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A History of Compromise

In an article titled “Why We Need Compromise,” former U.S. Representative Lee Hamilton wrote:

The responsibility of our politicians is to make the country work, to provide stability and an environment in which Americans can live in freedom and achieve their goals. In a nation as big and diverse as ours, in which people hold so many differing opinions, that means finding solutions to issues that allow us to work peaceably and productively together; and that means finding compromises.¹

Sadly, many Texans agree with this both nationally and locally, believing that the only workable solution to any controversial issue is compromise. They believe that if both sides are willing to make concessions, a happy medium can be reached.

When it comes to principles—and politics should be governed by principles—compromise is never workable. As the former World Chess Champion Garry Kasparov once said, “If the road to hell is paved with good intentions, compromises on principles are the street lights.” The political history of Houston over the past thirty-five years demonstrates the truth of this statement.

Beginning in the early 1980s, statist—those who believe that the individual is subservient to the group—have put forth an ever growing list of proposals to limit property rights. In virtually every instance, those who were initially opposed to the proposals eventually compromised.

In this paper, we will examine three examples. We will see that compromise has nearly destroyed one industry, created economic hardships for others, and reduced individual liberty for all. While the examples pertain to Houston, the lessons apply to political battles in every jurisdiction.

Sign, Sign, Everywhere a Sign

In 1980, Councilmember Eleanor Tinsley led an effort to rid Houston of billboards. Declaring billboards to be “visual pollution” and a blight on the city, Tinsley and her supporters soon passed an ordinance that prohibited the erection of any new billboards in the city.

At the time, there were an estimated 15,000 billboards in Houston. Today, there are about 4,000. If the original ordinance prohibited new signs but did nothing to remove existing signs, why has the number decreased by more than 70 percent? The answer is: compromise.

While the outdoor sign industry opposed the original ordinance, they did so weakly. They compromised on a fundamental principle, and when anti-billboard activists pushed for more stringent regulations, the industry found itself morally disarmed.

¹ Lee Hamilton, “Why We Need Compromise,” The Center on Congress at Indiana University, May 6, 2003, <http://centeroncongress.org/es/node/123>, accessed November 28, 2016.

In the mid-1980s, a proposal was submitted to City Hall to ban all billboards within Houston city limits. An article in the *Chronicle* quoted Rob Schmerler, who was then the public affairs officer for an outdoor sign company:

“Look at the jobs: Five thousand Houston jobs are directly affected by billboards. We would hate to see the city lose any,” he said. “If you took down all the billboards, that's what you would pull out of the economy.”...

But Schmerler insisted the industry is willing to compromise "to make changes that would be beneficial to the environment.”

“If the city wants to clean up the drive from the airport, they could encourage voluntary compliance by allowing companies to replace the signs out there with some in another part of town where billboards would be more appropriate. Voluntary compliance is going to be a lot faster than forced compliance.”²

Rather than state and defend the principle involved—property rights—the sign industry meekly defended itself on economic grounds. At the same time, the industry stated its willingness to allow city officials to regulate them. In doing so, they essentially signed their death warrant.

The number of jobs involved was irrelevant to Tinsley. According to a story in the *Houston Chronicle*,

Tinsley said, “In my 6 1/2 years on the council, people have become more concerned about quality of life. You can ask the Houston Economic Development Council or the Chamber of Commerce. They see this issue the same way I do. The economy is not helped **by** excessive signage.

“Yes, it does mean the loss of some jobs, but I think most of the skills are transferable," she said.”³

When Tinsley rejected Schmerler’s economic argument with a casual “oh well,” the sign industry had no argument to offer in response. In 1986, City Council banned billboards in Houston and gave sign companies about two decades to comply. In other words, City Council voted to kill the billboard industry in Houston and gave it twenty years to die.

You might think that other businesses and industries would take note of this action and rush to the defense of the billboard companies. If the city could outlaw one industry, what would stop it from outlawing other industries? Sadly, most businesses and business organizations jumped on the “quality of life” bandwagon and supported the ban.

As one example, the website for the Greater Houston Partnership claims that the “Partnership is the primary business advocate for the Houston region.”⁴ The organization formed the Quality of Life Coalition (QLC) to promote the planting of trees, construction of parks, and greater controls on billboards and signs. In 2009, two members of QLC steering committee called for stronger sign regulations, including more controls aimed at on-premises signs:

² Bill Mintz, “Billboard business hit by sales slump, faces a dim future,” *Houston Chronicle*, May 19, 1986, Page 1.

³ *Ibid.*

⁴ The Greater Houston Partnership, “Partnership Public Policy,” <http://www.houston.org/policy/>, accessed November 28, 2016.

Visual blight seriously damages Houston's public image, impairs quality of life and impedes economic development. It's important that the business and civic community work together to ensure that Houston maintains an appealing and visually inviting environment in an economically competitive marketplace. We look forward to additional efforts by the city to improve signage in Houston.⁵

So, “the primary business advocate for the Houston region” was eager and willing to destroy an entire industry. With advocates like this, who needs enemies?

A year later, Clark Martinson, general manager of Houston’s Energy Corridor District, said that the Houston business community generally supports the ban on new billboards, and ongoing efforts to continue to reduce the existing billboard inventory.

While the city’s business leaders have aligned themselves against the billboard industry, sign companies have continued to appease city officials. In 2007, Mayor Bill White and Councilmember Pam Holm, who led the effort for more stringent controls on billboards, wrote: “Following three years of negotiations, we reached an agreement with a company controlling over 90 percent of the small- and medium-sized billboards in the city to take down two-thirds of them, 881 billboards, within six months.”⁶

In other words, rather than fight to retain its property, the company—Clear Channel—simply caved and agreed to dramatically reduce its inventory of signs.

With these compromises on the principle of property rights it is not surprising that anti-billboard activists and politicians demanded more and more controls on outdoor signs. Nor is it surprising that business leaders around the city joined the assault on signs. If the industry did not have the moral courage to defend itself on principle, it could not expect others to do so.

It did not take long for the attack on property rights to escalate, and those attacks would eventually impact nearly every business in the city.

Your Rights End at My Nose

In 1986, Councilmember Eleanor Tinsley proposed an ordinance to limit smoking inside most buildings in Houston, including restaurants and other private businesses. The Chamber of Commerce executive committee opposed the ordinance because it included workplaces. After more than a month of negotiations, Tinsley softened the restrictions, and the Chamber of Commerce reversed its position and supported the ordinance.

The original ordinance prohibited smoking in businesses and restaurants. However, an employer could establish designated smoking areas, up to half the size of their space. After negotiating with the Chamber and the Houston Restaurant Association, Tinsley revised the ordinance to allow the designated smoking area to be proportional to the number of customers and employees who smoke. In exchange for a minor change in the ordinance, the two business groups backed a proposal to give the city control over what occurs on private property. In other words, they compromised on the

⁵ Max Watson and Ed Wulfe, “Sign ordinance a positive, but city needs to do more,” *Houston Chronicle*, July 18, 2009, <http://www.chron.com/opinion/outlook/article/Sign-ordinance-a-positive-but-city-needs-to-do-1731100.php>, accessed November 28, 2016.

⁶ Bill White and Pam Holms, “Removing billboards a priority — within federal law,” *Houston Chronicle*, December 16, 2007, <http://www.chron.com/opinion/outlook/article/Removing-billboards-a-priority-within-federal-1818796.php>, accessed November 28, 2016.

principle of property rights—the right to use one’s property as one deems best. As we saw with the billboard industry, that compromise was only the start.

In 2005, City Council banned smoking in restaurants. The *Houston Chronicle* reported:

Under the ordinance, which goes into effect Sept. 9, the city will continue to allow smoking in bar areas within restaurants, in outdoor dining areas and in free-standing bars. Mayor Bill White proposed the measure as a compromise between the economic interests of restaurant and bar owners and anti-smoking advocates who pushed to ban smoking in all public indoor spaces.⁷

White’s compromise had the backing of both the Greater Houston Restaurant Association and the Houston Convention and Visitors Bureau, who claimed that a stricter ban would result in a loss of business. The business groups did not oppose further violations of property rights, only those that they deemed were “going too far.”

In response to those who wanted a total ban on indoor smoking, White defended the compromise, saying, “This is Texas, where we do balance freedoms.”

To White and anti-smoking activists, this was issue an of the rights of smokers versus the rights of non-smokers. And since non-smokers are a large majority in Houston, their “rights” should dictate public policy. Ignored in the entire debate were the rights of property owners.

Rights recognize the freedom of individuals to act according to our own judgment, so long as we respect the freedom of others to do the same. Only physical force, or the threat thereof, can violate our rights. For example, robbery, rape, and kidnapping violate our rights because they force us to act without our voluntary consent.

It is important to understand that rights to not pertain to groups, but only individuals. There is no such thing as women’s rights, gay rights, or smoker’s rights. There are only individual rights, and they apply to all individuals, no matter their gender, sexual orientation, or smoking status.

Property rights protect our freedom to create, use, trade, and dispose of material values according to our judgment. In the context of a business, the property owner has a moral right to set the terms and conditions upon which he will allow others to use his property. The rights of others protect their freedom to accept or reject those terms and conditions.

For example, an employer can establish a dress code for employees, who are free to accept such a requirement as a condition of employment or find another job. Similarly, a restaurant owner can require certain attire for admission to his establishment, and patrons are free to accept that requirement or take their business elsewhere. Each individual—employer, employee, restaurant owner, and patron—is free to act on his own judgment.

The same principle applies to smoking—the property owner has a moral right to determine what he will and will not allow on his property. If the owner chooses to allow smoking or ban it, each individual is free to decide for himself if that policy is acceptable.

This was the principle that opponents to the ordinance should have defended. Instead, they once again compromised. And, as with billboards, it wasn’t long before anti-smoking activists returned to City Hall demanding more.

In 2006, City Council banned smoking in bars and other workplaces with the backing of the Greater Houston Restaurant Association. It took twenty years, but a series of compromises gave anti-smoking activists what they initially wanted.

⁷ Ron Nissimov, “Council bans smoking in indoor dining areas,” *Houston Chronicle*, March 10, 2005, <http://www.chron.com/news/houston-texas/article/Council-bans-smoking-in-indoor-dining-areas-1498231.php>, accessed November 28, 2016.

And they weren't the only group that achieved their goal through compromise.

Preservation Comes to Houston

In the aftermath of the defeat of zoning in 1993, preservationists could no longer count on comprehensive zoning to accomplish their goals. Unhappy with the redevelopment of properties in the Heights, Westmoreland, the Sixth Ward, and other neighborhoods, they launched a campaign to pass Houston's first historic preservation ordinance. In 1995, the ordinance was passed by City Council with the backing of Mayor Bob Lanier, a former developer.

The preservationists sought to "protect our heritage" by imposing land-use regulations on historic properties, and in some cases, entire neighborhoods. They wanted to halt the demolition of buildings that they thought had historic significance. They wanted control over the architectural style and other exterior features of new buildings. They didn't want structures that "clashed" with nearby buildings. They wanted to preserve the historic character of Houston's older neighborhoods.

There was considerable opposition to the proposed ordinance. After months of debate and negotiation, a compromise was reached between preservationists and developers, builders, and property owners. The preservationists wanted a complete ban on the demolition of historic buildings, while opponents to the ordinance wanted no controls on demolition. The two sides compromised on a 90-day moratorium on demolition.

In compromising, the ordinance opponents abandoned the principle of property rights. Developers and builders accepted some controls on the use of their property. The owners of historic buildings were no longer free to do as they chose with their property. Instead, they had to wait for 90 days before they could demolish the building. While this may seem like little more than a minor inconvenience, it established the fact that the city could control and regulate the use of historic properties. It also showed preservationists that developers and builders would not stand on principle.

In 2005, preservationists began to pressure the city to strengthen the preservation ordinance. In August of that year, City Council passed amendments to the ordinance. Included was a provision that allows owners of historic buildings to permanently prevent alteration to the exterior of the building. The protection would come through a covenant attached to the property's deed.

Given that property owners could already attach covenants to a property, why was it necessary to pass an ordinance? Councilwoman Pam Holms, who helped draft the 2005 amendments, provided a clue at the time. According to the *Chronicle*, she hoped "that city officials might consider ways to protect landmarks whose owners do not volunteer to preserve them."⁸

In other words, while permanent protection was made voluntary in 2005, preservationists hoped to eventually make such protection mandatory, no matter the property owner's own choice.

In 2007, City Council passed another amendment that requires property owners in historic districts to apply for a "certificate of appropriateness" from the Houston Archeological and Historic Commission before demolishing a structure. Failure to do so would result in a two-year waiting period before building permits would be issued for a new structure.

What was first a seemingly minor inconvenience—90-day moratorium—had become a much more onerous regulation. Beginning in 2007, a property owner who does not obtain the permission of city officials to demolish certain buildings will have to wait two years before he can use his property. And even then, he must grovel at the feet of the Houston Archeological and Historic Commission with the hope that they will deem his project "appropriate."

⁸ "Saving our landmarks: City Council approval of a historic preservation ordinance is a welcome step," *Houston Chronicle*, August 22, 2005, <http://www.chron.com/opinion/editorials/article/Saving-our-landmarks-City-Council-approval-of-a-1913724.php>, accessed November 28, 2016.

Three years later, preservationists again pressured City Hall to pass tougher amendments to the ordinance. In October 2010, City Council added a “no means no” provision. The 90-day moratorium on the demolition of historic buildings was removed. Today, permission must be granted from the Houston Archeological and Historic Commission before designated buildings can be legally demolished. Today, anyone who demolishes a designated building without city permission is subject to fines of \$500 per day.

Billboard opponents didn’t get everything they wanted in 1980. Anti-smoking activists weren’t able to get the ban on indoor smoking that they wanted in 1986. Preservationists didn’t get the ban on demolishing historic buildings that they wanted in 1995. But each of these statist groups eventually achieved its goals. Compromise made it possible and inevitable.

Compromise and Principles

Compromise is a “settlement of differences in which each side makes concessions.” A compromise is proper when each side shares a basic principle, but disagrees on its application. For example, compromising on the price of a car is based on the shared principle of trading value for value. However, if the buyer does not want to pay for the car and the seller capitulates, what occurs is not a compromise but the rejection of the principle.

To compromise on a principle is to reject it. A “principle” with exceptions is no longer a principle; it becomes a general guideline that can be abandoned whenever it is convenient. If the principle of property rights can be violated “sometimes,” then the only issue open to debate is when and to what extent.

As we have seen in regard to billboards, smoking, and preservation, compromise emboldened the statist. Repeatedly, they returned to City Hall to demand more stringent controls on property use. Having abandoned the principle of property rights, the victims were morally disarmed.

In each of the examples we have examined, the victims accepted the principle of the statist—property use should be determined by the collective rather than the rightful owner. In accepting this principle, property owners could only argue that each new proposal was “going too far.” They couldn’t challenge the proposals at the most fundamental level. They couldn’t challenge the proposals as a matter of principles.

The statist used the process of consensus building to give their proposals a chimera of moral validity. They held hearings, sought the input of stakeholders, and negotiated with opponents. To broaden support, politicians compromised on details, but they never abandoned their campaign to control property use.

Underlying each of these campaigns (and many others) is the principle of altruism—individuals must sacrifice their personal interests for the “public interest.” The individual must put aside his own independent judgment in deference to the “will of the people.”

As an example, the smoking ordinance prohibits business owners from judging which smoking policy he believes would be best for his establishment. Instead, he must conform to the preferences of “the people.” As another example, owners of properties in historical districts are prohibited from choosing the architectural style and features of his building; instead, he must receive permission from city officials before he can legally use his property.

In each instance, the individual is forced to sacrifice his desires, interests, and values to others. Billboard owners must sacrifice for those who want “scenic districts.” Restaurant and business owners must sacrifice for non-smokers. Property owners must sacrifice for preservationists.

Because they did not question the principle of altruism, the victims of the ordinances discussed in this paper could not challenge the infringements of their rights. They could not assert their moral right to use their property as they choose in the pursuit of their own personal values. Having accepted the

principle that they must sacrifice for others, they could only try to mitigate the sacrifices. They could only seek compromises from the victimizers, and as we have seen, those compromises were only a temporary reprieve.

Compromising with statist means embracing and accepting their principles. To defeat them and their proposals, compromise is not an option. We must fight them on principles. We must defend individual rights, including property rights. And to do that, we must reject altruism.

Defending Individual Rights

Defeating and reversing the statist trend illustrated in these examples requires more than opposing particular proposals. It requires more than arguing about the economic consequences of a policy or ordinance. It requires more than claiming that an ordinance is going “too far.” We have seen that such an approach is ineffective, and it is ineffective because it doesn’t address the principles involved.

To defeat statism, we must expose it for what it is—an assault on the moral right of each individual to live his life in the pursuit of the values of his own choosing, so long as he respects the rights of others to do the same. We must defend individual rights, including property rights.

We cannot defend the rights of individuals to use their property as they deem best while simultaneously advocating altruism—the moral duty of individuals to serve others.

For most of its history, Houston has demonstrated a greater respect for property rights than other cities. Houstonians have rejected comprehensive zoning on three separate occasions. The city’s vibrant economy, lower cost of doing business, and affordable housing are a result. The economic benefits are the result; the city’s relative respect for property rights is the cause.

But we should not defend individual rights because of the economic benefits. We should defend individual rights because it is morally right.

The Declaration of Independence states that all men are endowed with certain unalienable rights, including the right to life, the right to liberty, and the right to the pursuit of happiness. The right to life means the freedom to live your life as you choose. The right to liberty means the freedom to take the actions that you judge best for your life. The right to the pursuit of happiness means the freedom to choose the values that you will pursue and the means by which you will attain them.

These rights stand in stark contrast to statism. Statism holds that you exist to serve the demands and alleged interests of the group. Statism holds that your desires, interests, and values are subservient to those of the group.

The choice is clear. We can choose to defend our right to live our lives for our own happiness, or we can choose to subordinate our lives to the group. Which do you choose?

The Texas Institute for Property Rights provides analysis, training, and resources for legislators, businesses, organizations, and property owners.

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