**Resolved: Historic preservation is a legitimate constraint on property rights**

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Author: Jason Jordan

Editor: Kyle Cheesewright

# \*\*\*Topic Analysis\*\*\*

**Resolved: Historic preservation is a legitimate constraint on property rights**

This topic provides LD debaters with one of the more “real world” debates proscribed by a high school debate topic in recent years. While debaters are cutting their cases on this topic, the nexus question of to what degree the desire to preserve the past can limit present day growth and change will be debated by city planners, business owners, and historians across the country on a local, regional, and national scale. While on first glance this resolution seems rather small in impact and scope, the core assumptions of the best affirmative and negative arguments positions this topic at the cross roads of much bigger debates about government, the private sphere, and free market capitalism. Additionally, debaters on both sides of this topic will be able to reference a myriad number of concrete examples to bolster their arguments.

Affirmative ground on this topic is mostly derived from two areas. First, a large numbers of scholars and public commentators (and a surprisingly high number of social and political conservatives) have written extensively about the intrinsic value of history, and it’s purposeful preservation. While ultimately a rather nebulous “good” the importance of history serves as an impact that is by and large controlled by the affirmative side of this resolution. Second, the private sphere left to it’s own devices has a mostly abysmal record when it comes to protecting and preserving historical items and locations. Additionally, I believe that there may be some narrow affirmative ground written directly into the wording of this resolution. Specifically, the wording choice of “legitimate constraint” as opposed to something like “should be valued above” seems to allow clever ACs the ability to “PIC” out of the NC’s likely rather generic “property rights good” claims.

Conversely, the negative is able to leverage both the intrinsic value and instrumental efficacy of the free market and/or classical liberalism as core ground in this debate. While there are defenders/proponents of these worldviews from a variety of ideological and academic backgrounds, the most salient arguments for this topic mostly stem from political economics, and the discussion of the tragedy of the commons. Within the context of this topic, negative debaters will be able to claim that while preservation of history may be a noble goal, such de facto protection of property is ultimately only possible through some regime of direct ownership. Additionally, there may be some ground written into this resolution with the exclusion of the word “private” before “property.” That is, some NCs may want to claim that the ACs “protection good” warrants also stem from property rights, namely public/governmental ones.

Finally, several trajectories for critical engagement are possible within this topic. First, critiques of history as a discipline/idea are germane to debating the preservation of “a” history. Second, affirmative debaters will have access to a wide variety of Marxist authors that claim ‘property is theft.’ Finally, debaters that may be more Randian in their inclinations will find the negative side of this debate will represented within contemporary Objectivist literature.

# \*\*\*Further Reading\*\*\*

**Chapman, T.E. (1997). To save and save not: The historic preservation implications of the property rights movement. *BUL Rev*, *77*.**

**Hunt, R. (1996). Property rights and wrongs: Historic preservation and Florida’s 1995 private property rights protection act. *Florida Law Review*, *48*.**

**Leichenko, R.M, Coulson, N.E., & Listokin, D. (2001). Historic preservation and residential property values: An analysis of Texas cities. *Urban Studies*, *38*.**

**Nason, J.D. (2001). Traditional property and modern laws: The need for native American community intellectual property rights legislation. *Stanford Law and Policy Review*, *12*.**

**Rose-Ackerman, S. (1985). Inalienability and the theory of property rights. *Columbia Law Review*, *85*(5). 931-969.**

# \*\*\*AC\*\*\*

**I affirm: “Resolved: Historic preservation is a legitimate constraint on property rights”**

**Since this resolution questions the limits of individual rights in a society, the best value for this debate is Communitarianism, Etzioni explains:**

“Communitarianism,” *Encyclopedia of Community: From the Village to the Virtual World*, Vol 1, A-D, Karen Christensen and David Levinson, eds. (Sage Publications, 2003) pp. 224-228., This article by Amitai Etzioni; full text at: http://www2.gwu.edu/~ccps/etzioni/A308.pdf

**Communitarianism is a social philosophy that maintains that society should articulate what is good–that such articulations are both needed and legitimate. Communitarianism is often contrasted with classical liberalism, a philosophical position that holds each individual should formulate the good on his or her own.** Communitarians examine the ways shared conceptions of the good (values) are formed, transmitted, justified, and enforced. **Hence their interest in communities** (and moral dialogues within them), **historically transmitted values and mores, and the societal units that transmit and enforce values such the family, schools, and voluntary associations** (social clubs, churches, and so forth), **which are all parts of communities.**

**For the purposes of this round, the best way to achieve communitarian good is through preserving historic artifacts, thus, the standard for this debate should be Cultural Preservation, according to Miri:**

**(**Ali Miri, "The Concept of Cultural Heritage Preservation", *e-conservation magazine*, No. 24 (2012) pp. 177-182, http://www.e-conservationline.com/content/view/1082)

**Cultural heritage includes any artifacts, natural sites or intangible culture that contains significance and value. Regardless of its physical dimensions, the excellence of cultural heritage depends entirely on its meaning and importance. It carries an intrinsic message from its time to the future generations. Historic structures, buildings, sites and objects** (works of art) **are some of the most important resources and need to be preserved and protected.**

**Contention 1: Historical preservation works**

**DVPC 11**

Success Stories – Historic Districts: A Successful Historic District: Using Land Development Ordinances to, by the Delaware Valley Planning Committee, 2011: http://www.dvrpc.org/historicpreservation/SuccessStories/HistoricDistricts.htm

**The historic district movement in the United States began in 1931, when Charleston, South Carolina, adopted a local ordinance designating an "Old and Historic District". Today, there are more than 2,300 historic districts in the United States.** A local historic district is an area **where historic buildings and their surroundings are protected from modification or demolition by public review**. According to the National Park Service, "Local **legislation is one of the best ways to protect the historic character of buildings, streetscapes, neighborhoods, and special landmarks from inappropriate alterations, new construction, and other poorly conceived work, as well as outright demolition."** Many people assume that a historic building is "protected" if it is listed on the National Register of Historic Places. In fact, federal historic preservation law only applies to projects that involve federal grants or tax credits. As a result, **local historic preservation ordinances are extremely important. They can be used across an entire district to control inappropriate exterior remodeling, and demolition**. According to the Pennsylvania Historical and Museum Commission, "**Preservation is most effective in communities that have historic preservation programs managed at the local government level."** In Pennsylvania, municipalities can use the 1961 Historic District Act (Act 167) and the Pennsylvania Municipalities Planning Code (Act 67 & 68) to zone for protection and preservation purposes. In New Jersey, municipalities can use historic preservation zoning and the Municipal Land Use Law (MLUL) to identify, evaluate, designate, and regulate historic resources. DVRPC has identified four communities, Bordentown City (Burlington County), Haddonfield Borough (Camden County), Newtown Borough (Bucks County), and West Chester Borough (Chester County), which have historic districts to have successfully protected historic resources and maintained or revitalized their downtowns.

**Contention 2: Absence of external constraints fails**

**Theodore 08**

Georgetown University Law Center Scholarship @ GEORGETOWN LAW: Over My Dead Property! Why the Owner Consent Provisions of the National Historic Preservation Act Strike the Wrong Balance Between Private Property and Preservation

Jess Theodore, Georgetown University Law Center

**Since historic preservation is a public or collective good that a large portion of the population enjoys, the members of the public are faced with the free rider problem. Most individuals will not act to protect historic properties because they assume someone else will and the benefit an individual derives from historic preservation is probably not as great as the benefit a private property owner enjoys from having complete dominion over his or her property. Note that the interests of the public when aggregated in the preserving a property may outweigh the private property owner’s interest in his property, but because the public’s interests are dispersed over a large number of people, it will be difficult to motivate and organize action in behalf of preservation.** **While state and local preservation laws would restrict a property owner’s use in his or her property, the costs incurred by the landowner are justified by the public interest advanced by historic preservation and it is likely that the owner of the property herself will enjoy increased property value as a result of the designation.**

**Contention 3: History comes first**

**Barry 12**

Why Preserving History Matters by Steve Berry, Bestselling Author Posted: 04/23/2012 2:46 pm: http://www.huffingtonpost.com/steve-berry/why-preserving-history-matters\_b\_1446631.html

Firsthand, **all across the country, I've witnessed the incredible treasures preserved within libraries in our schools, public buildings, historical societies, museums, and universities. At the Mark Twain House in Hartford, Connecticut, I saw a marginalia written in Twain's own hand. Inside the rare book room at the Library of Virginia was a book of psalms that arrived here on the Mayflower. In county libraries in rural America were the records of families who settled that land centuries ago, and in Smithsonian were the last remaining books of James Smithson, whose legacy was the founding of the institution itself. All of these libraries serve to preserve our heritage. They are a record of who and what we are. Sadly, though, most times we lose these treasures not by fire, flood, or willful destruction but by simple neglect**. One of my novels, The Alexandria Link, dealt with the famed Library of Alexandria. Most people believe that library was either sacked by invaders or destroyed by religious zealots. The reality is far more tragic. The greatest repository of knowledge in the ancient world most likely just rotted away, a victim of neglect and indifference, whose remnants were picked apart stone by stone, parchment by parchment. So complete that, today, we don't even know where the building itself once stood.Imagine what we lost.And **the threat of losing priceless artifacts remains in modern times. More than 4.8 billion artifacts are held in public trust by more than 30,000 archives, historical societies, libraries, museums, scientific research collections, and archaeological repositories in the United States, but lack of funding places a third of these items at risk of being lost.** This is why my wife, Elizabeth, and I started our foundation, History Matters, and why I am so proud to be the first national spokesman of the American Library Association's National Preservation Week, April 22-28. **History comes alive when someone is able to not only read about the past, but is also able to visit the places, examine the artifacts, appreciate the images, and study the actual words. For most people, history starts with simply learning about their family or their community. A concerted effort to preserve our heritage is a vital link to our cultural, educational, aesthetic, inspirational, and economic legacies -- all of the things that quite literally make us who we are. History is not something obscure or unimportant. History plays a vital role in our everyday lives. We learn from our past in order to achieve greater influence over our future. History serves as a model not only of who and what we are to be, we learn what to champion and what to avoid. Everyday decision-making around the world is constantly based on what came before us. Why? Because history matters.**

# \*\*\*Aff Cards\*\*\*

## Preservation laws don’t hurt property rights

**Theodore 08**

Georgetown University Law Center Scholarship @ GEORGETOWN LAW: Over My Dead Property! Why the Owner Consent Provisions of the National Historic Preservation Act Strike the Wrong Balance Between Private Property and Preservation

Jess Theodore, Georgetown University Law Center

This paper takes a different approach. Instead of arguing that historic preservation has gone too far in impinging on personal property rights, it will argue that, in some cases, **historic preservation law affords too much protection to personal property rights**. In **particular**, this paper 1will focus on **the overprotection of property rights provided by the owner consent provisions of the National Historic Preservation Act Amendments of 1980** (the “Amendments”).2 A careful study of the legislative history behind these consent provisions, **which require owner consent before an individual property or historic district can be designated under the National Historic Preservation Act** (NHPA) **or the Convention Concerning the Protection of the World Cultural and Natural Heritage** (the World Heritage Convention or WHC),4 **reveals that Congress was largely motivated by a desire to protect unwilling property owners from burdens imposed by national historic preservation laws**. This paper will show **that such burdens are negligible for three reasons. First, the additional burdens imposed on properties designated under the NHPA or WHC are small. State and local laws and ordinances, which rarely have consent provisions, place a significantly larger burden on properties designated under them. Second, the small burden created by the NHPA and the WHC is counterbalanced by the benefit to the public good created by historic preservation. And, third, any burdens borne by a property from designation under NHPA and the WHC are further counterbalanced and outweighed by the economic benefit that private property owners will enjoy from increased land values that, in many cases, can be traced in part to the designations under the NHPA and the WHC**.

## Preservation k2 public good

**Theodore 08**

Georgetown University Law Center Scholarship @ GEORGETOWN LAW: Over My Dead Property! Why the Owner Consent Provisions of the National Historic Preservation Act Strike the Wrong Balance Between Private Property and Preservation

Jess Theodore, Georgetown University Law Center

One of the most clear **is when there is a large number of individuals that share an interest in a particular good, commonly called a public good. In such a case, private collective action maximizing enjoyment of the good may not be possible because of coordination and free-riding problems. In such cases, a government may be a useful manager of the resource by making users of the public good take into account other users’ interests, i.e., take into account any negative externalities created by their actions. Thus, in the historic preservation setting, the government can reasonably make a property owner pay for destroying a property listed on the National Register because it is a public good to some extent, or a quasi-public good.**

## Prevents demolition

**Neely 13**

The Walnut Street Dilemma: Property Rights vs. Historic Preservation St. John’s unwavering plan to demolish two 1920s buildings puts it at odds with Knoxville’s newfound instinct for historic preservation By Jack Neely Wednesday, June 26, 2013: http://www.metropulse.com/news/2013/jun/26/walnut-street-dilemma-property-rights-vs-historic/?print=1

**The smallish old brick buildings across from the side of Lawson McGhee Library are not famous landmarks. In recent years, they’ve shown little obvious life**. The shorter one most recently bore a simple sign marked Interdenominational Bible Institute, a modest African-American pastor-training organization. St. John’s had been allowing the IBI to use the building as their headquarters, but the organization vacated the building in 2011. (The IBI’s website still lists 712 Walnut as their headquarters, but the phone number listed doesn’t work.)

After IBI left, in late September, 2011, **St. John’s applied for a demolition permit for both buildings, explaining to the Downtown Design Review Board that it could not afford to maintain them and feared their vacancy would attract vagrants.**

The rector of St. John’s is known as a dean, the cleric of a cathedral. In October, 2011, Dean John Ross first came before the Downtown Design Review Board**, pleading that the buildings needed to be torn down primarily because they were in poor condition and a financial burden on the church. “It’s money we just really don’t have,” Ross stated.**

**He said the church had no need to expand its parking and had no need for the buildings. He also made it clear St. John’s would never sell them. The church would build something in the future.** Without offering a timetable, he said, “it won’t be 30 years” before some new construction took the place of the buildings. In the meantime, he said, it would be a fenced green space.

The proposal drew sharp criticism from the board. John Craig, a downtown developer behind several projects on Gay Street and Market Square (and father of the popular International Biscuit Festival), responded, “This is a textbook case of demolition by neglect: when you have a property that has been allowed to deteriorate, and then that deterioration is used as the rationale for tearing the building down.”

The board criticized the church both for not taking care of the buildings and for wanting to tear them down. It wasn’t a customary role for St. John’s. The church includes several of Knoxville’s most generous philanthropists, who are much more accustomed to gratitude and accommodation.

**The church was told to come back with some better plans. The rejection startled and angered the church’s leadership**. If St. John’s had demolished the buildings 10 years ago, they would not have been required to go through this review. If they’d demolished the buildings 20 years ago, it might not even have made the news. In the 20th century, property owners demolished old downtown buildings all the time, especially for parking lots. Most didn’t even rate an article in the daily.

But things have changed downtown. The Downtown Design Review Board, a legacy of the Nine Counties One Vision project, was launched during the mayoral administration of a former St. John’s parishioner, Bill Haslam, one of those credited with downtown’s preservation-fueled revival.

Likewise, the church’s proposal for demolition came as a shock to the downtown community. Downtown Knoxville is very, very small. Downtown people know their buildings like Vol fans know their football players, their performance and potential.

Though the buildings are unimpressive to some, they’re the first historic buildings anyone has tried to tear down since Home Federal’s demolition of the five-story 1904 Sprankle Building on Union Avenue in early 2005, after years of controversy. That subject still gets blood boiling. Some downtown supporters cite it as the one reason they will not deal with Home Federal. When asked why they’re concerned about the St. John’s issue, some point to the bank’s “parking crater” at Walnut and Union, in the place where the bank once promised a new building.

## Preservation good for business, Knoxville proves

**Neely 13**

The Walnut Street Dilemma: Property Rights vs. Historic Preservation St. John’s unwavering plan to demolish two 1920s buildings puts it at odds with Knoxville’s newfound instinct for historic preservation By Jack Neely Wednesday, June 26, 2013: http://www.metropulse.com/news/2013/jun/26/walnut-street-dilemma-property-rights-vs-historic/?print=1

**Meanwhile, downtown’s revival—over 90 percent of its new businesses, over 90 percent of its new residences—has taken place in old buildings: specifically in old buildings of a particular era, 1870-1930**. That national phenomenon has prompted several theories about why old brick buildings are so appealing to developers and to customers. Knoxville’s supply is strictly finite. Even before this controversy, **developers had been expressing anxiety about what will happen after they’re all used up. Since 2000, about 120 historic downtown buildings of various sizes have been renovated and occupied. In the central business district**, the supply of vacant unrenovated pre-war buildings is now in the single digits. Most of those, like the remaining McClung Warehouses, are subjects of dispute.Only regulations solve

**Theodore 08**

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The Consent provisions of the 1980 Amendments harm historic preservation efforts, especially at the national and international level. **Historic preservation** however **is a public good that results in increased welfare for all and which studies suggest provides increases in economic value for individual property owners**. Thus, **Congress should seek not to restrict historic preservation because of concerns of encroachment on private property, but to promote preservation** through the removal of the owner consent provisions from the 1980 Amendments. Rather than requiring owner consent, Congress should ensure that property owners are protected through diligent application of the provisions in the NHPA that require notice and public hearing of any properties nominated to the National Register or World Heritage List. **Where notice and public hearing alone do not provide sufficient protection, Congress should apply more flexible solutions that are able to adapt to the changing landscape of historic preservation in the United States. By removing the owner consent provisions from law and creating more flexible solutions, Congress will ensure that the appropriate balance is struck between private property and historic preservation.**

# \*\*\*NC\*\*\*

**I negate: “Resolved: Historic preservation is a legitimate constraint on property rights”**

**Since this resolution questions the limits of individual rights in a society, the best value for this debate is Individual Rights, Petro explains:**

Petro, Wake Forest Professor in Toledo Law Review, 1974 (Sylvester, Spring, page 480)

However, one may still insist, echoing Ernest Hemingway - "I believe in only one thing: liberty." And it is always well to bear in mind David Hume's observation: "**It is seldom that liberty of any kind is lost all at once**." Thus, **it is unacceptable to say that the invasion of one aspect of freedom is of no import because there have been invasions of so many other aspects. That road leads to chaos, tyranny, despotism, and the end of all human aspiration**. Ask Solzhenitsyn. Ask Milovan Dijas. In sum, if one believed in freedom as a supreme value and the proper ordering principle for any society aiming to maximize spiritual and material welfare, then **every invasion of freedom must be emphatically identified and resisted with undying spirit**.

**And, for the purposes of this debate round, the best way to achieve individual rights is through the protection of private property from government encroachment. Therefore, the standard for this debate should be unalienable property rights. According to Alchian:**

“Property Rights” from the concise encylopedia of economics by Armen A. Alchian. Published 2008. Full Text at: http://www.econlib.org/library/Enc/PropertyRights.html

**One of the most fundamental requirements of a capitalist economic system**—and one of the most misunderstood concepts—**is a strong system of property rights**. For decades social critics in the United States and throughout the Western world have complained that “property” rights too often take precedence over “human” rights, with the result that people are treated unequally and have unequal opportunities. Inequality exists in any society. But the purported conflict between property rights and human rights is a mirage. **Property rights are human rights**.

**Contention 1: Property rights should be the first priority**

**Alchian 08**

“Property Rights” from the concise encylopedia of economics by Armen A. Alchian. Published 2008. Full Text at: http://www.econlib.org/library/Enc/PropertyRights.html

The fundamental purpose of **property rights**, and their fundamental accomplishment, is that **they eliminate destructive competition for control of economic resources. Well-defined and well-protected property rights replace competition by violence with competition by peaceful means.** The extent and degree of private property rights fundamentally affect the ways people compete for control of resources. With more complete private property rights, market exchange values become more influential. The personal status and personal attributes of people competing for a resource matter less because their influence can be offset by adjusting the price. In other words, more complete **property rights make discrimination more costly**. Consider the case of a black woman who wants to rent an apartment from a white landlord. She is better able to do so when the landlord has the right to set the rent at whatever level he wants. Even if the landlord would prefer a white tenant, the black woman can offset her disadvantage by offering a higher rent. A landlord who takes the white tenant at a lower rent anyway pays for discriminating.But **if the government imposes** rent **controls** that keep the rent below the free-market level, **the price** the landlord pays to **discriminate falls**, possibly to zero. The rent control does not magically reduce the demand for apartments. Instead, it reduces every potential tenant’s ability to compete by offering more money. The landlord, now unable to receive the full money price, will discriminate in favor of tenants whose personal characteristics—such as age, sex, ethnicity, and religion—he favors. Now the black woman seeking an apartment cannot offset the disadvantage of her skin color by offering to pay a higher rent.Competition for apartments is not eliminated by rent controls. What changes is the “coinage” of competition. **The restriction on private property rights reduces competition based on monetary exchanges for goods and services and increases competition based on personal characteristics. More generally, weakening private property rights increases the role of personal characteristics in inducing sellers to discriminate among competing buyers and buyers to discriminate among sellers**.The two extremes in weakened private property rights are socialism and “commonly owned” resources. Under socialism, government agents—those whom the government assigns—exercise control over resources. The rights of these agents to make decisions about the property they control are highly restricted. People who think they can put the resources to more valuable uses cannot do so by purchasing the rights because the rights are not for sale at any price. Because socialist managers do not gain when the values of the resources they manage increase, and do not lose when the values fall, they have little incentive to heed changes in market-revealed values. The uses of resources are therefore more influenced by the personal characteristics and features of the officials who control them. Consider the socialist manager of a collective farm under the old Soviet communist system. By working every night for one week, he could have made, say, one million rubles of additional profit for the farm by arranging to transport the farm’s wheat to Moscow before it rotted. But because neither the manager nor those who worked on the farm were entitled to keep even a portion of this additional profit, the manager was more likely than the manager of a capitalist farm to go home early and let the crops rot.Similarly, **common ownership of resources**—whether in the former Soviet Union or in the United States—**gives no one a strong incentive to preserve the resource**. A fishery that no one owns, for example, will be overfished. The reason is that a fisherman who throws back small fish to wait until they grow is unlikely to get any benefit from his waiting. Instead, some other fisherman will catch the fish. The same holds true for other common resources whether they be herds of buffalo, oil in the ground, or clean air. All will be overused.Indeed, a main reason for the spectacular failure of the 1980s and early 1990s economic reforms in the former Soviet Union is that resources were shifted from ownership by government to de facto common ownership. How? By making the Soviet government’s revenues de facto into a common resource. Harvard economist Jeffrey Sachs, who advised the Soviet government, once pointed out that when Soviet managers of socialist enterprises were allowed to open their own businesses but still were left as managers of the government’s businesses, they siphoned out the profits of the government’s business into their private corporations. Thousands of managers doing this caused a large budget deficit for the Soviet government. In this case the resource that no manager had an incentive to conserve was the Soviet government’s revenues. Similarly, improperly set premiums for U.S. deposit insurance gave banks and S&Ls (see savings and loan crisis) an incentive to make excessively risky loans and to treat the deposit insurance fund as a “common” resource.Private property rights to a resource need not be held by a single person. They can be shared, with each person sharing in a specified fraction of the market value while decisions about uses are made in whatever process the sharing group deems desirable. A major example of such shared property rights is the corporation. In a limited liability corporation, shares are specified and the rights to decide how to use the corporation’s resources are delegated to its management. Each shareholder has the unrestrained right to sell his or her share. Limited liability insulates each shareholder’s wealth from the liabilities of other shareholders, and thereby facilitates anonymous sale and purchase of shares.In other types of enterprises, especially where each member’s wealth will become uniquely dependent on each other member’s behavior, property rights in the group endeavor are usually salable only if existing members approve of the buyer. This is typical for what are often called joint ventures, “mutuals,” and partnerships.While more complete property rights are preferable to less complete rights, any system of property rights entails considerable complexity and many issues that are difficult to resolve. If I operate a factory that emits smoke, foul smells, or airborne acids over your land, am I using your land without your permission? This is difficult to answer.The cost of establishing private property rights—so that I could pay you a mutually agreeable price to pollute your air—may be too high. Air, underground water, and electromagnetic radiation, for example, are expensive to monitor and control. Therefore, a person does not effectively have enforceable private property rights to the quality and condition of some parcel of air. The inability to cost-effectively monitor and police uses of your resources means “your” property rights over “your” land are not as extensive and strong as they are over some other resources such as furniture, shoes, or automobiles. When private property rights are unavailable or too costly to establish and enforce, substitute means of control are sought. Government authority, expressed by government agents, is one very common such means. Hence the creation of environmental laws.Depending on circumstances, certain actions may be considered invasions of privacy, trespass, or torts. If I seek refuge and safety for my boat at your dock during a sudden severe storm on a lake, have I invaded “your” property rights, or do your rights not include the right to prevent that use? The complexities and varieties of circumstances render impossible a bright-line definition of a person’s set of property rights with respect to resources.Similarly, the set of resources over which property rights may be held is not well defined and demarcated. Ideas, melodies, and procedures, for example, are almost costless to replicate explicitly (near-zero cost of production) and implicitly (no forsaken other uses of the inputs). As a result, they typically are not protected as private property except for a fixed term of years under a patent or copyright.Private property rights are not absolute. The rule against the “dead hand,” or perpetuities, is an example. I cannot specify how resources that I own will be used in the indefinitely distant future. Under our legal system, I can specify the use only for a limited number of years after my death or the deaths of currently living people. I cannot insulate a resource’s use from the influence of market values of all future generations. Society recognizes market prices as measures of the relative desirability of resource uses. Only to the extent that rights are salable are those values most fully revealed.Accompanying and conflicting with the desire to secure private property rights for oneself is the desire to acquire more wealth by “taking” from others. This is done by military conquest and by forcible reallocation of rights to resources (also known as stealing). But such coercion is antithetical to—rather than characteristic of—a system of private property rights. Forcible reallocation means that the existing rights have not been adequately protected. **Private property rights do not conflict with human rights. They are human rights. Private property rights are the rights of humans to use specified goods and to exchange them. Any restraint on private property rights shifts the balance of power from impersonal attributes toward personal attributes and toward behavior that political authorities approve. That is a fundamental reason for preference of a system of strong private property rights: private property rights protect individual liberty**.**Contention 2: Preservation schemes fail**

**Yellin 14**

In Tenafly, a tricky question of historical preservation versus property rights FEBRUARY 24, 2014 BY DEENA YELLIN

STAFF WRITER THE RECORD: http://www.northjersey.com/news/in-tenafly-a-tricky-question-of-historical-preservation-versus-property-rights-1.664028?page=all

**Local historic experts say the Mackay-Lowe Estate at 53 Knickerbocker Road has historic significance and should be preserved. But the owners of the property don't want a historic designation. That has raised an essential question local officials will have to ponder: Should a community value the historical significance of structures over the private-property rights of its residents?** On Tuesday, the Borough Council will discuss a request from the Historic Preservation Commission to declare the Mackay-Lowe Estate property a historical landmark.Such status would protect it, by local ordinance, from demolition and would require that any proposed exterior changes be reviewed by the commission."If the council wishes to consider this, the next step would be to send it to the Planning Board for their recommendation," said Mayor Peter Rustin.If the council declines to consider it, the issue would likely be closed. **Similar debates are being waged throughout the country as old buildings fall to the wrecking ball to make way for malls and town houses**. In Closter, the owners of the Harold Hess Lustron House fought landmark status and, in the end, the council declined to grant the designation to the home. In that case, the homeowner said he had purchased the property as an investment. The Historical Preservation Commission argued that the house was a historical gem of Closter that should be saved because of its porcelain-enameled metal construction and because it represents the post-World War II period, with few examples of that kind left in the nation. Closter attorney David Watkins, who represented that homeowner, said a compromise was reached: The owner will allow Closter historical controls over the existing dwelling but is subdividing the land so that two more homes can be built on the property. Watkins said a similar compromise cannot be reached on the Tenafly property because of the way it's configured.That property is now listed for sale for $6.9 million, according to Watkins, whose firm also represents the Tenafly homeowner. His law associate Marc Greenberg said they would sue if the town proceeds with the designation. "We will explore every legal option available on behalf" of their client, he said. They did not want the owner's name publicized, as a matter of confidentiality.The criteria for a home being deemed historic include architectural significance and an association with significant people.Dave Wall, chairman of the Tenafly Historic Preservation Commission, said of the Mackay-Lowe Estate, "The house deserves designation because it has been a widely published, magnificent example of the Dutch Colonial Revival style, designed around 1920 by a nationally recognized architect, Frank J. Forster, in a region of the country known for its original, sandstone and gambrel-roofed Dutch colonials."It was also the home of both Malcolm Mackay, who was probably the most generous of Tenafly's benefactors, having given the town the Roosevelt Common, Roosevelt Memorial and Sunnyside Park, and the home of Donald V. Lowe, who was a model American, very accomplished in serving both the Port Authority of New York and New Jersey and the private sector of our economy through his ownership of the Lowe Paper Co."Mackay was a Wall Street financier, philanthropist and author. The Theodore Roosevelt monument that he donated is now a national landmark.Donald Lowe, who bought the property in the 1940s, served on the board of directors of the Port Authority for more than two decades, and under his leadership, the PA took over operation of La Guardia and Newark airports and acquired Teterboro Airport.Watkins rebuts the commission's characterization of the house. **"We have expert testimony that indicates it's not historic," he said. "The house was built in the 1940s. There's no reality in their arguments." If the home is designated a landmark, it will hamper the homeowner's ability to sell the land, he said. "There's 7 acres of land there. It will have a huge impact on the ability to develop the property. It will cost Tenafly hundreds of thousands of dollars in damage," he said.**

**Watkins said the historical group is trying to find any reason to stop development. He added, "It's taking property away without due process rights."**

# \*\*\*Neg Cards\*\*\*

## Market solves, Knoxville proves

**Neely 13**

The Walnut Street Dilemma: Property Rights vs. Historic Preservation St. John’s unwavering plan to demolish two 1920s buildings puts it at odds with Knoxville’s newfound instinct for historic preservation By Jack Neely Wednesday, June 26, 2013: http://www.metropulse.com/news/2013/jun/26/walnut-street-dilemma-property-rights-vs-historic/?print=1

**Visiting urban-design professionals have viewed the blossoming of downtown Knoxville and assumed there was a comprehensive plan behind it. Though there’s been occasional nudging from local government, Knoxville’s been a remarkable exception to the urban-plan model, seeming proof that, given good examples and some community spirit, property owners will do the right thing.** The Walnut Street issue may be an isolated hiccup, or it can suggest a discouraging end to an optimistic era.

## Kills property rights

**Knight 04**

Stealing Property Rights in the Name of Historic Preservation December 6, 2004

By Peyton Knight http://americanpolicy.org/2004/12/06/stealing-property-rights-in-the-name-of-historic-preservation/

**Once a property owner files his request to do want he wants to with his property, the Historical Committee schedules a public hearing on the matter and the property owner is required to post a notice of the public hearing that is visible from the nearest public way. After the public hearing, the Commission is given 21 days to cast its judgment and decide whether the property owner’s plans to do what he wants with his property conflict with what South Boston’s The Enterprise describes as “West Bridgewater’s historical, cultural or architectural heritage or resources.” In other words, the property owner is screwed.** Historical Commission Chairwoman Francine Sheedy claims that this is just “a delay” or “review process.” She waxes bureaucratic, saying the trampling of a homeowner’s property rights simply “allows a community to give a property a second chance.”Usually these bleeding hearts reserve second chances for felons and convicts. Now in West Bridgewater, **100-year-old homes are given more rights than their owners, who of course, have no chance.**

## Example Scenario (Neg)

**Theodore 08**

Georgetown University Law Center Scholarship @ GEORGETOWN LAW: Over My Dead Property! Why the Owner Consent Provisions of the National Historic Preservation Act Strike the Wrong Balance Between Private Property and Preservation

Jess Theodore, Georgetown University Law Center

It is not unusual for an article about the tension between property rights and historic preservation to begin with a gloomy scenario. **One day, you, the private property owner, receive a knock at the door. Upon opening the door, you discover an ominous government official who demands that you immediately stop construction on the addition to your home.**

**Flabbergasted, you begin to protest, naming the many reasons why the addition must be built. But, the official does not care that the quintuplets have outgrown your present home. Neither is he sympathetic when you tell him that you paid fair market value for fee simple ownership in the property. And, he appears bored when you protest that this is America, where private property rights are the foundation for the entire society. Because, after all, he reminds you, your property has been legally designated as a historic landmark. And, this designation gives the government power to prevent you from altering the historic character of your home.**

**But, what about your quintuplets? What about your fee simple interest in the property? What about your sacred rights as a private property owner?**

**And, so it goes. The story conveniently sets up a critique of the current historic preservation system, which, through either legislative decree or judicial decision, deprives owners of their full property rights.** A remedy is proposed; property rights are vindicated.