INDIVIDUAL RIGHT TO PROPERTY VS. ECONOMIC INTEREST OF THE COMMUNITY

By Noah McKay

Resolved: The individual right to property ought to be valued above the economic interest of the community.

Now that we have investigated the background of the resolution and considered a few ways to affirm or negate it, it is time to examine real-world examples – usually referred to in LD as "applications" – supporting each side. Historical events, studies, and even raw statistical data may be used as applications. Fortunately, there are plenty of each available to both sides of this year's resolution.

Part I: When to Use Applications

First, let's briefly consider the purpose of applications. Some coaches and competitors insist that every contention in an LD case requires an application; indeed, during rebuttals, some competitors encourage judges to reject arguments for the sole reason that they do not include any applications. In my view, this is misguided. Some contentions require applications, but others do not.

To understand which arguments require applications, we need to introduce a distinction between *a priori* knowledge and *a posteriori* knowledge. *A priori* knowledge is knowledge that is based on reason or intuition, rather than observation. For example, knowledge that all circles are round is *a priori*, because it is possible to have this knowledge without observing any circular objects. Since circles are round by definition, it would be pointless to measure every circle you could find to determine whether they were round. Another example of *a priori* knowledge is moral knowledge, such as the knowledge that torturing an innocent person is wrong. No double-blind, peer-reviewed scientific study could establish this, and even if one could, you would not have to perform a study in order to know that it is true. Your conscience tells you that torturing the innocent is wrong, in the same way that your reason tells you that all circles are round.

A posteriori knowledge (also sometimes called "empirical" knowledge) is knowledge that is based on observation. For example, the claim that the COVID-19 vaccine is safe and effective is an *a posteriori* claim, because it can only be settled by conducting scientific studies. Our knowledge about cause-and-effect relationships is almost always *a posteriori:* in order to know which events cause which other events, we must observe them. For instance, we now know that smoking cigarettes causes lung cancer because we have observed that one follows from the other.

Whether an argument requires an application depends on whether it is an *a priori* argument or an *a posteriori* argument. For example, a debater who argues that confiscating property is morally wrong because it violates the human right to self-ownership makes an *a priori* argument, so he does not need an application. After all, how could a scientific study or a historical account show that confiscating property is wrong? On the other hand, a debater who argues that upholding the right to property is necessary to prevent tyranny makes an *a posteriori* argument, since it *is* possible to test his claim through observation. So, he needs an application.

Since *a priori* claims do not require applications, it is possible to write a competitive LD case with no applications by appealing exclusively to *a priori* premises. But most good LD cases make *a posteriori* claims, so most of them include multiple applications. Below are a few you can use to support your arguments this season.

Part II: Affirmative Applications

The simplest (though, for reasons explained below, potentially the weakest) applications AFF can run are examples of societies in which the economic interest of the community was valued above the individual right to property and the consequences were disastrous. One such example is the Soviet Union under Joseph Stalin, who effectively abolished private property and enforced collective labor in agriculture and industry in an attempt to achieve economic equality and growth. According to Peter Kenez, a history professor at the University of California, Santa Cruz,

> *Peter Kenez (Peter Kenez is emeritus professor of history at the University of California, Santa Cruz. He was born in Hungary and is a Holocaust survivor.),* A History of the Soviet Union From the Beginnings to Its Legacy *(Cambridge: Cambridge University Press, 2017), 96.*
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> The trauma of collectivization, the lack of incentives, and the peasants' hatred of the new institutions led to a considerable decline in overall agricultural production. According to estimates, crop production declined 10 percent between 1928 and 1932, and the output of animal husbandry declined 50 percent. At the same time the state became far more efficient in removing produce from the countryside. Delivery quotas were high, usually 40 percent of the product of the farm. During the first five-year plan deliveries were two or three times higher than the quantities the peasants had previously marketed. The result was predictable: great misery and ultimately starvation in the countryside.

Elsewhere, Kenez notes,

> *Peter Kenez (Peter Kenez is emeritus professor of history at the University of California, Santa Cruz. He was born in Hungary and is a Holocaust survivor.),* A History of the Soviet Union From the Beginnings to Its Legacy *(Cambridge: Cambridge University Press, 2017), 89.*
>
> Party leaders in charge of the economy promised not only vast increases in the output of heavy industry, but also dramatic improvements in the standard of living of the Soviet people. How unrealistic the plans were can be seen

> by the fact that some of the target figures promised by the party leaders were achieved not in 1932, at the end of the first five-year plan, but in 1960, fifteen years after the Second World War. The goal of the first five-year plan was reached by fiat: after four years the Soviet leaders simply announced that the plan had been fulfilled.

Not only did Stalin's plan fail to spur economic growth, but it failed to deliver the economic equality that was supposedly at the heart of communism:

> *Mark Harrison (Mark Harrison is professor emeritus of economics at the University of Warwick) "The Soviet economy, 1917-1991: Its life and afterlife," Vox EU, November 2017, https://voxeu.org/article/soviet-economy-1917-1991-its-life-and-afterlife.*
>
> The Soviet state confiscated most personal wealth and appears to have distributed wage incomes from employment more equally than in Russia before or since. This is suggested by Figure 4, which shows new data from Novokmet et al. (2017). But income data might not be a good guide to consumption inequality under communism. The distribution of consumer goods and services was characterised by shortage and privilege. Every Soviet adult could count on an income, but income did not decide access to goods and services – that depended on political and social status.

There is a caveat here: In the strategy section, I said that AFF should avoid characterizing the NEG position as communist or socialist, since it is not necessary to advocate for the abolition of private property in order to negate the resolution. NEG will likely decry applications like this one as extreme and unrelated to his position. With that in mind, AFF may still point to examples of communist or socialist policies in order to show that governments are generally incompetent to further the community's economic interests and that surrendering property rights for the sake of equality or prosperity only leads to abuse. If centralized economic decision-making failed on a large scale in the past, AFF may inquire, why think it will succeed on a small scale?

A narrower and potentially more promising approach is to offer examples in which governments used their power over the individual right to property as a tool for oppressing or silencing particular people. For example, in 2018, reports emerged that Bashar Al-Assad, president of Syria, was persecuting political dissidents by seizing their property under authority granted by an anti-terrorism law:

> *Dahlia Nehme (Dahlia Nehme is an assistant foreign editor based in Abu Dhabi with more than 15 years of experience in journalism.), "Syrian State Seizes Opponents' Property, Rights Activists Say,"* Reuters*, December 12, 2018, https://www.reuters.com/article/us-mideast-crisis-syria-property/syrian-state-seizes-opponents-property-rights-activists-say-idUSKBN1OB0H3*
>
> BEIRUT (Reuters) - Syria's government has been using a little-known anti-terrorism law to seize property from dissidents and their families as it takes back control of areas that were held by rebel groups, rights groups and some of the people affected say.
>
> [paragraphs omitted]
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> Two Syrian rights groups, the Syrian Observatory for Human Rights and the Syrian Network for Human Rights, said they had verified numerous cases. The network said it had registered at least 327 individuals targeted by property seizures from 2014 to 2018. The observatory said it had registered 93 cases of property seizures

> targeting opposition activists. It was aware of many other cases, but was not able to verify them because those involved were too scared to speak freely, it said.

In eerily similar fashion, Prime Minister of Canada Justin Trudeau recently attempted to quash public protests against a national vaccine mandate by freezing the bank accounts of Canadians involved with the protests, under the pretense that they were funding "domestic terrorism":

> *Brian Platt and Jen Skerritt, "Banks Freeze Millions in Convoy Funds Under Trudeau Edict,"* Bloomberg News, *February 22, 2022, https://www.bnnbloomberg.ca/banks-freeze-millions-in-truck-convoy-funds-under-trudeau-edict-1.1727032*
>
> Canadian banks froze about $7.8 million (US$6.1 million) in just over 200 accounts under emergency powers meant to end protests in Ottawa and at key border crossings, a government official said Tuesday. The new tally was revealed in testimony to lawmakers examining Prime Minister Justin Trudeau's decision to invoke the country's Emergencies Act to end a three-week occupation of the nation's capital. Trudeau and his ministers have said the measures announced last week are meant to cut off funding to protest leaders and to pressure trucking companies to prevent their semis from being used again in blockades. Ottawa's downtown core was cleared out over the weekend, but dozens of trucks remain gathered at encampments outside the city.

These applications may be used to show that granting government power – even emergency power – over the individual right to property inevitably leads to the violation of other fundamental liberties, including the liberty to oppose those in power.

Part III: Negative Applications

The best NEG applications are examples of common-sense exceptions to the individual right to property. The least controversial such exception is the power of eminent domain, the right of the federal government, implicitly recognized by the Fifth Amendment to the United States Constitution, to force individuals to sell or lend their property for public use when the public interest requires it. According to the U.S. Department of Justice,

> *"History of the Federal Use of Eminent Domain," United States Department of Justice, updated January 24, 2022, https://www.justice.gov/enrd/history-federal-use-eminent-domain*
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> The federal government's power of eminent domain has long been used in the United States to acquire property for public use. Eminent domain 'appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty.' Boom Co. v. Patterson, 98 U.S. 403, 406 (1879). However, the Fifth Amendment to the U.S. Constitution stipulates: 'nor shall private property be taken for public use, without just compensation.' Thus, whenever the United States acquires a property through eminent domain, it has a constitutional responsibility to justly compensate the property owner for the fair market value of the property. See Bauman v. Ross, 167 U.S. 548 (1897); Kirby Forest Industries, Inc. v. United States, 467 U.S. 1, 9-10 (1984).
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> [paragraphs omitted]

> Eminent domain has been utilized traditionally to facilitate transportation, supply water, construct public buildings, and aid in defense readiness. Early federal cases condemned property for construction of public buildings (e.g., Kohl v. United States) and aqueducts to provide cities with drinking water (e.g., United States v. Great Falls Manufacturing Company, 112 U.S. 645 (1884), supplying water to Washington, D.C.), for maintenance of navigable waters (e.g., United States v. Chandler-Dunbar Co., 229 U.S. 53 (1913), acquiring land north of St. Mary's Falls canal in Michigan), and for the production of war materials (e.g. Sharp v. United States, 191 U.S. 341 (1903)). The Land Acquisition Section and its earlier iterations represented the United States in these cases, thereby playing a central role in early United States infrastructure projects.

There are plenty of cases in which the exercise of eminent domain is necessary to uphold critical community interests. To give just one example, when a nation goes to war, its government must have the power to repurpose factories and transportation services for the production and distribution of military equipment. (Lest AFF deny that this counts as an economic interest, notice that it is concerned with the production and distribution of goods and so counts as economic under most definitions.)

Another sensible limit on property rights is zoning. Zoning laws prohibit certain kinds of construction, development, or other activities on private land for the purpose of safeguarding community interests. For example, they may prevent landowners from building skyscrapers in the middle of suburban neighborhoods, drilling for oil next to a neighbor's yard, or releasing mass amounts of air pollutants in residential areas. The U.S. Supreme Court has ruled that these laws are legitimate exercises of government's authority to safeguard the common good:

> *George Sutherland (George Alexander Sutherland was an English-born American jurist and politician. He served as an associate justice of the U.S. Supreme Court between 1922 and 1938.), Euclid v. Ambler, No. 31 (Supreme Court of the United States November 22, 1926), https://tile.loc.gov/storage-services/service/ll/usrep/usrep272/usrep272365/usrep272365.pdf*
>
> The decisions enumerated in the first group cited above agree that the exclusion of buildings devoted to business, trade, etc., from residential districts, bears a rational relation to the health and safety of the community. Some of the grounds for this conclusion are-promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry; suppression and prevention of disorder; facilitating the extinguishment of fires, and the enforcement of street traffic regulations and other general welfare ordinances; aiding the health and safety of the community by excluding from residential areas the confusion and danger of fire, contagion and disorder which in greater or less degree attach to the location of stores, shops and factories. Another ground is that the construction and repair of streets may be rendered easier and less expensive by confining the greater part of the heavy traffic to the streets where business is carried on.

Both eminent domain and zoning are difficult to square with the resolution, since they are instances of direct conflict between the individual right to property and the economic interest of the community in which the community's interest clearly wins out. Furthermore, it is hard to imagine living a world in which these restrictions on property rights did not exist: would any of us really prefer to live in a society in which our neighbors could build skyscrapers and oil rigs in their backyards, or in which a landowner could stubbornly refuse to allow the construction of a

pipeline through the corner of his property even when it was necessary to the energy security of several thousand people? And refuse it even for a reasonable price? I doubt so.

Conclusion

While applications are not the be-all-end-all of LD debate, most LD resolutions have significant real-world implications, and this year's resolution is no exception. In order to determine whether restrictions on property rights will help or harm prosperity, freedom, or justice, debaters will have to consult the historical record. In this short overview, I have merely scratched the surface; there is a wealth of evidence to explore on your own.