

The Law's Ideological Shield

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How legal neutrality turns human need into an exception and property into a command

This edition includes the complete reading text and source notes. For the linked action tools, [download the HTML kit](#) and open index.html. Web source links in this PDF are clickable.

Read the essay

Source essay · Original wording preserved. The reading notes below distinguish its civic argument from legal holdings.

There is a danger in explaining a legal system that protects property before people. If we only describe how the system works, we may make it sound fair, normal, or unavoidable. That would be a mistake. The question is not whether the law has reasons for what it does. Every system of power has reasons. The real question is who those reasons protect, what they hide, and whose suffering they ask the public to accept.

The charge is simple. American law often treats property claims as urgent and enforceable. At the same time, it treats food, housing, health care, and basic safety as hopes, not duties. When people need help, the government often says its hands are tied. When markets need help, the government suddenly finds power, money, and speed. That is not neutrality. That is a choice dressed up as law.

This way of reading the law fits an older legal tradition. Legal realists and Critical Legal Studies scholars have long argued that law is not always a neutral referee standing above politics. Law often chooses a side while calling that choice procedure. This essay follows that point in plain language: neutrality can be an active political decision.

The Fiction of Neutrality

The law often uses clean words to cover unequal facts. “Freedom of contract” makes it sound like a worker and an employer meet as equals. But a worker who needs rent, food, medicine, or health insurance does not stand on equal ground with a corporation. The law may call the deal voluntary. In real life, the choice may be simple: accept the terms or face hardship.

The same thing happens when officials say the Constitution creates “no duty” to provide housing, health care, or economic security. The state calls itself neutral because it does not promise those things. But that neutrality is selective. The state acts every day to protect property. It enforces contracts. It removes tenants through courts and police. It protects patents and business rights. It steps in when financial markets are in trouble. The power is there. The question is who gets to use it.

Cases like *DeShaney v. Winnebago County* show the point in hard form. The Supreme Court has said the Due Process Clause limits what government may do to people, but usually does not require government to protect them from private harm. That rule may be accepted doctrine. But it also shows how the law can define danger as outside public duty, even when government has the power to act.

That is why the words “promote” and “provide” matter. When banks or markets are in danger, public power can appear almost overnight. When a family is being evicted, when a patient cannot afford treatment, or when a worker cannot afford insulin, the language changes. Need becomes a private problem. Survival becomes a personal responsibility. The law does not disappear. It changes sides.

Some people defend this by saying rights mostly protect us from government interference. That matters. But freedom is thin if a person must keep a bad job to keep health insurance, stay in unsafe housing to avoid homelessness, or take on debt to get basic care. A system that protects formal freedom while ignoring real need does not end coercion. It hides it.

The Preamble Is Not a Dead Letter

Joseph Story gives the strongest legal answer against using the Preamble in court. He said the Preamble cannot create new federal powers or enlarge powers that were not already given. It does not, by itself, create a lawsuit. A person cannot walk into court, point to the Preamble, and automatically win a case. But Story also said the Preamble helps explain the nature, purpose, and reach of the powers the Constitution does give. That is the rule. And that rule does not end the argument.

Story’s point also proves something important. Even if the Preamble does not give courts new power, it still states the purpose of the Constitution. Public officials swear an oath to support the Constitution. Senators, Representatives, judges, and executive officers do not swear to support only the parts they prefer. They swear to support the whole Constitution. That includes its first words: “We the People,” justice, peace at home, common defense, general welfare, and liberty for future generations.

That oath creates a duty, even when a court case cannot be won. A judge may say the Preamble is not a freestanding legal right. Congress cannot then say the Preamble means nothing. Elected officials are not excused from constitutional purpose just because a court cannot force them to act. The oath is not a technicality. It is a public promise.

This is the breach. Congress speaks the language of the Preamble at election time and forgets it in office. When votes are needed, the citizen becomes “the people.” The worker becomes “the backbone of America.” The family becomes “our future.” But after the campaign ends, the real audience often changes. “We the People” starts to look more like “they the donors,” “they the funders,” and “they the people who keep the campaign alive.” The citizen is treated as central when votes are counted, then pushed aside when policy is written.

The charge is not that every official is corrupt. It is not that every hard policy question has only one answer. The charge is narrower and stronger. The goals named at the start of the

Constitution have been turned into campaign slogans. Justice, welfare, peace, and liberty are praised in speeches while lawmaking follows money, access, and power. The citizen is fully seen on Election Day and partly invisible afterward.

The Defenses Do Not Clear the Charge

A fair defense must be heard. One defense says courts should not create positive rights to housing, income, or health care because judges are not elected and should not control budgets. That concern matters. But it does not answer the charge. If legislatures are supposed to make these choices, then courts should not keep stepping in mainly when lawmakers try to limit capital. The *Lochner* era struck down labor protections in the name of contract rights. *Citizens United* struck down limits on corporate independent spending in elections. Courts do enter the economy. The question is why they so often enter to protect property and political money, not basic survival.

Another defense says strong property rights and capital markets create wealth, technology, and medical breakthroughs. That is also partly true. Patents, investment, logistics, and private firms can help create real advances. Vaccines, supply chains, and new medicines do not appear by magic. But that defense proves too little. A system may produce wealth and still distribute insecurity. It may create medicine and still price people out of care. It may reward innovation while leaving the workers who make that innovation possible without stable lives.

So the answer is not to deny that markets can build useful things. The answer is to ask who receives the benefits and who carries the risk. If public power protects the market when it fails, then public power can also demand that the fruits of the market serve life, not only ownership.

The Constitutional Trap

This is where originalism can become a trap. If constitutionalism means only loyalty to the 1787 settlement, the citizen starts from a weak position. The original Constitution did not clearly define national citizenship the way we understand it now. It referred to citizens for officeholding and state relations, but federal citizenship as a clear constitutional status came later, with the Fourteenth Amendment.

In the 1787 text, people often appear as inputs for power. Article I counts people to divide seats in Congress and direct taxes among the states. Its original formula included the Three-Fifths Clause, which counted enslaved people as fractions for political power while denying their humanity and freedom. That is not a small technical flaw. It shows that the original structure could treat human beings as numbers in a system built around representation, revenue, property, and control.

The contract system carried the same warning. The Framers feared debtor laws that would let popular majorities weaken private obligations. That fear shaped parts of the Constitution. So if someone reads the Constitution only as a creditor-debtor settlement from 1787, the citizen asking for basic economic survival will almost always lose. The machine was not built to let

need easily defeat debt.

That is why advocates for the citizen had to break the trap. They could not rely only on the narrow economic logic of 1787. They had to point to later constitutional change, public necessity, labor power, civil rights struggle, and popular sovereignty. They had to argue that a Constitution that serves only creditors and owners is not self-government. It is a debt instrument enforced by the state.

How the Citizen Breaks the Trap

The first answer is the Fourteenth Amendment. After the Civil War, the Constitution was changed in a basic way. It declared that all persons born or naturalized in the United States are citizens of the United States and of the state where they live. It also promised due process and equal protection. This was a second founding. It did not erase every injustice, but it changed the constitutional starting point. The citizen was no longer only an input in a system of state power. The citizen became a national constitutional subject.

The second answer is public necessity. During the Great Depression, Minnesota paused some mortgage foreclosures to stop families from losing their homes. Creditors argued that this violated the Constitution's Contract Clause. In *Home Building & Loan Association v. Blaisdell*, the Supreme Court upheld the law. The Court said emergency does not create new power, but it can provide the occasion to use power that already exists. In plain terms, the Court admitted that contract rights are not absolute when public survival is at stake.

That point matters here. If creditor rights were always untouchable, society could break under the weight of private claims. The state exists because people live under it. Its first duty cannot be only to preserve contracts while people lose homes, health, and life itself. *Blaisdell* does not create a full right to survival. But it proves that the law has known, when forced, that public welfare can stand above private contract.

The third answer is popular sovereignty. A Constitution cannot be treated as a permanent command from the dead to the living. Thomas Jefferson put the point sharply when he wrote to James Madison that the earth belongs to the living. The living people must be able to govern their own conditions. If the 1787 text is treated as a locked box that protects creditors forever, then constitutionalism becomes inheritance without consent. It becomes rule by the past.

This does not mean the Constitution has no limits. It means its limits must be read through the whole story, not only through the creditor fears of 1787. The Second Founding, labor struggle, civil rights movements, and democratic pressure all show that constitutional meaning has been changed by people who refused to accept legal silence as moral defeat.

Property, Faction, and Constitutional Memory

This problem did not appear out of nowhere. Many of the Framers owned property and feared both monarchy and popular pressure from below. In Federalist No. 10, James Madison warned about factions and connected political conflict to unequal property. The Constitution was built to make self-government possible, but also to slow down majorities when they threatened powerful interests.

This does not mean the Constitution belongs only to property owners. It means its meaning has always been fought over. Broad words like “general welfare” can be read widely when they help banks, industry, public credit, or markets. But those same words are often read narrowly when people use them to demand wages, shelter, food, or care. The general welfare becomes broad when capital needs help and narrow when people do.

That double standard turns “We the People” into a promise with a gatekeeper. In theory, the people are sovereign. In practice, their power is treated as dangerous when they demand a fairer share, stronger worker rights, or basic survival. Property, meanwhile, is treated as order itself. Courts and institutions do not have to say they serve capital. They only have to make capital’s claims faster, clearer, and stronger than everyone else’s.

What the System Makes Enforceable

The result is a country with great wealth beside deep insecurity. Executive pay, corporate profits, and asset values can rise while people face homelessness, medical debt, unsafe work, and unstable lives. This contradiction is not hidden. It is managed. The law helps decide which crises count as emergencies and which ones are treated as normal suffering.

When the letter of the law is used to say the system cannot guarantee basic survival, while the same system organizes trillions to protect markets, the mask slips. The legal framework is not neutral. It becomes a shield. It makes this outcome seem normal. It treats property as firm, urgent, and enforceable, while treating food, housing, health care, and safety as optional or unrealistic.

That difference shows where the system places duty. A landlord’s claim, a bank’s claim, a patent, or a corporation’s right to profit can call on courts, police, regulators, and public money. But when a family needs shelter, when a worker cannot afford medicine, or when a community is left with unemployment and illness, the same government suddenly becomes careful and limited. It finds restraint exactly when people need help most.

That is why describing the system is not enough. If we explain the machine without judging it, we may accept its rules without meaning to. The law can sound fair because it speaks in clean words. But those words do real work. They turn hunger into bad luck, eviction into process, debt into personal failure, and public rescue of markets into necessity.

So the charge must be clear. The law’s claim of neutrality often protects the current balance of power. If the state can move quickly to save markets but cannot be made to protect the conditions of life, then the issue is not ability. The issue is priority. The system recognizes

some claims as real and treats others as background noise.

The next question is where reform begins. If courts will not enforce the Preamble as a right, and if Congress keeps treating its oath as ceremony, then the answer cannot come from doctrine alone. It may require stronger labor law, antitrust enforcement, campaign finance reform, public options for care and housing, and direct political pressure from people outside the courtroom. The Constitution's purpose will not reclaim itself. It has to be reclaimed by citizens who refuse to let public duty be reduced to private fundraising.

That is the final evidence. A society shows its values not only by what it says, but by what it enforces. When property is mandatory and survival is optional, the law does more than reflect inequality. It teaches people to see inequality as order.

What the legal record establishes

The essay argues that legal institutions can make property claims easier to enforce than claims for the conditions of a decent life. That is an institutional judgment to test against decisions and outcomes. These distinctions keep the argument precise.

The Preamble states purposes; it does not supply a free-standing power.

Constitution Annotated explains that the Preamble can help interpret powers granted elsewhere. It is not itself a grant of substantive power. The essay's oath-based demand is a civic standard of accountability, not a new court-enforceable guarantee of housing or care. Article I's taxing-and-spending language is a separate provision. [Legal effect of the Preamble](#).

The original Constitution did more than count people.

Article I restricts suspension of habeas corpus and forbids bills of attainder and ex post facto laws. Article III provides criminal jury trials and limits treason prosecutions; Article VI bars religious tests for federal office. These protections do not amount to a guarantee of material security. The essay's "inputs" description is a critique of political structure, not a complete inventory of original rights. Its Three-Fifths discussion concerns apportionment and direct taxation; the formula increased slaveholding states' representation without giving enslaved people votes. [Original Constitution, Articles I, III and VI](#).

The Fourteenth Amendment changed citizenship and protection.

Its Citizenship Clause includes the qualification "subject to the jurisdiction thereof," omitted from the essay's paraphrase. Its due-process and equal-protection guarantees apply to persons, not only citizens, and constrain states. The essay describes the 1868 change; it is not a current birthright-citizenship litigation guide. [Amendment XIV, section 1](#).

A missing constitutional duty is not a prohibition on public action.

DeShaney (1989) rejected the asserted due-process duty to protect a child from private violence. The opinion distinguishes state custody and leaves other legal sources of duty separate. It does not hold that government lacks power to fund housing, healthcare or protection. [Read the opinion](#).

Contract protection has limits, and so does emergency relief.

Blaisdell (1934) upheld temporary, conditional Minnesota mortgage-redemption relief. It did not authorize cancellation of all debts or establish a general right to survival. The Contract Clause restricts states; the relief had to fit a public purpose and reasonable conditions. [Case and limits](#).

These checks support specific distinctions. They do not independently establish every broad claim in the essay about judicial patterns, lawmakers' priorities, or the history of capital. Those claims require decisions, institutional records, and measured outcomes.

Where the Federalist Society fits

A legal philosophy becomes durable when institutions teach it, debate it, and carry it into professional practice. The Federalist Society describes its work as a conservative and libertarian network spanning students, lawyers, scholars and judges. It emphasizes limited government, individual liberty and judicial interpretation of existing law. It says it does not take policy positions or endorse nominees. [The Society's account of its purpose and activities.](#)

Operation Citizen's question is what those principles deliver in practice. When freedom is framed chiefly as protection against government action, how much room remains for enforceable public duties to secure the conditions in which people can use that freedom? This is an interpretive critique, not proof that every member rejects individual rights or that membership caused a particular ruling.

Test the institutional connection through a named legal argument, a named advocate or decision-maker, a ruling, and its effect. A membership label cannot replace that chain. The Society's professional network helps explain how ideas can persist; a claim that it produced a specific advantage for capital still requires case-specific evidence.

Turn the argument into a public demand

Choose one rule, subsidy, tax preference or protection. Identify the benefit promised to the public. Then ask: what does the recipient have a right to receive, what does the citizen have a right to demand, and who must answer when the promised benefit fails to arrive?

Record the authority, the responsible office, the people affected, the measurable result and the correction sought. An argument about public purpose becomes usable when it reaches an office that can change the rule.

Check whether the benefits reached households.

Inspect the constitutional assessment.

Find an actor and an available authority.

Prepare an action record.

Build the power to change the rules

Build Citizen Power connects thirteen reform proposals to responsible actors, legal limits and a first citizen step: governing rules, enforceable public duties and organized collective action.

Publication record

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