

# Local Liberty



"Local liberty is a rare and fragile thing." — Alexis de Tocqueville, *Democracy in America*

## Illegal Immigration Focus I

# Our Backs Against the Border – Arizona is America

by E. Anderson

With 3,000 illegal immigrants crossing our valley on an average night, Cochise County, Arizona is a community under siege. Many residents here—ranchers and farmers whose property hugs the Mexican border—alert the border patrol multiple times each day to groups sneaking across our property into the United States. Most of us have been ambushed by illegal immigrants at one time or another. Traveling outdoors we're often forced to carry a cell phone, a two-way radio and a weapon for our own protection—in many places just to get from the kitchen to the barn door.

Home invasion robberies aren't uncommon here and petty crime is frequent. After a mother and daughter were attacked en route to school one morning sheriff's deputies began following some school busses as they made their rounds. More often we are left to fend for ourselves. The chronically understaffed border patrol simply can't respond to all the calls they receive, a fact not lost on the coyotes and smugglers, who break the law with impunity. Locals have resorted to our own private version of 911 to cope. Every ranch and farmhouse has a two-way radio that links it to all others, an innovation that has saved more than one life.

As awful as it sounds, all this is nothing new to us. The deterioration of our border has been gradually destroying our way of life for years. Our community garnered further attention recently during the Minuteman Project, when volunteers from all over the country spread out along the border to alert the Border Patrol to the position of illegal immigrants. Their success shows that a concerted effort can reduce illegal immigration along our border given the political will. As elites weigh whether or not to take the necessary steps to tighten our border I'd like to share a few more experiences from Cochise County, where the illegal immigration problem is felt in immediate ways the rest of the country can only imagine—at least for now.



Illegals moving across Roger Barnett's ranch, Cochise County, Arizona, on the Arizona-Mexico Border  
[www.desertinvasion.us/index.html](http://www.desertinvasion.us/index.html)

Imagine the homes, private property and open space in your own neighborhood.

In our community, where thousands of illegal immigrants traverse the land each day, its degradation has become an environmental disaster. Mountains of refuse and garbage litter the "lay-over sites"—places where illegal immigrants wait for their next pick up. Worse, these sites are akin to open-air latrines. And strewn amid

[ see Anderson on page 4 ]

## Kelo in California

# The Blighting of Property Rights

by C. Robert Ferguson

On June 23, 2005, the United States Supreme Court held (*Kelo v. City of New London*) that the government can use eminent domain to take one person's home or small business so that a bigger business can make money in a new development and pay more taxes to the condemning authority. In other words, recycling real property, regardless of its condition, is now a public use under the Fifth Amendment of the United States Constitution.

Had the Court decided in favor of Ms. Kelo, much of the redevelopment abuse that frequently occurs in California would have

ended. But, with the Court's decision in favor of the City of New London, the continuation and expansion of such abuse is a certainty.

### REDEVELOPMENT AND BLIGHT

Prior to the *Kelo* case evidence of blight was required before a city could condemn private property for private development. A statutory scheme known as "redevelopment" was created in California to cure blight and remove slums. It provides a redevelopment

[ see Ferguson on page 10 ]

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**Kelo in California:** C. Robert Ferguson on the war against property rights

**Eloise Anderson** reviews *Street Saints*

**Steven Frates** on initiative politics and economics

**John Eastman's** Local Litigation

# Local Liberty

“The strength of free peoples resides in the local community.”  
– Alexis de Tocqueville

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## From the Editor

### Constitutionalism and Local Liberty

This issue of *Local Liberty* presents a variety of essays and reviews on conservative themes, concluding that more than even new tax and regulation policies, what local government most needs today is the restoration of constitutional standards. We see this need for constitutionalism in areas as diverse as property rights, immigration, direct democracy, and faith-based welfare reform.

An abstraction such as “constitutionalism” became concrete in the brutal message brought to us by the Supreme Court in the *Kelo v. New London* case. The 5-4 decision authorizes local governments to seize private property and transfer it to another private owner, if they provide a development plan. If the public benefits (as asserted by local governments’ plans), the Constitution does not bar the taking of private property. This brutal candor makes clear for all with eyes to see the difference between a Court decision and respect for natural rights. The Constitution is *not* what the Court says it is. The Claremont Institute, through its Center for Constitutional Jurisprudence, headed by John Eastman, filed a brief (co-authored by Eric Claeys) on behalf of the homeowners, whose points Justice Clarence Thomas reiterated in his ringing dissent. Our commentaries on *Kelo* can be found at [www.localliberty.org](http://www.localliberty.org), both the essays and our blog. The brief can be found at <http://www.claremont.org/static/KeloBriefFinal.pdf>.

C. Robert Ferguson notes how *Kelo*’s test of “public benefit” lifts the last bars to radical redevelopment in California, weakly held in check by the vague “blight” test. Orange County Supervisor Chris Norby’s group Municipal Officials for Redevelopment Reform (MORR) will have much to say in its biennial conferences on this setback for liberty. They produce a useful guide, *Redevelopment: The Unknown Government*. Ferguson’s article will be included in the Claremont Institute’s own primer on this subject.

This collapse of constitutionalism is evident in our three articles on illegal immigration. E. Anderson describes from experience the horrific situation confronting American citizens who live on the Arizona border. Edward J. Erler lays bare the anarchy the “sanctuary cities” movement is really calling for and creating, by allowing lawlessness in the form of illegal immigrants and then surrendering authority over them. John Fonte cuts through the economic arguments to the constitutional one, how such immigration undermines the value we put on our citizenship. Finally, immigration status is one of several topics John Eastman addresses in his review of Center for Constitutional Jurisprudence litigation. The

problem, we conclude, is not too many immigrants; it’s not enough Americans.

One problem of defending constitutionalism in California lies the ease with which our fundamental law can be amended: by majority vote of the people. Thus, California has unusual reliance on direct democracy. This enables Sacramento legislators to avoid making choices beneficial to the common good. Direct democracy may operate as a safety valve preventing the development of well-defined political parties with principled platforms. Governor Schwarzenegger has used this Progressive Era device to get around a legislature bordering on illegitimacy. It is certainly his hope that the November election will produce some constitutional reform protecting individual rights and the rule of law. Steven Frates considers the politics and economics of initiatives in a review of a book establishing their success in reducing spending. While conservatives can note several triumphs through direct democracy (notably the anti-racial and gender preferences Proposition 209), one should ponder the seeming lack of effect these triumphs have had on the bloated and incompetent Sacramento ethos.

Constitutional government has always relied on a citizenry motivated by virtuous conduct. Eloise Anderson considers how faith-based institutions can not only outperform government welfare but also inspire both those who work in them and those for whom they work. It is yet another example of how the best American practice has always involved the harmony between enlightened laws and revealed religion.

It is all too easy to become saturated with national news, especially after the Internet and blogging revolutions. That revolution, former local government reporter Conor Friedersdorf notes, will dramatically affect the coverage of local government as well, and likely all to the good of exposing much mischief. It is a major tool of the spirit of self-government that lies at the heart of constitutionalism. But it is still a means only. The qualities of judgment and knowledge that alert citizens have always had to exercise remain at the core of constitutional government. It is to those qualities that this issue of *Local Liberty* and all the activity of the Center for Local Government are dedicated. ♡

Ken Masugi  
Editor

# Self-Government The Future of Local Newspapers

by Conor Friedersdorf

*The daily newspaper isn't dying due to sudden heart failure; it's slowly being eaten away by an unrelenting cancer of lack of creativity, inflexibility, occasional corporate arrogance, and 20th (in some cases even 19th) Century thinking.*

—Joe Gandelman blogs at [themoderatevoice.com](http://themoderatevoice.com)

In America the conversation about print journalism revolves around *The New York Times*, *The Washington Post*, *The Wall Street Journal* and a few other national dailies. Those newspapers dominate the *Columbia Journalism Review*, Howard Kurtz's *Media Notes* column, and journalism classes at countless universities. One consequence: almost no attention is paid to how Americans get the information they need about local government, for it is only local newspapers that cover things like school board elections and how contracts are handed out at City Hall.

As a beat reporter for a city of 100,000 people, I developed a healthy respect for the mundane tasks of sitting through city council meetings and pouring over city contracts. In my beat, local officials knew an enterprising young reporter was watching them closely. And still I caught them at corruption! In cities without a local newspaper the corruption is far worse. Public resources are squandered; as a result, budget cuts force things like the layoff of police officers, fewer crossing guards to help kids get to school and a vector society with insufficient resources to eliminate mosquitoes carrying West Nile Virus.

Without the watchdog role that local newspapers play, local governance would suffer in similar ways across the nation. Though few citizens seem to realize it, the rise of electronic media via the Internet presents a grave threat to the viability of local newspapers and especially to the oversight function they provide.

Already we recognize the Internet as a force that has transformed the national media. During the last election cycle, blogs helped Howard Dean amass campaign contributions, exposed flaws in a *60 Minutes II* story about President Bush and drew mainstream media attention to Vietnam veterans attacking John Kerry. On Sunday morning talk shows, conservative talking heads fantasized about blogs replacing *The New York Times*. But the national discourse, while correctly perceiving that blogs are transforming national media, miss the bigger story: *The New York Times* will never be replaced by blogs, but the local newspaper—barring significant changes—may suffer that fate.

Put another way, we will always pay reporters to cover international news, the White House, and celebrity trials. But what if you could get a better version of almost everything your local newspaper gives you for free? If the local gossip, the classifieds, the results of the high

school football game, and the test scores at your child's school were all available in a convenient format online, would you still subscribe to the local paper?

Under the media's radar, entrepreneurs in cities around the country are hoping to create hyper-local Web sites that, if successful, will make local newspapers seem primitive. The possibilities are exciting: imagine a Web page where volunteer citizen journalists post on local happenings, staffers run online discussion boards that function like a town meeting, teachers post the list of school supplies for the upcoming year, dozens of bloggers produce content on narrow subtopics of their choice and homeowners share information like the name of a good plumber.

*Local newspapers will be very different ten years from now than they are today. Anyone who cares about local government ought to pay close attention to how they evolve.*

Backfence.com hopes to be one such Web site. Its founder, Mark Potts, posted the following on the journalism blog *Press Think*: "People care most about news and information about the places, people and things closest to them, but this desire for intensely local (neighborhood-level) information is all but unmet by traditional media. Backfence.com will fill that gap by using blogs, wikis, RSS and other technologies to allow citizens to share community news and information with each other, essentially unmediated by editors."

Myriad sites like this will spring up over the next decade; most will die, but the few that survive? The most successful models will eat up advertising revenue and kill local newspapers unless they evolve too, embracing the electronic age and innovating to maintain some comparative advantages over their new media competitors.

Unfortunately, most local newspapers are woefully unprepared for such innovation, partly because their publishers don't perceive the risk that new media poses. Of course, there are exceptions. Consider the *News & Record* in Greensboro, North Carolina.

"That's precisely the sort of media company the *News & Record* intends to become," editor John Robinson wrote on his blog. "Creating new content. Serving the public and allowing the public to serve journalism. Building a new way of doing smart, citizen journalism. More transparency. News as a conversation. We've been having serious, detailed, how-to discussions about all of those things here."

But even newspapers like the *News & Record* that see the need to innovate face a major hurdle: how to pay for it all while continuing to publish a newspaper.

As *Wall Street Journal Online* Managing Editor Bill Grueshkin noted in the *Online Journalism Review*, "The issue of how online sites affect their print counterparts is bubbling steadily beneath the surface, and is set to erupt in the upcoming year or two...the idea that giving away your content doesn't affect print circulation and revenue is becoming too ludicrous for all but the most die-hard proponents of this flat-earth theory to keep promulgating."

Only time will tell what media model will prevail in coming years. But one thing is certain: local newspapers will be very different ten years from now than they are today. Anyone who cares about local government ought to pay close attention to how they evolve. Ideally, they will use new media innovations to better serve their readers while maintaining the local government oversight function they have traditionally fulfilled. But if local newspapers die, or transform themselves in ways that abandon their oversight function to citizen journalists who haven't any interest in the mundane tasks of professional journalism, either another entity must replicate their watchdog role, or local government will falter from neglect, an ironic fate if it comes as citizens enjoy more thorough, accessible and useful information about most everything else in their communities.

Conor Friedersdorf works as a Southern California journalist. His blog can be viewed at <http://unconventionalwisdom.powerblogs.com>. He is the editor of *Beyond Borders Blog*, <http://langamp.com/borderblog/>. He also participates in the Center for Local Government's blog at [LocalLiberty.org](http://LocalLiberty.org).

*Local Liberty*

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■ **Anderson** [ continued from page 1 ]

the used toiletries, backpacks, travel documents (written in both Spanish and Arabic), discarded clothes, and cans of food are syringes, needles and empty pill bottles—alarming evidence that many of the illegal immigrants coming through may be sick with communicable diseases or strung out on illegal narcotics.

The ranchers and park rangers must clean up these sites regularly to prevent the livestock and local wildlife from eating the refuse. Despite their best efforts it is all too common to see young calves or deer dead, the plastic still hanging from their mouths.

Our equipment suffers too as illegal immigrants, thirsty as they trek across the desert, tamper with and damage the water supply. Ranchers, hoping to prevent the drainage of their water tanks, have taken to installing water spigots on the tanks marked “Agua aqui.” Even so the spigots are frequently broken off to drain the tanks, or else water pipes are cut to access the water. It can take days for a rancher or farmer to find the break in the pipes and repair it. Since water is the lifeblood of a ranch—critical to the survival of its cattle and crops—these violations of our property and water rights threaten our livelihood.

So too does the damage done to our fences, cut every night by illegal immigrants and

repaired every day by ranchers who must ensure the safety of their cattle. Still the cattle that escape each night through gates left open by illegal immigrants must be rounded up each morning. It is mind-boggling to calculate the man-hours and dollars spent on these fruitless enterprises.

The foot and vehicle traffic that comes with illegal immigration is yet another problem. On some farms the ground is so compacted that nothing can grow. Many of us ranchers have pastures that will never see another blade of grass in our lifetimes. Ranchers do not so much raise cattle as they grow grass. Our lands are dying—and so too, it seems, is our way of life. Already I cannot even live on the land where my family owns property because the Border Patrol cannot guarantee our safety or their own. Last year, an off-duty Border Patrol agent responsible for patrolling our section of the border was murdered. He was murdered by Mexican drug smugglers who had just been released from the Cochise County Jail the week before. They bashed his head in with boulders.

As long as illegal immigration continues the problems faced by individuals in our community will deepen. Given the gravity of the problems I’ve described you’d think our plight would garner appropriate attention. Yet despite numerous efforts reaching out to our elected officials and the media nothing happened until the recent efforts of the Minuteman Project.

Suddenly everyone seemed to know about my family’s section of the border. The media

poured in alongside Minutemen, scrutinizing their every move. As a result, the world witnessed these volunteers, armed only with cell phones and binoculars, as they successfully secured the border—if only temporarily.

Their experiment demonstrates what can be done if we get serious about securing our border. In fact, many Americans are already serious – the Minuteman Project was staffed by citizens from all over the country who gave up their time, traveled at their own expense and sat for multiple eight hour shifts just to help us out. They know that the 3,000 illegal aliens stalking through our valley each day eventually end up in other parts of the country. The drain these folks place on the system and the multitude of other problems they bring are not imaginary.

Illegal immigration does not affect the elites of our society as much as it affects the rest of us. The effects begin at the lower levels with the unskilled laborers and gradually work their way up the ladder. But the elites would do themselves and the rest of the country a favor if they saw the side of illegal immigration we experience in Cochise County. Come for a visit. We’re overwhelmed by illegal immigration. And we’re a microcosm of what may soon be coming to a neighborhood near you.

*E. Anderson grew up on the Arizona-Mexico border and is currently a national security consultant in Washington, DC. 🍷*

## Illegal Immigration Focus II Sanctuary Cities: A New Civil War

by Edward J. Erler

The ghost of John C. Calhoun still stalks the land. Calhoun, of course, was the leading architect of nullification—and secession. Almost everyone believes the issues of nullification (the doctrine that federal law can be negated by state laws) and secession were resolved by the North’s victory in the Civil War and the passage of the Reconstruction Amendments. But nullification has once again reared its hoary head, this time in the guise of “sanctuary cities.”

### SANCTUARY POLICIES

Across the nation cities from New York to Houston to San Diego forbid city officials—including police—from inquiring into anyone’s immigration status or cooperating with immigration officials. The police may not stop or detain persons solely due to their immigration status or even inquire into their status while making routine traffic stops or misdemeanor arrests. These policies have, in effect, created safe havens for illegal immigrants, including criminal aliens.

Cities began adopting sanctuary laws in the 1980s, supposedly to foster trust between illegal immigrants and police. Proponents argued that crimes would not be reported, witnesses to crime would not come forth and immigrants wouldn’t cooperate with police if they feared deportation.

Yet the policies adopted reflect the power of immigration advocacy groups more than concerns about crime prevention. Politicians in large cities with significant immigrant populations simply surrendered to the demands of immigrant rights groups that sought to minimize—if not extinguish—the distinction between legal immigrants and illegal aliens. Nor is it only immigrants’ rights groups that promote sanctuary cities. Business interests want a steady source of cheap, compliant and exploitable labor; the minions of the welfare state want to magnify their power by extending the largess of the administrative state to those who will, in all likelihood, take their place in the so-called “underclass.”

The resulting policies not only tolerate crime—after all, illegal immigrants are law-breakers—but actively abet and protect criminal activity by handcuffing the powers of the police.

Currently over 400,000 illegal immigrants within our borders have received final deportation orders from a federal judge but have failed to show up for deportation. Nearly a quarter of these absconders are convicted criminals. In sanctuary cities police may not inquire into the deportation status of these aliens or apprehend them until they have committed another crime.

Fox News reports that illegal aliens account for nearly 25 percent of California’s prison population, far in excess of their numbers in the general population. When these aliens finish their sentences they are subject to deportation. Yet it has been estimated that fewer than 50 percent of these criminals are actually deported.

If criminal aliens are released in sanctuary cities they are not reported to immigration authorities who might begin deportation proceedings. Thus sanctuary cities harbor deportable criminal aliens, placing them beyond the reach of immigration laws until they commit further crimes—and even then they might not come to the attention of immigration officers, depending on the severity of the crime.

An example: a notorious and brutal rape was committed in New York in 2002. Four of the perpetrators were illegal aliens who had been in police custody before the crime but were released without notification to immigration officials who might have taken them into custody pending deportation proceedings. Instead the City’s

■ **Erler** [ continued from page 4 ]

sanctuary policy prohibited any officials from making the notification. The public outrage over this incident momentarily brought the policy into question. Ultimately Mayor Bloomberg repealed it by executive order—only to see it return, slightly modified, shortly thereafter in response to pressure from immigrant advocacy groups.

Even criminal aliens who are actually deported later receive sanctuary in these cities upon their return to the United States. Even if, for example, a Los Angeles police officer knows from personal experience that an alien has returned and is thus committing a felony simply by his presence, the officer may not arrest him until he commits another crime. Such returnees naturally look to sanctuary cities as safe havens.

**SANCTUARY POLICIES AND CRIMINAL GANGS**

State Representative Russell Pearce recently introduced a bill in the Arizona legislature that would allow police to enforce federal immigration laws. “We have an invasion going on,” Pearce says. As violent gangs flock to the United States, he argues, sanctuary cities make it easier for them to operate. In Phoenix, Arizona’s largest city, sanctuary policies limit the ability of the police “to enforce the law,” he says. Similarly, Department of Homeland Security officials routinely say that criminal alien gangs have become a dangerous epidemic abetted by sanctuary cities.

Los Angeles’ sanctuary policy, known as “Special Order 40,” prevents police from arresting anyone based solely on their immigration status, or from notifying immigration officials about an illegal immigrant. In January 2004 Manhattan Institute scholar, Heather Mac Donald wrote that “dozens of gang members from Mara Salvatrucha, a ruthless Salvadoran gang, have sneaked back into town after having been deported for such crimes as murder, assault with a deadly weapon and drug trafficking. Police officers know who they are and know that their mere presence in the country after deportation is a felony. Yet if an LAPD officer arrests an illegal gang-banger for felonious reentry, it is the officer who will be treated as a criminal for violating an LAPD rule.”

According to the National Drug Intelligence Center, an agency of the Justice Department, there may be as many as 10,000 members of Mara Salvatrucha spread across the country. The gang, also known as MS-13, engages in cross-border drug and weapons smuggling, illegal immigrant smuggling, purveying false documents, robbery and murder. In California the gang has allied itself with the Mexican Mafia to control the notorious gang culture that dominates the state prison system. Central American authorities blame MS-13 for a wave of murders in the region, including the killing of 28 women and children during a Honduras bus hijacking. Officials speculate that the gang perpetrated this mass murder simply to intimidate

authorities with its brazenness and ruthlessness. There is even speculation that MS-13 may be cooperating with al-Qaeda in smuggling operations across the border.

Recently MS-13 leaders boldly threatened to retaliate against the Minuteman project, a group of civilian volunteers who sought to reduce illegal immigration by staking out portions of our southern border. In some states the gang has issued “green lights” to kill police officers. In recent months, federal authorities have become more aggressive in arresting MS-13 gang members. Among those arrested so far more than half had prior arrests or convictions for drug possession, murder, assault, arson or weapons violations.

In sanctuary cities the power of the police to deal with such violent gangs has been severely limited. At most they can keep these repeat felons under surveillance until they commit another crime. Clearly Special Order 40 endangers public safety, especially among the immigrant population itself. Mac Donald rightly notes that “the biggest myth about sanctuary laws is that they are immigrant-friendly. To the contrary: they leave law-abiding immigrants vulnerable to violence.”

**MEXICO AS A SANCTUARY**

At the same time that the U.S. provides sanctuary cities for illegal aliens, Mexico has become a sanctuary for criminals fleeing the United States. More than 60 murderers, including cop killers, have fled to Mexico from Los Angeles

County alone. In another recent case an illegal immigrant killed Officer David March in Los Angeles before fleeing to Mexico.

The whereabouts of these killers is known to Mexican authorities—in one case a notorious cop-killer is living openly and could be arrested at any time. Mexican officials, however, refuse to extradite these killers because they might face either the death penalty or life in prison without parole. (Mexico’s human rights sensitivities are such that it will not allow extraditions where murderers might face those penalties.) As many as two-thirds of all fugitive felony warrants in Los Angeles were for illegal immigrants, many of whom have presumably fled to Mexico.

President Bush has frequently advocated policies of “compassion to our neighbors to the South.” Calls for compassion, however, have only provoked contempt from Mexico. This was entirely predictable since compassion as the basis for foreign policy is not only unrealistic but is sure to be perceived as weakness. Instead of compassion, the U.S. should demand simple justice—the return of these violent criminals who have received sanctuary in Mexico.

**SANCTUARY CITIES ARE ILLEGAL**

What is most remarkable about sanctuary cities is that they are illegal. In 1996 Congress passed two laws dealing with the subject: the


[ see Erler on page 6 ]

**THE PROGRESSIVE REVOLUTION  
IN POLITICS AND POLITICAL SCIENCE**

edited by John Marini and Ken Masugi

THE  
**PROGRESSIVE  
REVOLUTION  
IN POLITICS AND  
POLITICAL SCIENCE**

*Transforming the American Regime*



EDITED BY  
JOHN MARINI AND KEN MASUGI

*The Progressive Revolution in Politics and Political Science* explores the scope, ambition, and effect of the Progressive revolution of a century ago, which relegated the theory and practice of the Founders to an antiquated historical phase. By contrast, our contributors see beyond the horizon of Progressivism to take account of the Founders’ moral and political premises and illuminate its effects on our political science and political practice today. Edward J. Erler is the general editor of the book series, copublished by the Claremont Institute, in which this book appears.

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937 West Foothill Blvd.  
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## About the Claremont Institute

The Claremont Institute for the Study of Statesmanship and Political Philosophy is the leading conservative think tank in California. Founded in 1979, our mission is to recover America's first and noblest principles of liberty and equality and the political institutions and moral standards that proceed from them. We believe that there can be no freedom and justice without limited and accountable government, without the maintenance of a strong national defense, without the preservation of strong and stable family life, and without the protection of private property.

The Claremont Institute publishes books and articles, sponsors lectures and debates, and reports to people on how they are governed and how their government can be improved. Our studies have led to public outrage at the practices of our national Congress; to significant change in environmental and land use regulation. We will assist in major efforts in California to bring the budget back under control. Our work is only beginning, but it has found the heart of the problem: forgetfulness of America's founding principles, the principles behind limited government, strong family life, and individual freedom.

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## ■ Erler [ continued from page 5 ]

Personal Responsibility and Work Opportunity Reconciliation Act and the Illegal Immigration Reform and Immigrant Responsibility Act. Under both statutes state and local governments could no longer prohibit employees from inquiring about immigration status or tipping off immigration authorities. The Court of Appeals upheld both provisions in *New York v. U.S.* (1999).

The Appeals Court remarked that “the City’s sovereignty argument asks us to turn the Tenth Amendment’s shield against the federal government’s using state and local governments to enact and administer federal programs into a sword allowing states and localities to engage in passive resistance that frustrates federal programs.” The court concluded that where the federal government has undoubted power to act, as in the case of immigration, the Supremacy Clause “bars states from taking actions that frustrate federal laws and regulatory schemes. We therefore hold that states do not retain under the Tenth Amendment an untrammelled right to forbid all voluntary cooperation by state or local officials with particular programs.”

### REEVALUATING SANCTUARY POLICIES

Some California jurisdictions have announced that they will reevaluate their sanctuary policies. Orange County Sheriff Mike Carona is proposing the most significant change: he plans to train hundreds of officers to enforce immigration laws. A recent *LA Times* editorial calls this plan “overly broad, dangerously so.” The editorial, however, characterizes as “understandable” the Los Angeles County Sheriff’s plan “to ascertain the immigration

status of convicted felons in county jails.” It almost defies understanding that this was not already standard procedure.

The biggest political imbroglio has been occasioned by the LAPD’s announcement that that it would issue a “clarification” of Special Order 40. This plan, however, has come to naught due to pressure from Latino activists. In a meeting with Latino groups, who expressed fears that any modification of the Special Order would lead to racial profiling, Police Chief William Bratton gave assurances that “we are not proposing to change a single word of Special Order 40.” Rather, under the guise of “clarification” police officers will be allowed to inquire about immigration status in three well-defined situations: when a police officer recognizes a suspect who has been deported as the result of a prior conviction; if police intelligence identifies a person as a returned deportee; and if officers learn that someone already under arrest has been deported and subsequently returned illegally.

Returning to the U.S. after deportation is a federal felony that carries a penalty of 10 to 20 years in prison. LAPD arrests about 200 returned felons every month. These “clarifications” are surely improvements—but only of a rather cosmetic kind. They touch only on the most glaring and egregious defects of Special Order 40. Sanctuary should be removed for all law-breakers—including illegal immigrants—not just those criminals who are deported and return. The safety of the community should command more respect than just “clarifications” to a bankrupt and illegal policy.

*Edward J. Erler is a senior fellow of the Claremont Institute and professor of political science, California State University, San Bernardino. He has published extensively on civil rights, constitutional law, and political philosophy.*



## Illegal Immigration Focus III

# Open Letter on American Identity

by John Fonte

*Veteran journalist Tamar Jacoby writes extensively on immigration, race, and ethnicity. She is a senior fellow at the Manhattan Institute. President Bush appointed her to the Council of the National Endowment for the Humanities.*

Dear Tamar:

You are everywhere these days promoting the McCain-Kennedy “slow motion” amnesty plan for illegal immigrants. I commend your energy and spirited advocacy, while strongly disagreeing with your recommendations and the “tempered” multicultural ideology behind them.

My principal objection is that you over-emphasize economics and deal only superficially with America’s twin national interests in border security and patriotic assimilation. Further, the economic points that you raise are themselves open to question.

You and I agree that the United States has been more successful in assimilating immigrants than any other country in the history of the world. The reason for that success, however, is that from George Washington to Theodore Roosevelt, Americans have insisted upon the “Americanization” or patriotic assimilation of immigrants. Today, America’s elites no longer promote serious assimilation.

Instead, our de facto policy is mass, low-skilled immigration combined with weak border security and anti-assimilation practices (ethnic group preferences for newcomers, bilingualism, multiculturalism and tolerance of dual citizenship). Your policy recommendations—reflected both in McCain-Kennedy style legislation and your book, *Reinventing the Melting Pot*—do not challenge these anti-assimilation practices.

## ■ Fonte [continued from page 6]

Let us start with McCain-Kennedy. Capitol Hill sources claim that the legislation was written mostly by the American Immigration Lawyers Association, a predominantly liberal group that has fought every serious attempt at border enforcement. No wonder the bill insists that local police not be given “additional authority” to enforce immigration laws. According to Senator Cornyn (R-TX), McCain-Kennedy offers “more studies rather than real money.” We don’t need more studies; we need more security personnel, both on the border and in interior enforcement, particularly when thousands of “OTMs” (other than Mexicans), many from the Middle East, have continued illegally crossing the Rio Grande even since the Sept. 11 terrorist attacks.

Yet border security is possible. Apparently even a small group of mostly senior citizens in deck chairs (Minutemen) inspired the re-deployment of Mexican army units, which resulted in a big drop in illegal crossings in the sector where the deck chairs were located. Imagine what serious, high-tech, professional enforcement could do.

How do we deal with the millions of illegal immigrants already in the country? The choice is not, as many would have you believe, between crafting some sort of amnesty plan or instantly deporting ten million people. No one is suggesting mass deportation. Instead, the reliable and consistent enforcement of existing laws should lead to the steady downsizing of the illegal immigrant population over several years. When laws are enforced, word gets out among illegal immigrants and many leave. Indeed, the *New York Times* reported the virtual disappearance of a Pakistani neighborhood in that city after a crackdown on illegal immigrants (most of whom apparently fled to Canada).

It is undeniable that McCain-Kennedy and other proposals will lead to a massive increase in unskilled immigration. Most economists argue that low skilled workers add little to a nation’s GDP. True, some businesses are helped by the availability of cheap labor. But this is really a form of “corporate welfare.” The rest of us subsidize these businesses through higher taxes needed to pay for the vastly increased health and education costs incurred by the illegal population.

As my favorite economist, Thomas Sowell, notes, “Virtually every job in the country is work that Americans will not do, if the pay is below a certain level.” The cheap labor provided by illegal immigrants, combined with our welfare state, distorts the free market by depressing wages and discouraging technological innovation, modernization and mechanization. Without access to the abundance of cheap labor available to American agribusiness, even statist “Old Europe” has done a better job of mechanization than certain sectors of American agriculture.

Let us now turn to your collection of 21 authors, *Reinventing the Melting Pot*. I am surprised that you are considered a “conservative,” because

your own essays in the book are more liberal than conservative. You believe 1960s multiculturalism is mostly positive (“it may have clarified and improved” American identity). You call for a “tempered multiculturalism”—*Commentary*’s reviewer characterized your approach as “soft assimilation.” But the multicultural challenge of the Sixties was a direct assault on the core American values of patriotism and individual citizenship, carried out in the name of ethnic group identity and ethnic group rights.

An anecdote from your book is instructive. The reader is introduced to “Eddie Liu,” who moved to the United States at age two when his professional parents immigrated from Taiwan. Eddie is a product of multicultural education and identity politics. He wants to “make it” economically but is ambivalent about America. One of our most important tasks, you tell us, is to “find ways to talk about becoming American” that will be “meaningful” for “a young man like Eddie Liu.” True enough.



But then, while calling for this new American narrative, you state it “must accommodate the realities of the world we live in”—realities among which you include accommodation to multiculturalism and identity politics. Having accepted multiculturalism (albeit tempered) you write: “A young man like Eddie doesn’t have to choose whether he is Asian or American - the very idea is an abomination.”

In the same vein you attack what you describe as the “coercive” assimilation policies of the 1920s and 1950s. It is significant, however, that those very policies led to a thoroughly Americanized “greatest generation” in World War II. That meant, for example, that some of my Italian-American relatives fought against Italian soldiers in North Africa and Sicily. It is not clear where Eddie Liu would stand in a war in which Americans fought Chinese (not an implausible scenario), but it is clear that your policy prescriptions (“Eddie Liu doesn’t have to choose”) are, to put it mildly, inadequate to infuse national loyalty in newcomers.

To be sure, you state immigrants must accept the “rules of the game,” which you define as a “minimalist” core of the immigrant bargain—support for democracy and a “largely political identity” that “comes with few if any cultural corollaries.”

Significantly, however, you do not oppose dual allegiance for immigrants, a stance that surely undermines even the “minimalist rules of the game” that you advocate. After all, the Oath of

Allegiance to the United States—in which new citizens “renounce” all “allegiance” to their birth countries—and the moral rejection of dual citizenship is at the heart of our successful “nation of immigrants” ethic. We are, to put it more accurately, a nation of *assimilated* immigrants: the transfer of allegiance from the old country to the United States that occurs when taking the oath is central to who we are.

This is central to American identity because unlike many other nations, America does not base citizenship on race, religion or ethnicity. Instead, citizenship is based on political loyalty to our constitutional democracy. If we accept the principle that it is legitimate for foreign-born citizens (and their American-born children) to maintain political allegiance to the foreign states from which they came, we have accepted an ethnic conception of citizenship that mocks our core values. In the War of 1812 we refused to accept the ethnicity-based concept of citizenship implicit in “once an Englishman always an Englishman.” Today we should refuse to accept the ethnicity-based concept of “once a Mexican always a Mexican,” or once a Pakistani always a Pakistani, or any other ethnic designation upon which dual citizenship is based.

Among other flaws McCain-Kennedy exacerbates the dual citizenship problem. If the bill becomes law, 10 to 12 million new citizens will also be able to retain Mexican, Central American or other foreign citizenship. Never has there been such a potential challenge to the integrity of citizenship naturalization. After all, Mexico shares a contiguous border and sends us our largest number of immigrants. Moreover the Mexican government, through its vigorous promotion of dual allegiance, is actively working to retain the loyalty of its former citizens and even gain the loyalty of their American-born children.

At the same time McCain and Kennedy—and you and your allies—remain mute before an outspoken Mexican government that directly challenges our ability to patriotically assimilate our new citizens. Naturalized citizens of Mexican descent and their U.S. born children are not, as the Mexican government insists, “Mexicans living abroad,” anymore than my parents, brother, and myself are “Italians living abroad.” American citizens of Mexican descent are Americans, pure and simple. If you and other McCain-Kennedy supporters are serious about the integrity of American citizenship, you ought to tell President Fox and his government exactly that, while joining others who insist upon cracking down on the growing phenomenon of dual allegiances.

Sincerely,

John Fonte

*John Fonte is senior fellow and director of the Hudson Institute’s Center for American Common Culture. His chapter, “Patriotic Assimilation,” will appear in the Claremont Institute book on citizenship versus multicultural immigration.* ♣

# The Economic Case for Direct Democracy

Book Review by Steven Frates

*For the Many or the Few: The Initiative, Public Policy, and American Democracy*

by John G. Matsusaka

University of Chicago Press

206 pages. \$29.00

Is the initiative process unduly influenced by moneyed interests? Do most initiatives run counter to popular will? Rigorous analysis of the matter by Professor John G. Matsusaka, author of *For the Many or the Few*, suggests otherwise. His comprehensive work carefully examines initiative outcomes, opinion surveys and government policies over the last century. His robustly supported conclusion: the initiative process rather closely reflects the will of the public.

This puts him at odds both with frequent press lamentations about initiatives and the position of numerous prominent pundits (*Washington Post* columnist David Broder, author of *Democracy Derailed: Initiative Campaigns* and the *Power of Money*, is specifically cited). These critics of direct democracy argue the initiative process has been largely co-opted by narrow special interests.

Prof. Matsusaka, a faculty member at the University of Southern California's business and law schools, states that he did not write the book to build a case "for or against the initiative." Though he is president of the Initiative and Referendum Institute—an organization dedicated to research and education about direct democracy—he is true to his mission: his research thoroughly examines opinion surveys, initiative outcomes and government spending patterns covering most of the twentieth century, with particular emphasis on the last three decades. The scope and depth of his work is remarkable. For example, Matsusaka examines the tax and spending policies of all the states and some 4,700 cities, the extant body of relevant opinion polling, and initiative results to determine whether or not initiatives gave the majority of the public what it wanted.

The results are clear and compelling: Voters prefer lower taxes and less government spending. When given the opportunity to vote on initiatives reducing taxes and government spending the majority support these efforts.

With fine detail Matsusaka examines the history of the direct initiative in the political decision making process, an exercise that reinforces his core findings. In the last thirty

years, there is a clear difference in the tax and spending policies of state and local jurisdictions where direct initiatives are used. Such jurisdictions have lower taxes and less profligate government spending patterns. These results reflect the alienation of the Progressive state from the voter and taxpayer.

While the direct initiative is more prevalent in the West, some Southern and Eastern states have it. Many local governments also have a provision for the direct initiative. A useful appendix provides details about initiative provisions in the states that allow them, and another appendix examines the details pertinent to 20 large American cities allowing direct initiatives, including New York, not generally considered a hotbed of fiscal conservatism.

*There is a clear difference in the tax and spending policies of state and local jurisdictions where direct initiatives are used. Such jurisdictions have lowered taxes and less profligate government spending patterns.*

Matsusaka is careful to dissect polling data and correlate it with initiative outcomes. His conclusion that the two are tightly correlated is solidly supported by the empirical evidence. And it is here that he raises some interesting philosophical questions. It is clear from the data that direct initiatives give the voters what they want. The canard that voters are easily and cynically manipulated by "wealthy special interests" is convincingly rejected.

Why then is the initiative so often employed to redirect the course of government fiscal policy these days? Matsusaka's answer is direct and succinct: "Without the initiative, voters are forced to accept the policy choices of the legislature. With the initiative, voters are given choices." When state legislatures and city councils do what their constituents actually want, the initiative process lays dormant. When they deviate from the public will, the initiative is more often employed, as it has been in the latter half of the twentieth century.

Prof. Matsusaka speculates about what causes these deviations from the popular will. One explanation is that elected officials make

"honest mistakes." That is to say, the politicians think that they are doing what the public wants but misread popular will. A less benign view is that politicians may actually say one thing to voters but do another when in office. An even more disturbing possibility is that (some) politicians know exactly what they are doing and, for whatever reasons, are actively thwarting the public will. In any case, the direct initiative is a potent corrective measure.

To contemporary critics who argue that clever and misleading advertisements can sway public opinion about an initiative Prof. Matsusaka counters that the public has many sources of information upon which to base a decision. Many doctrinaire environmentalists, for example, can confidently rely on the endorsement of such organizations as the Sierra Club to assist them in deciding how to vote.

Prof. Matsusaka also reflects on the meaning of the direct initiative in the larger scheme of a republican government, and provides three useful frameworks for thinking about initiatives. He dubs them the delegation view, the information view, and the competitions view. The delegation view posits that the initiative gives voters a way to redirect their representatives. The information view holds that the initiative captures the diverse information sources of the broader citizenry which may escape elected officials (think of rising property taxes and Proposition 13). The competition view sees initiatives as a way for non-politicians to compete against political insiders in proposing public policy.

Whatever direct democracy's place in republican government, *For the Many or the Few* clearly debunks the argument that the initiative process serves the (ignoble) interests of small numbers of manipulative and wealthy special interests. Based on Prof. Matsusaka's meticulous (but admittedly somewhat dry and clinical) work, a reasonable counter-argument could be made that the direct initiative is in fact the antidote to the sort of manipulation that political (and, not incidentally, media) insiders are wont to practice. They, especially, should read it.

*Steven Frates is the President of the Center for Government Analysis and a Senior Fellow at the Rose Institute of State and Local Government at Claremont McKenna College. He has served on the California State Constitution Revision Commission and currently sits on the Governor's Performance Review Commission.* ♣

## Christian Charity

# When the Saints Go Marching In

Book Review by Eloise Anderson

*Street Saints: Renewing America's Cities*

by Barbara J. Elliott

Templeton Foundation Press

338 pages, \$24.95

In *Street Saints* Barbara J. Elliott plunges readers into the world of American faith-based services. She wrote the book, she states, "to raise the visibility of street saints, those people who are doing the remarkably hard work of loving human beings into wholeness." Founder and director of the Houston-based Center for Renewal, she is an advocate for faith-based community and social-service organizations.

"I want to be part of what I hope will be a revolution of the heart, to take their faith out of the sanctuary and into the streets," she says. "I want people to understand that every one of us who is a person of faith has really been charged to go and be an apostle."

In effect two books emerge from her efforts—one a directory of programs and people, mostly in inner-cities, doing good work to help the needy; the other an eschatological view of Christianity.

In sum the book shows those working to resurrect their communities to be "saints" striving to create the Kingdom of God on earth. Ms. Elliott tells their story for outsiders who have yet to discover what goes on under the surface in neighborhoods that society has written off. *Street Saints* informs the reader that government programs are inadequate—the educational establishment, for example, is portrayed as distant from the life and needs of the families it is to serve.

Enter faith-based servants, who, according to Elliott, demonstrate that human relationships are necessary for change. Why? Relationships hold in their midst the presence of the Divine, she argues. "Where two or more are gathered there I will be."

Ms. Elliott wants to lead secularists through a world unknown to them, attempting at every description to make them comfortable with faith-based service. *Street Saints* makes faith-based programs palatable even to secular readers by dispelling the notion that faith workers are always proselytizing to the needy. Moreover the credentials and material successes of the book's "saints" are described—Ms. Elliott understands the non-believer will look to such criteria when forming their judgments. Yet she is keenly aware that credentials and money are no substitute for

having been broken and healed, and then sharing that healing experience with another. Thus her book witnesses for the reader the spiritual healing taking place.

Her tour of various faith-based organizations is a cross-country experience. Her message: the "saints" are everywhere—go look in your own city and you will find them. Ms. Elliott's language seeks to reinforce Judeo-Christian heritage while conveying understanding to those not familiar with the theology. She wants to make the modern faith-based services experience seem a natural part of American nature, deeply rooted in the country's history. Spiritually, American is different from Europe and has been since its beginnings, she argues. The Founders perceived that our freedoms are God-given, she points out—thus they can only be preserved by a faithful society.

*She engages the reader in a discussion of the Christian faith and one's purpose in life. She wants to move you to action, to involve you in your faith... Readers are led to evaluate their own faith, their society, and its direction.*

Meanwhile Ms. Elliott seems to have a secondary purpose: She engages the reader in a discussion of the Christian faith and one's purpose in life. She wants to move you to action, to involve you in your faith—perhaps even to become Christian. Readers are led to evaluate their own faith, their society, and its direction.

Another aspect of *Street Saints* elevates politics.

Ms. Elliott supports President George W. Bush's Faith-based and Community Initiative. Her background helps to explain why: she once directed an awards program for faith-based nonprofits around the country. Much of her philanthropic work is focused on getting private individuals to support faith-based and community organizations. Her advocacy is also an outgrowth of her faith. "The people who are working at the grass roots are reaching a place the government cannot touch and even the large social service institutions cannot touch," she writes.

*Street Saints* combines motivating stories about people caring for others with facts that document the results of faith-based programs. Ms. Elliott compares their results to those of government-run programs. (See Joseph Knippenberg's reviews of two social-science books on faith-based programs in the Spring, 2005 *Local Liberty*.) The faith-based approach out-performs the secular programs in every situation. She demonstrates, then, that people are changed through relationships with other people, relationships that are built on love—a Christ-centered relationship in which one person helping another as an equal makes all things new. "Christ fills us with love to give away, not to squander on ourselves," she writes. But government-run programs do not provide service out of love; therefore low expectations produce inferior results.

Nor do government-run programs negate the need for Americans to help one another, she believes. Social services aren't an appropriate reason to cease caring for one's neighbor, letting the government do it. She expresses concern for the lack of personal involvement that has been developing in the United States, and approvingly quotes *Habits of the Heart* by Robert N. Bellah, which says that "the American experiment is a project of common moral purpose, one which places upon citizens a responsibility for the welfare of their fellow and for the common good." Ms. Elliott, like Bellah, believes that Americans are not living out individualism but loneliness. She indicates that she believes the remedy for this loneliness is service, giving in love. She demonstrates this in the people and programs she profiles. These are committed people giving of themselves with no hint of loneliness.

The last parts of *Street Saints*, "The Big Picture" and the "Conclusion" are more than just a directory of people and programs; they are statements of faith. This almost seems out of place and could be a book on its own. Here Ms. Elliott leaves the streets and moves to the American beginnings. She ties the actions of today's faith-based organizations to the founders and earlier American beliefs. Her sweeping portrait shows readers the past and present of faith-based organizations in hopes that they and those who participate in them will have a bright future.

*Eloise Anderson is a Senior Fellow at the Claremont Institute. She was Director of Social Services under Governor Tommy Thompson in Wisconsin and, most recently, Governor Pete Wilson in California.* ♣

## ■ Ferguson [continued from page 1]

agency with the power of eminent domain, and property tax revenue to fund the agency's activities.

Unfortunately, even with a statutory scheme to prevent abuse and protect property owners, abuse has been widespread. The safeguards are primarily honored by their breach. Cities continue to find up-scale areas blighted while failing to spend the required 20% set aside of new tax revenue generated in the redevelopment area for low-income housing. This being the case, it is not surprising that redevelopment agencies condemn well-kept housing and small businesses so that large businesses can relocate and expand into a redevelopment project area.

### LOW-COST HOUSING GOES

In her *Kelo* dissent, Justice O'Connor stated the following:

*Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more.*

Justice O'Connor's prediction is already fact in California.

The acquisition of the power to conduct wholesale condemnation is illustrated by the City of Riverside's recently adopted La Sierra/Arlanza Redevelopment Plan. The Project Area encompasses 12,576 parcels, 8,066 acres (12.6 square miles), and five separate neighborhoods. The area is not blighted. From the City's point of view, the problem is that the area largely consists of large lot, rural, and horse properties, yielding a low tax base. But it also consists of the new Riverwalk development and the Tyler Mall with its Nordstrom's high-end department store. The City's objective is to replace the very low density housing with medium to high-density, higher income housing, and new businesses and commercial centers that will generate substantially higher tax revenue.

This same goal was sought by the County of Riverside in 1998 with the Lake Ellsinore Redevelopment Project. That project consisted of 1,485 acres of residential property which contained 4,409 dwelling units, or an average of 1/3 acre per residence. The residents were mostly low- and moderate-income people who lived in small, permanent houses and mobile homes. There was also vast acreage of vacant property along Lake Ellsinore. The County's Environmental Impact Report stated that the

area had "a distinct resort character." The Agency's goal was to replace the residents, who were primarily blue-collar workers and moderate-fixed-income retirees, with young executives living next to an up-scale resort. A lawsuit was brought challenging the finding of blight and the matter was settled. The County gave up and waived its right of eminent domain as to improved property, and the residents are no longer threatened.

### HOMES VERSUS BUSINESS

New London sought to condemn Ms. Kelo's home for a business park. Many comparable examples exist in California:

- In Fresno homes were condemned to provide land for a turkey processing plant. Ironically, a few years later the company went bankrupt and the plant closed.
- Six years ago the City of Garden Grove condemned a whole area of well kept low-and moderate-income housing units in order to develop and build a new Hampton Inn hotel.
- Three years later the City of Garden Grove acquired eleven homes for land so that a developer could build additional hotels.
- Recently the City of San Bernardino acquired a number of homes to provide the land for a new Sam's Club.

### SMALL BUSINESSES LOSE TO LARGE SCALE DEVELOPMENT

In 2004, the City of Lynwood's Redevelopment Agency proposed to acquire a portion of what is known as Project Area 26 for a large hotel chain. Most of the existing merchants had left when this property became a redevelopment project area after the adjacent freeway opened. Over time the area's high vacancy rate disappeared. The City then landscaped and upgraded the area into an attractive commercial zone. It is no longer blighted. Yet the City of Lynwood still possesses the power to condemn the profitable businesses. This would include removing a small but profitable hotel, then selling the land for the development of a major hotel.

A comparable situation is planned for the corner of Hollywood and Vine where property owned by the Metropolitan Transit Authority is being sold to a developer for a large scale, luxury hotel and commercial development. The City of Los Angeles is now seeking to reacquire the right of eminent domain so that it can acquire the privately owned property along Vine which consists of small merchants and a small office building. Though two years ago the property was apparently not "needed" by the developer, the City has now expressly stated that it will use

eminent domain to put the existing merchants out of business.

A travesty occurred in Redevelopment Project Area No. 1 in the picturesque City of South Lake Tahoe in the High Sierra Mountains. There the Redevelopment Agency acquired and demolished 526 family oriented motel rooms so that Embassy Suites could construct a 400-room hotel. More such motel rooms are being demolished to be replaced by the Embassy Vacation Resort, a 210-unit up-scale timeshare development. Now only one small 28-unit apartment of affordable family housing remains.

Situations comparable to the above examples are frequent. Problems exist because redevelopment agencies can, and frequently do, redevelop and upgrade an area and then come back and condemn it again for a project that will generate even more tax revenue. Also, redevelopment agencies refuse to follow and abide by the statutory definition of blight. Once blight is established, the entire project area is conclusively presumed to be blighted for the duration of the redevelopment plan, regardless of what happens in the future. State Courts, for the most part, have followed this presumption while, up until *Kelo*, federal courts in California have not.

### CONCLUSION

Cities and Redevelopment Agencies should be required to concentrate on revitalizing areas that have become a physical and economic liability, and not be permitted to redevelop viable areas simply for the gain of tax revenue. There is no reason to assume that California or any other state will have more restrictive standards than the federal one. Unfortunately, the United States Supreme Court has decided that cities can use their power simply as a convenient revenue source. *Kelo* will unleash local governments to abuse their powers.

*C. Robert Ferguson is a California attorney who practices land use law. He has lectured widely on redevelopment abuse. A lengthier version of this article can be found at [www.localliberty.org](http://www.localliberty.org), under Essays. He contributed "They Take a Village: Redevelopment in Blighted Claremont" to the Fall, 2004 Local Liberty.*

### Next Issue:

Special Issue on Initiatives

What difference will they make?

Is California's Constitution as sound as Arnold's?

New urbanism, Islam in the inner city, and reviews.

# Local Litigation

by John C. Eastman



Among the most fundamental aspects of sovereignty is the sovereign's ability to define citizenship and to distinguish citizens from non-citizens. In the United States, the Constitution delegates that core responsibility to Congress through the Article I power "To establish an uniform Rule of Naturalization."

After the Supreme Court adopted an egregiously erroneous understanding of citizenship in the infamous *Dred Scott* case (and the resulting Civil War), a constitutional amendment established a lower limit on Congressional authority to define citizenship. Since 1868, the Fourteenth Amendment has provided that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

Two developments make this national power a matter of great local consequence. The first occurred over a century ago when the Supreme Court, erroneously interpreting the Citizenship Clause of the Fourteenth Amendment, found an absolute right to citizenship for anyone born on U.S. soil. This ignored the second component of the constitutional mandate: that such persons also be subject to the sovereign jurisdiction of the United States at the time of their birth. In other words, the Constitution—properly understood—does not grant citizenship to those born on U.S. soil whose parents are here only temporarily (whether legally or illegally) and continue to owe allegiance to another sovereign.

The second development, more recent, has exacerbated the threat to sovereignty from the first. For whatever reason, the U.S. government and a significant number of state and local governments are failing (or deliberately refusing) to enforce Congressional naturalization policy and law. Millions of illegal immigrants have streamed across our southern border with ever-increasing frequency, taking up more or less permanent residency, demanding entitlement to our social welfare services, and claiming the mantle of citizenship for their children in violation of the basic precept that citizenship requires bilateral consent.

California is particularly hard hit. The State verges on bankruptcy partly due to the drain on social services caused by massive illegal immigration. But the stakes are much more than financial. A recent billboard ad campaign by a Los Angeles-based Spanish

language television station puts the broader issue in stark relief. Atop a view of the Los Angeles skyline (with the Mexico City monument to Mexican independence superimposed) are the words, "Los Angeles, ~~CA~~ MEXICO." The billboard's brazen implication is a testament to the danger posed by unfettered illegal immigration.



In response to this crisis of sovereignty, the Claremont Institute's Center for Constitutional Jurisprudence is pursuing several litigation strategies.

In the *Hamdi* case, in which the Supreme Court was confronted with the legal process that was due to a member of the Taliban army captured on the battlefield in Afghanistan, by virtue of the fact that he claimed U.S. citizenship, having been born in Louisiana while his Saudi father was on a temporary work visa—we filed an *amicus curiae* brief arguing for restoration of the constitutional requirement for citizenship. Locally, we are developing litigation that would revive California's Proposition 187 ban on providing social services to illegal immigrants; though passed by California voters the initiative was held unconstitutional by a fairly radical district court opinion. Subsequently the California Attorney General dropped the matter before it could be heard by the Court of Appeals or the Supreme Court.

Moreover we are exploring ways to compel government officials to enforce immigration policy (and defend them against lawsuits when they do), and to prevent them from pursuing policies that subsidize illegal immigration. Watch these pages for more developments as these litigation strategies materialize.

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In other litigation news, religious symbols in the public square continue to be under attack. Our challenge to the L.A. County Board of Supervisors for removing the small Latin cross from the County Seal, *Horowitz v. County of Los Angeles*, remains pending while we await the outcome of parallel litigation before the U.S. Court of Appeals for the Ninth Circuit (*Vasquez v. County of Los Angeles*). We filed an *amicus curiae* brief in the Ten Commandments case, *Van Orden v. Perry*, decided by the U.S. Supreme Court in June, and we filed with the U.S. Court of Appeals for the Ninth Circuit an *amicus curiae* brief in support of the Boy Scouts' right to keep their Balboa Park summer camp

lease with the City of San Diego.

We are also involved in an interesting mix of cases involving property rights, free speech and the free exercise of religion. Our *amicus curiae* brief in *Kelo v. City of New London, Connecticut* reminded the U.S. Supreme Court of the limits of governmental power with respect to eminent domain, and was picked up in the dissenting opinions of both Justices Thomas and O'Connor. Likewise, our *amicus curiae* brief in *Cutter v. Wilkinson* challenged the federal government's expansive power claims under the Spending Clause while defending the ability of states to choose their own policies with respect to religion. And in a client case that provided a blend of all three, we successfully advised Ron and Karen Plechaty, property owners in northern California who were threatened with criminal prosecution for posting signs protesting government decision-making. (The couple contended that recent policies would send the local economy into the "toilet," including a porcelain depiction of the word on the sign.) The City also threatened the Plechatys with criminal prosecution for posting an Easter sign stating: "I'll be back! Jesus." After our exhaustive analysis and preparation of a demand letter, the City thought better of its threats and granted the Plechatys the permit to which they were constitutionally entitled.



As always, our extensive work is made possible by the efforts of our cooperating attorneys and law students working with our liberty clinics and in our Blackstone Fellowship program. Many thanks are due to Professor Eric Claeys for his work on our *Kelo* brief and Professor Ed Erler for his work developing the arguments raised in our *Hamdi* brief; Chapman Law students Karen Lugo (*Van Orden* and *Hamdi*), Rachel Pickens (*Plechaty*), Sean Meadows, Mark Gordon, Anthony Geraci, and Chris Schumate (*Horowitz*), Allison Gomez and Kevin Muldoon (*Boy Scouts*), Jeff Schermerhorn (*Proposition 187*), Anthony Geraci (*Cutter*), and Fern English (eminent domain); and to our 2004 Blackstone Fellows, who helped with initial development on a number of these cases.

John C. Eastman is Director of the Center for Constitutional Jurisprudence of the Claremont Institute. A former clerk of Justice Clarence Thomas, Eastman teaches at the Chapman University School of Law. He has a Ph.D. in government from Claremont Graduate School and a J.D. from the University of Chicago Law School. 🦋

# Claremont Publications

## Claremont Review of Books



The *Claremont Review of Books*, the flagship publication of the Claremont Institute, is the only journal to make bold arguments for a new, reinvigorated conservatism, one that draws upon the timeless principles of the American Founding, and applies them to the moral and political problems we face today. Edited by Charles R. Kesler, each issue highlights important new books, scholarly and otherwise, as well as those neglected by other publications. By engaging policy at the level of ideas, we aim to reawaken in America politics a statesmanship and citizenship worthy of our noblest political traditions.

### Featured in the Summer 2005 issue:

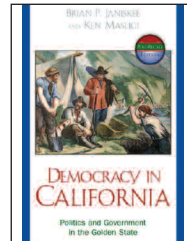
Victor Davis Hanson: *Our Shameful Universities*.

Michael Uhlmann: *William F. Buckley and the American Conservative Movement*.

John C. Eastman on *Clarence Thomas*.

Charles Lofgren on *Michelle Malkin*.

## Claremont Books Review California



Brian Janiskee, Professor of Political Science at the California State University, San Bernardino and Ken Masugi, Director of the Center for Local Government at The Claremont Institute and Editor of *Local Liberty*, have collaborated on two books that are essential for an understanding of California Government.

The Post-Recall edition of *Democracy in California: Government and Politics in the Golden State* is a succinct guide to the intricacies of California government that includes a special chapter putting the recent recall election in context.



*The California Republic* brings together a diverse group of well-known political scientists, historians, journalists and political activists to shed light on the evolution of Progressive government in California and its contemporary policy consequences.

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THE CLAREMONT INSTITUTE  
937 W. Foothill Boulevard  
Claremont, California 91711  
www.claremont.org  
Phone: (909) 621-6825  
Fax: (909) 626-8724



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