

# In This Issue

As a local elected official, I am always amazed at how often local elected officials, who are registered Republicans, forget conservative ideals in their local decision-making. I know many a local elected official who has never met a new government program he or she did not like. We must teach what it is to be a conservative to those who serve in city, county and school posts.

– On the front page: Tom Fuentes, former Chairman of the Orange County Republican Party, now heading the Claremont Institute's Orange County office.



**The Ten Commandments in the floor of the National Archives.**

*Photo by Carrie Devorah*

If the Supreme Court holds that the public display of the Ten Commandments is unconstitutional, watch to see if anyone reports that the decision was rendered from a bench that sits under the watchful eye of Moses himself, complete with the two tablets of the Decalogue carved in marble directly above the bench.

– Updates from John Eastman's Local Litigation on page 10.

Can a self-governing people lack well-governed souls? The libertarian view of liberty suffers from arbitrariness in its definition of liberty. Natural rights theory...should instead be the basis for the rule of law and self-government, not litigation for the defense of particular freedoms.

– See page 2 for Ken Masugi on the libertarian seduction.

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# Local Liberty



## California Dream: Opportunity and Freedom

Local Liberty editor Ken Masugi interviewed Tom Fuentes, former Chairman of the Orange County Republican Party. Now heading the Claremont Institute’s Orange County office, he reflected on the California dream and current political issues, including the place of local government.



Tom, you recently retired after heading the Orange County Republican Party for 20 years. You were 35 when you began your tenure, so you’ve seen a lot of California and general political history since then, having served in a variety of positions of trust, including politics, community leadership, and higher education. We are now honored to have you head up the Claremont Institute’s Orange County Office. I hope you might reflect on your years in politics and how we might envision California in the decades to come:

### **What is the California Dream? Is it in danger, or simply changing?**

For me, the California Dream is opportunity and freedom.

As a sixth generation Californian, my family has been enjoying life in the Golden State since 1834. This has been a place of opportunity and freedom for our family. I want to be sure that my children and theirs, into the countless generations ahead, have the same freedoms that we have enjoyed.

My great-great-grandfather arrived in San Diego aboard a ship from Mexico in 1834. He was born aboard another ship that came from Spain in 1810. Both he, and his parents before him, suffered hardships and trials so that he could reach this magnificent place we call California.

Today, I see ever growing government and more restrictions on our freedoms as Californians. Our state capital is infested with special interests and the average Californian has to pick up the tab to support the govern-

ment and special interest elites. The administrative state is constantly more present in our lives. Each session of the state legislature adds to the burden. Big government, big unions, and big business have an excess of influence in the current direction of California.

Each year, the state spends more than it takes in. There still is a very strong entitlement mentality in the legislature. The bonded indebtedness of our children and grandchildren is growing at a horrific pace.

We are mortgaging their future and that will limit their freedom, too.

### **What does this Dream mean for the state, localities, and the nation?**

We need less government in California, not more. Conservatives rallied to launch a recall to toss out Gray Davis because he wanted to foist \$10 billion of bonded indebtedness on our people to pay for over spending.

After Davis was recalled, the new state administration promoted the passage of a \$15

[ see *California Dream* on page 10 ]

## Local Politics and the English Language

By Conor Friedersdorf

*“In prose, the worst thing one can do with words is surrender to them.”*  
George Orwell

When academics and other scholars discuss newspapers one gets the impression that *The New York Times*, *The Washington Post*, *The Wall Street Journal* and a few other nationally known dailies provide most Americans with print news. In fact, small and mid-sized newspapers—both daily and weekly—remain the primary source of written news for a majority of Americans, and often times are their only source of news about local government.

It follows that while university journalism departments and media think tanks draw attention to problems in elite media—where the profession-

al writing allows scholars to focus on abstract ethics, ideological bias, high profile scandals and the like—trends and problems affecting smaller newspapers are ignored, if even recognized in the first place.

In this climate, a grave problem for journalism and democracy has gone ignored: at local newspapers across America lazy, inexperienced or untalented writers are producing jargon-filled copy so complex and off-putting that it obscures the day’s events for many readers, while causing many more to simply put down the newspaper, or at least skip to the sports section.

That’s a bad thing for democracy.

Busy Americans, having no time to monitor City Hall themselves, rely on their local newspapers to pick out important events and explain them in easy to understand language. When local media fails, residents become disengaged from

local government, making its failure more likely.

Each year in Los Angeles, the public school system sends parents a large handbook explaining school rules for the coming year. This year, Superintendent Roy Romer began with an apology of sorts. “I realize that much of the information in this handbook is detailed and presented in a very formal manner,” he wrote, “but we do so in order to comply with legal mandates.”

Presumably he referred to passages like the following:

*It is the policy of the Los Angeles Unified School District to seek restitution, including but not limited to, when a student willfully cuts, defaces, causes the loss, nonreturn or otherwise injures any property, real or personal, belonging to the school district or a school employee. The parent/guardian*

[ see *Friedersdorf* on page 5 ]

# Local Liberty

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

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# From the Editor

## The Libertarian Seduction

Those who pay attention to local government know that bureaucracy and arbitrariness predominate. No one has done more to challenge this grassroots tyranny than libertarian attorney Clint Bolick. I have known and admired his work and committed character since the days we worked together at the Clarence Thomas-chaired Equal Employment Opportunity Commission.

Bolick's latest book, *Leviathan: The Growth of Local Government and the Erosion of Liberty* (Hoover Institution Press), continues the expose of *Grassroots Tyranny* (Cato, 1993). In total budgets and personnel and in anonymity local governments exceed the federal. Against this hydra, Bolick advocates removal of arbitrary barriers to employment, protection of private property from eminent domain, freedom of commercial and political speech, school choice, and colorblindness in government endeavors including school admissions and adoption. On all these subjects he is invariably on-target, making his book an essential guide.

Consider his indictment of local government property-rights policies. “[C]ities view all property as up for grabs.” Eminent domain, he points out, is now being used by local governments to transfer property “from the current owner and give it to someone they like better”—who turns out to be someone who claims to produce more tax revenue or produce more jobs than the current property holders. This is “Robin Hood in reverse,” as the poor and powerless lose out to the politically connected and corporations. “In most instances, it’s corporate welfare of the most naked kind.”

More to the point, Bolick’s open-ended definition of liberty, which culminates in “the right to be left alone,” threatens to undermine the conditions of that liberty. To exemplify what he takes to be a principled stand, he defends the right to sodomy proclaimed in *Lawrence v. Texas* (2003) as well as a right for the Boy Scouts not to suffer discrimination for their rejection of membership to open homosexuals. Americans, Bolick admonishes, need to stop “indulging their own moral preferences rather than supporting consistently the right to be left alone that most Americans cherish.” (Here he eschews defending drug legalization, which he had advocated in *Grassroots Tyranny*.) Local government’s power “to safeguard the safety and well-being of the community” must not be allowed to subvert “personal autonomy.”

While the Bolick solution may appear to solve many a problem, and regain constitutional principles of liberty and justice, in fact it drives us away from those principles. For Bolick, as do libertarians generally, adopts the main principle that gives us the bureaucratic state to begin with—personal autonomy. In *Democracy in America* Tocqueville called it individualism—of the selfish and self-effacing sort, not the rugged sort—and saw it led to centralized administration, the kinder, gentler despotism. Even if Bolick would not extend his defense of sodomy rights to same-sex marriage—and it’s hard to see how he could prevent that—this one example shows the massive limitations of his approach to local government.

After all, what does it mean to deny legislative power to enforce morals? Bolick would distinguish the enlightened judge who would read the Constitution his way from the block-headed bureaucrats who stifle freedom. But why would he object to an enlightened bureaucrat? How could he? Taking inherently controversial issues such as same-sex marriage off the table by declaring it part of one’s “personal autonomy” means the abolition of politics and the concomitant permanency of bureaucracy. The logic of the bureaucratic state is to

make moral decisions private, beyond the realm of political struggle. Politics would be devoid of the requisite spiritedness required for robust debate and mobilization of majority sentiment. Eventually, subordinating all struggles means repressing freedom as well. Government based on consent withers. While denouncing “leviathan,” Bolick’s logic justifies it. How does he get from autonomous individual to legitimate government?

Can a self-governing people lack well-governed souls? The libertarian view of liberty suffers from arbitrariness in its definition of liberty.

Natural rights theory, a version of which is embraced by Bolick, should instead be the basis for the rule of law and self-government, not litigation for the defense of particular freedoms. Pinning exaggerated hopes on the judiciary and hence on lawyers can distract us from the task at hand of reshaping local governments, an endeavor that must necessarily uproot and not just trim grassroots tyranny. ♣



Ken Masugi  
Editor

## ■ California Dream [ continued from page 10 ]

money and benefits, especially retirement, will eventually bankrupt California if not soon checked.

With the influence of so many special interests in the capital, both from big labor and big business, and with such a few Republicans in the state senate and assembly, it will be hard to achieve real progress. But, I am sure that the Governor knows that the people want reform. Perhaps he will have to go to the people as he said he wants to do.

***Illegal immigration is often cited as an issue by those who want a Republican revival in California. Is this overrated as an issue? How should it be pursued?***

So far, neither party has come up with any successful solutions to the issue of illegal immigration. Personally, I favor a vigorous guest worker program as California experienced decades ago.

People will continue to come to California from other states and from other nations. We need some practical solutions.

Enormous sectors of the California economy are dependent on immigrant labor. Presently Mexico is the source of much of that labor. Mexicans continue to come here, legally and illegally, to seek opportunity for themselves and their families. Improvement in government and society in Mexico has to occur before that flow will ever slow down.

From Asia, many Vietnamese have settled in California. They have been a strong Republican voting community. Several immigrant Vietnamese-American Republicans have been elected to public office.

***Tom, don't the critics deride guest worker programs as "amnesty"? Is this wrong and/or demagogic? How do we get beyond slogans here?***

We must be about teaching the principles and ideals of the American founding to all who reside in our borders.

America is special. It is different in its reasons for existence. It would appear that neither party, when in power, is willing to deport anyone from this magnificent nation.

I do not want to give up hope for substantive immigration reform, but if our borders are not secure, whoever is here, legally or illegally, must be taught what it is to be an American. The Claremont Institute is ideally suited to work in this area. We can stimulate programs on national, state and local levels.

***Your career has been marked by devotion to following principle and at the same time expanding the base of the party. What advice can you give to young politicians and those who are cynical about politics and how to match principle and electability?***

There is still great opportunity for young people to do great things in politics. I always stress to them, that if they want to achieve great things, they must concentrate on what they want to do, not who they want to be.

I believe that America's conservative party, the Republican Party, has great potential to grow in the ethnic communities that are growing in the population of California. But, these new neighbors must be addressed in the same way as the Bush campaign did so successfully in the election of 2004.

The Republican Party must outreach with a conservative message. Nationwide, the campaign found success in reaching Hispanics and Catholics, for example. In 2004, Catholic support for Bush was up to 52%—six points higher than in 2000. Among Hispanics, Bush's numbers grew to 40% in 2004, up five points from the totals in 2000.

But reaching these constituencies in California will be a real challenge. The state party today is in the hands of moderates, not conservatives. Many from big business, and moneyed moderates, do not want to encourage a more conservative party.

Our ethnic community neighbors have deeply held values. A party can only appeal to them in a noble fashion with substantive ideals and principles if it truly wants them to join. Furthermore, a principled party must give these new members a place at the table when it asks them for their votes. Ronald Reagan knew and understood this concept.

Neither the old Eastern Liberal Establishment nor the new Western so-called Moderate Establishment wants to share power. But, a party with money and no people is soon not a party.

***On what local government issues should Republicans consider uniting? How should conservatives link local issues to state and national ones?***

I have the privilege of serving as a trustee of a large community college district. As a local elected official, I am always amazed at how often local elected officials, who are registered Republicans, forget conservative ideals in their local decision-making. I know many a local

elected official who has never met a new government program he or she did not like. We must teach what it is to be a conservative to those who serve in city, county and school posts.

As an example, the labor unions are as aggressive in the cities and school districts, as they are in Sacramento. I see self-identified Republican city council members and school trustees voting for outlandish salaries, retirement benefits and entitlement programs for public employees with little regard for the taxpayer. I see property rights challenged by these same people.

***Tell us about your work for the Claremont Institute in its new Orange County Office.***

I am delighted to be serving the Institute at its new offices in Newport Beach. Orange County has always had a warm spot in its heart for The Claremont Institute. The Institute has so many able and articulate scholars. I want to help get out their message to the people of Southern California and to recruit neighbors to support the work of the Institute in sharing the message of the American Founding in our contemporary political life. We have begun to have some fine showcase events to get more exposure for the work of the Institute. It's an exciting time. 🦋

## ***The Progressive Revolution in American Politics and Political Science***

Edited by John Marini and Ken Masugi.

Studies in Statesmanship and Political Philosophy Series.

Rowman & Littlefield, Fall 2005

■ **California Dream** [ continued from page 1 ]

billion bond package. Now, another \$6 billion of bonds and interest have been sold to the voters to pay for stem cell research to the benefit of special interests. It all makes you wonder what was accomplished by the recall.

California was the place from which came Proposition 13 and Ronald Reagan. This state gave to the nation a conservative agenda of reform. I hope that vision is not lost.

**How does the November Republican victory nationwide reflect on the American/California Dream?**

I liked the county-by-county, red versus blue map of the nation that was published after the election. It showed that most of California is red. That is to say, most of the communities of our state voted for President Bush. The Kerry victory in California came from the blue urban core areas.

I believe that the map demonstrates that the good and morally motivated people in most of California's towns and communities share common values with the vast majority of their countrymen.

I travel a great deal to Washington, D.C. for my work on the board of the Legal Services Corporation to which I was appointed by the President. When I go to our nation's capital, I am very cognizant of the political differences between that place and the community in which I live. Orange County delivered the highest numerical margin of votes for the President of any county in the nation. Winning this one election does not mean there is not still an enormous amount of work to do to implement a conservative agenda both nationally and in California.

**Is California out of step on moral issues that many cite as giving Bush the edge over Kerry and the Democrats in the last election?**

I think that most Californians are good people who share noble ideals.

On the other hand, California is home to Hollywood and its violence and vulgarity. I do think that the recent election, however, shows that Hollywood's values are not the American people's values.

To win elections, a party has to have something to offer the voters in ideas and candidates. The party of Lincoln, Reagan and Bush has to have a fair forum in which the people can then demonstrate their preferences.

Today, the congressional and state legislative districts of California are all out of balance. It is virtually impossible to win a district based on a debate of substantive issues when the apportionment of registered voters is so lopsided.

We must have major state reform with respect to redistricting. The process must be more independent. Clearly, a conflict of interest is present when legislators are drawing up their own districts. Redistricting has become the tool of incumbents to sustain themselves in office, even if it means forfeiting real democracy. We cannot allow that to continue.

***I want to see the day again when substantive issues are debated, and the people vote for a party's candidate because he or she offers the best ideas in real debate. Unless and until Californians can engage fully in a genuine and ongoing debate about right and wrong and good and bad in politics, I'm afraid little will change.***

For example, here in the Orange County community, where we have a margin of a quarter of a million more Republicans than Democrats registered to vote, not one district changed party hands on November 2nd. The incumbents are protected in both parties.

I want to see the day again when substantive issues are debated, and the people vote for a party's candidate because he or she offers the best ideas in real debate. Unless and until Californians can engage fully in a genuine and ongoing debate about right and wrong and good and bad in politics, I'm afraid little will change.

***You seem to have great confidence in the capacity of people to make choices on the basis of an appeal to their intelligence and their judgment of character. Needless to say,***

***this is not the way most political campaigns are run. Has this gotten worse in the time you've been involved in politics?***

After every election, when I review the results, I see the wisdom of the people. Their collective intelligence always refreshes and reinvigorates me. But, the people are challenged ever more by the dominance of big money in politics today. Many paid political consultants are driven by the dollar, not by noble ideas or philosophy. Big dollars also tend to put distance between the candidates and their parties, too. We saw this happen recently when the leadership of the California Republican Party voted in full convention to oppose the stem cell research bond measure and the Louisiana-style primary proposal, yet the Governor broke with the party and backed both measures.

***Tom, you have seen what the Governor has to say in his 2005 State of the State message before the Legislature. What success do you think his new agenda will have?***

I suspect that this will be a matter of pure political will and determination. If the Governor will use all of his weight room training and powers of concentration in going up against the traditionally immovable forces in Sacramento, he may be able to achieve some progress. If he flinches, his opponents will take advantage of any weakness.

I am sure that every thinking taxpayer would like him to succeed.

I am delighted to see his pledge to reform the redistricting process. Nothing will change in the governance of our state, if we do not first have reform in the way the districts are apportioned. This will require some very noble and concrete action.

The current reapportionment assures a locked-in control of one party. It leaves little room for the debate of ideas. We need to create a political environment where ideas of reform can be moved forward by a legislature who expresses the will of the people. The current unfair district lines skew the entire democratic process.

***Are there other things you liked about his speech?***

I am impressed by the Governor's candor in identifying the government worker labor unions, especially the teachers, as key elements of the problem. The entitlements of

[ see California Dream on page 11 ]

# Faith-Based Social Work: Going Beyond the Myths

by Joseph M. Knippenberg

*Putting Faith in Partnerships: Welfare-to-Work in Four Cities*, by Stephen V. Monsma. University of Michigan Press, 268 pages, \$35.

*A Revolution of Compassion: Faith-Based Groups as Full Partners in Fighting America's Social Problems*, by Dave Donaldson and Stanley Carlson-Thies. Baker Books, 201 pages, \$14.99.

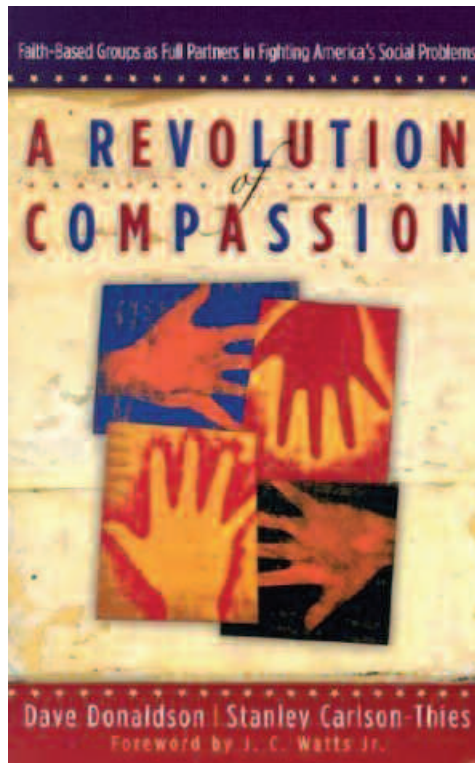
The recent presidential campaign season included some pretty negative coverage of its religious dimension. There was talk about the so-called “God gap,” “values voters,” and the four million evangelicals Karl Rove said did not vote in 2000. After the election, there was plenty of hand-wringing about the end of the Enlightenment and the “theocracy” of the Bush Administration. One source of particular worry to Bush Administration critics is an expansion of the so-called “faith based initiative” which allows government money to go to faith based groups to promote secular social improvements. After the election, one columnist went so far as to suggest, the expansion of this program would usher in a new era of intolerance and theocracy.

As usual, the reality is much more complicated—and more reassuring to friends of religious liberty—than the superheated rhetoric of the campaign season suggests. The Stephen V. Monsma’s *Putting Faith in Partnerships* seeks to explain the role of faith-based organizations in the universe of public and private, for-profit and non-profit welfare-to-work programs. Donaldson and Carlson-Thies address *A Revolution of Compassion* to evangelical leaders with a heart for service, encouraging them to think carefully and creatively about how their missions can be promoted or diverted by partnerships, not only with government, but also with foundations and other social service agencies. Taken together, the two books provide a richly-textured picture of the motives that animate social service providers, the programs they offer, and the complicated relationships they have with government, with philanthropic donors, and with one another.

Monsma’s survey covers welfare-to-work programs in four cities—Philadelphia, Chicago, Dallas, and Los Angeles—and represents information gleaned from questionnaires and two-day site visits. He examines government programs, those offered by corporations, large secular non-profits, small

community-based non-profits, and faith-based organizations. Monsma breaks down the faith-based organizations into two types: “faith-based/segmented” where the religious elements are separated from the secular programs and “faith-based/integrated” in which secular and religious elements are seamlessly interwoven.

In terms of size and professionalism, Monsma found a clear divide between the governmental, secular non-profit, and for-profit programs on the one hand, and the faith-based and community-based programs, on the other. The former tended to be larger, more professionalized, and better-funded, the



latter smaller and more reliant on volunteer assistance. In 2002, when the survey was taken, over 80% of full-time employees in the welfare-to-work field could be found in either government agencies or large secular non-profit organizations. Barely 10% worked for community-based or faith-based organizations.

Although the current capacity of the faith-based and community-based sector is small, Monsma found great willingness to expand and, more importantly, “the capacity to handle the paperwork and other demands put on organizations receiving government funding.” He concludes that “[i]f policymakers should decide to move in the direction of rely-

ing more heavily on community-based and faith-based providers, they would find providers who are eager to expand and to serve their communities more fully.”

Monsma also noted significant differences between the faith-based programs and the others. The former tended to offer a higher proportion of “life-oriented services,” like work preparedness training and mentoring, than did the other organizations, which tended to offer more “job-oriented services,” like ESL classes, job search services, and client assessment. Put another way, the smaller community- and faith-based organizations tried harder to focus on the root causes of an individual’s specific problems and offer solutions where appropriate. The different mix of services provided may bespeak a difference in orientation, captured in this comment by a formerly homeless client of a Los Angeles faith-based program, who said that “at the welfare office, they just try to get you in and get you out, while at the faith-based program, they really try to help. She said that if the welfare office finds you a job, there is no follow-up, but the people of the faith-based program are still there for you.” Still, Monsma also observed that “welfare-to-work service providers tend to attract staff members who have a sense of personal commitment, often even rooted in religious values, no matter in what setting that person works” (emphasis mine).

In short, Monsma describes a diverse “ecology” of service providers, offering varying mixes of programs, with substantial potential for expansion, especially in areas and with respect to needs that are relatively underserved. Among the principal barriers to expansion are those erected by opponents of the faith-based initiative, who fear government support for proselytization and religious discrimination in hiring.

Monsma’s research suggests that this fear is misplaced. The following statements by program administrators are, Monsma argues, representative of the attitudes of those working in faith-based organizations:

*Our call is for life transformation; we do not proselytize, do not say if you get saved everything will be OK. But we say you are precious—you reflect God’s image and...you need to find the good work that God created for you to do.*

[ see Knippenberg on page 4 ]

## ■ Knippenberg [continued from page 3]

*What we have here is an extension of our individual faith. We as a group do not feel we need to go evangelize or proselytize. If someone asks questions, we will talk to them about faith matters. We do not hide it. But neither do we lead with it. That is not our purpose. When we take this approach, there is no hidden agenda to shove your beliefs onto others.*

Even in the “faith-based/integrated” programs, the religious content is not, strictly speaking “sectarian.” The religious content of most faith-based programs usually deals “with attitudes toward work, personal responsibility, individual hope, and self-esteem.” Where secular programs might use trite motivational plaques and posters to inspire success in their program, faith-based programs use Scripture and speak of being created in God’s image. While some, Monsma concedes, might regard such appeals as sectarian proselytization underserving of government support, that understanding—I would argue—requires exceedingly expansive definitions of both sectarianism and proselytization. Such definitions might be embraced by a judge here or there, but they are unlikely to win in the court of public opinion. In short, if we can get beyond the inside-the-beltway rhetoric and look at what actually is happening in America’s communities, the public would likely embrace the programs and support further government funding for them.

Monsma also provides ammunition for those who would defend the rights of organization to hire only those who support their mission. Beyond effectively marshalling the relevant legal precedents, he offers the following observations:

*It is not a matter of churches or denominational groups wanting to hire persons from their own specific church or denomination.... Instead, it is usually a matter of such groups wishing to hire persons whose religious values and commitments fit within their religious commitments, broadly conceived.... In the real world the issue is not whether a particular religious tradition may only hire from within its own narrowly*

*defined tradition. Rather, the issue is, for example, whether or not a Christian agency must hire a total non-believer....*

If faith-based organizations have a role to play in addressing America’s social needs they should be entitled to hire employees who support their mission as secular agencies are. We should think of religious hiring preferences not as government-funded job discrimination, but rather as government accommodation of religious freedom.

Writing in full awareness of how contentious the faith-based initiative has become, Monsma concludes by offering a series of recommendations calculated to turn down the heat. Two in particular are worth highlighting. First, where possible, government assistance should be offered in the form of vouchers to individuals, rather than grants or contracts to organizations. This maximizes individual choice, weakens the perception of direct government support for religious entities, and leaves organizations free to do what they will to assist their clients. Of course, because they provide income rather than “seed capital,” vouchers can’t readily be used to start new programs. Monsma suggests that faith-based organizations look to philanthropic sources for startup funding, adding yet another element to the rich mosaic of partnerships.

His second suggestion is that government only provide funding to free-standing non-profit organizations, not directly to churches. Once again, this weakens percep-

tions of church-state entanglement and protects churches from inappropriate governmental scrutiny. And since he finds ample evidence to suggest that faith-based non-profits are no less faithful than actual congregations, clients lose none of the benefits faith can provide.

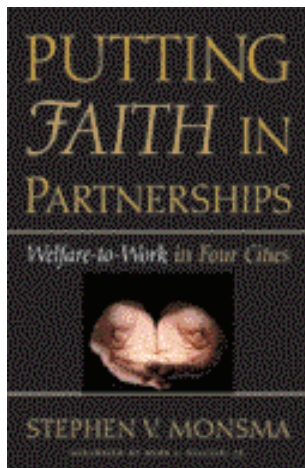
While Monsma’s work will no doubt be interesting to those working in the trenches of faith-based service providers, the Donaldson/Carlson-Thies volume may be of more direct use to this audience. Addressed to evangelicals—a group that, according to Monsma, is increasingly prominent in the landscape of faith-based

social service providers the Donaldson/Carlson-Thies book accessibly summarizes the case for President Bush’s faith-based initiative and addresses many of the practical concerns new entrants into the field might have. There is good reason for this. Donaldson is the founder and CEO of We Care America, an organization that assists social service ministries, and Carlson-Thies worked in the Bush Administration and currently works for the Center for Public Justice, a prominent evangelical think tank. The authors seek to encourage and reassure evangelicals that they do not need to sell their souls to serve their communities. Likewise, non-evangelical readers ought to come away from this book reassured that there is no hidden “theocratic” agenda, that evangelicals are genuinely looking to help heal the wounds in the society in which they live, and that that they do not practice only “faith healing.”

The most interesting and illuminating sections of the book deal with the complex web of relationships necessary to provide effective service. It is easy, for example, for those in the non-profit world to forget the centrality of business to their endeavors. Businesspeople are not enemies or even rivals, but partners, providing, among many things, the very work toward which welfare recipients are supposed to move. The authors urge “kingdom diplomacy”—an evangelical catch phrase for advancing cooperation over confrontation—upon their readers, demonstrating that miscommunication and misunderstanding on both sides have hindered effective partnerships. They offer as one example of fruitful collaboration that faith-based organizations can provide life skills and a network of mentors and supporters that will contribute to the success and productivity of the employees a business hires.

Donaldson and Carlson-Thies also discuss the challenges of remaining true to your evangelical mission, using the struggles of the Salvation Army as a case study. They note that while some secularizing pressure comes from government funding, there is perhaps even greater pressure from the norms of the social service professions. And the temptation to compromise one’s mission comes not only from these sources, but also from a too-heavy reliance on any single source of support, private or public.

Of course, their focus here is revealing. They and their audience have a genuinely defensive concern about losing their way, about



# Claremont Property Rights Brief

*The Summary of Argument and an excerpt (in brackets) from the Claremont Institute's brief in the Kelo v. City of New London case, co-authored by Eric Claeys of St. Louis University School of Law and John Eastman, Director of the Institute's Center for Constitutional Jurisprudence:*

This Court should correct the “broad,” “purposive,” and “deferential” reading of the Public Use Clause propounded by the court below, and restore the Clause’s original public meaning:

“Public use” requires the public to “use” the property, either by owning it or by controlling how it is used. The alternative, that “public use” means “public usefulness,” “purpose,” or “advantage,” confounds the Constitution’s structure, for it makes the term “use” basically repetitive of the term “necessary” in the Necessary and Proper Clause.

[Congress gets whatever eminent domain power it has from the Necessary and Proper Clause, not the Fifth Amendment.... The Fifth Amendment’s Takings Clause was clearly meant as a limitation on the eminent domain power, with two components: The taking had to be for “public use,” and “just compensation” was required.]

The relevant evidence of original meaning confirms what text and structure already make clear. The term “public use” marks off a principled distinction: Government violates the terms of the social compact when it redistributes one private owner’s land to another. By contrast, government stay within the social compact if it takes property in such a manner that citizens enjoy the taken property on the same terms that partners enjoy property acquired by their partnership.

This Court can enforce the Public Use Clause’s original meaning by applying a simple test. Government takes property for a public use if it retains ownership of the property, or if it assigns the property to a private party subject to common carrier duties of public access. But if the government transfers property to a private party not subject to common carrier duties, the taking is for a private use and violates the Public Use Clause.

To restore the original meaning of the Public Use Clause, this Court should also limit excessive language from *Berman v. Parker*, 348 U.S. 26 (1954), which suggested that governments may circumvent the Public Use Clause merely by citing the police power. Police-power analysis is relevant to the question whether a taking has occurred, not to whether that taking is for public use. The latter question should be judged only by whether the government owns the property taken or controls how it is used.

The full text of the brief may be found at <http://www.claremont.org/static/KeloBriefFinal.pdf>

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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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## Local Litigation

by John C. Eastman



The ACLU's onslaught against all things religious in public continued apace, but this year, those devoted to their "free exercise of religion" (words actually in the Constitution) rather than the "separation of Church and State (words not in the Constitution!) began to fight back, with increasing success and the assistance of The Claremont Institute's Center for Constitutional Jurisprudence. Our efforts to defend property rights and constitutionalism have also progressed, and our ranks have swelled with the creation of our new Academic Board of Advisors, comprised of law professors and constitutional scholars throughout the country.

**Los Angeles County Seal, *Horowitz et al. v. County of Los Angeles, et al.*** Our litigation against Los Angeles County and Supervisors Yvonne Burke, Gloria Molina, and Zev Yaroslavsky proceeded, with a hearing on the County's demurrer (motion to dismiss) on February 15, 2005. The most interesting development, though, is that it appears we have been joined by a higher authority in our effort to prevent the County from removing the Cross from the County Seal. On November 2, we filed for an emergency restraining order barring the County from taking any further action removing the Cross. We lost the emergency motion, so the County began dismantling the original seal or covering it up in locations all around the county, on county stationary, and on web sites.

The County made a big deal of the day it covered up the two large seals that are mounted on the wall in the Board of Supervisors hearing room in the Hall of Administration, putting the new seal's design over the old. Three days later, the Cross began appearing through the new seal, affixed in its proper place atop the new cross-less mission that had been designed to "honor" the missionary foundation of Los Angeles County without the (shudder) Christian context. One would think that this awesome sign of the power of the Cross would have convinced the County of the error of its ways, but at this writing the three anti-Cross Supervisors persist in their efforts to excise the Cross from our region's heritage. On February 15 the Los Angeles Superior Court put the case on hold while awaiting the resolution of a similar case, *Vasquez v. County of Los Angeles*.

**Ten Commandments.** Soon after the first of the Year, the Center for Constitutional Jurisprudence filed an amicus curiae (friend of the Court) brief in the Supreme Court of the United States defending the right of States to display the Ten Commandments in public spaces, in recognition of the role that religious document played in the development of Western legal traditions. Picking up on an argument we first made in the Ohio school vouchers case several years ago and repeated in last year's Pledge of Allegiance case, we argued that, correctly understood, the Establishment Clause of the First Amendment was designed to prevent federal interference with States as they partnered with religion to help foster the welfare and morals of the people. Justice Clarence Thomas has begun to develop the argument in his opinions; legal scholars are beginning to grapple with the argument; and more and more, litigants are urging the position in their own briefs. Not only is this the correct view of the Establishment Clause, but it is a critically important one, given the Founders' frequently-expressed belief that their experiment in republican government could not be sustained without a virtuous citizenry, a virtue that it would be foolish to expect in the absence of religion. Expect a ruling in these cases by June, and if the Supreme Court holds that the public display of the Ten Commandments is unconstitutional, watch to see if anyone reports that the decision was rendered from a bench that sits under the watchful eye of Moses himself, complete with the two tablets of the Decalogue carved in marble directly above the bench.



**The Ten Commandments in the floor of the National Archives.**

Photo by Carrie Devorah

**Nevada Tax Case, *Angle, et al. v. The Legislature of Nevada, et al.*** In January we filed a reply brief in support of our petition for writ of certiorari, asking the Supreme Court to review the adverse decision of the Ninth Circuit Court of Appeals last Spring. In that case, the Nevada Supreme Court ordered the Nevada legislature

to ignore the two-thirds tax vote requirement of the Nevada Constitution. Although the Supreme Court denied our petition for writ of certiorari, we will be ready to initiate new litigation should it try to avoid the two-thirds vote requirement for tax increases.

**Eminent Domain Abuse, *Kelo v. City of New London, Connecticut.*** In the first formal collaboration between the Center for Constitutional Jurisprudence and a member of its new Academic Board of Advisors, we filed an amicus curiae brief in the Supreme Court in this important property rights case argued in the Supreme Court on February 22, 2005. Principally authored by St. Louis University Law Professor Eric Claeys, the brief stakes out the argument that taking of property from one private party to give to another private party does not meet the constitutional requirement of "public use." See page 9 for excerpts from the Claremont property rights brief. We previously developed these arguments in a case before the Mississippi Supreme Court several years ago, and recently brought them to bear on behalf of a Claremont small business owner who was being threatened by the Claremont Redevelopment Agency seeking to take his property and give it to a private developer. A ruling in the case is expected by June, in what may be the most important property rights case in a decade.

### Free Speech in the Toilet

As the last year came to an end, we were asked to assist a citizen of a certain Northern California town who has been threatened with criminal prosecution for posting a sign in his yard criticizing local elected officials for taking actions that would, in his view, send the local economy into the "toilet" (and the sign actually included a porcelain depiction of the word!). Watch for more details of the case here, as the students in the constitutional litigation clinic sponsored by the Center for Constitutional Jurisprudence at Chapman Law School cut their litigation teeth on the true meaning of the First Amendment's Freedom of Speech Clause.

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## ■ Knippenberg [ continued from page 5 ]

abandoning their faith for merely worldly effectiveness and success, which is an acknowledgement of the power of a secular society. They do not propose to transform that society fundamentally—the city of man will always be the city of man—but rather to find a way of working with secular partners on behalf of genuinely common purposes. Hence no one should feel threatened by the willingness of evangelicals to bring their substantial resources and energies to bear on pressing social problems. If there is any danger of “contamination” here, the risk weighs heavier with the faith-based group in its confrontation with the secular than with the confrontation of the secular with religion.

The mission here, the authors make clear, is, above all, “to help neighbors and neighborhoods in need.” Yes, some flexibility will be required. Yes, evangelicals might occasionally find that their neighbor-love is more effectively expressed not by founding new organizations but by working within old ones. “The key,” they remind us, “is help that really helps, and not the growth and glory of the faith-based group.”

From the evidence that these two books provide, that sentence could serve as the watchword of the Bush Administration’s faith-based initiative. In a pluralistic society such as ours, everyone has at least the opportunity to learn the lesson of mutually respectful cooperation. If states and localities are better able to respond in innovative ways to particular local needs, then leaders everywhere should be open to the various kinds of partners our authors describe. Members of faith-based organizations are willing and able to learn how to navigate the shoals of genuinely loving and faithful service to a diverse community. People in the public and secular arenas can learn that their religious neighbors desperately want to pitch in and that they’re not just trolling for proselytes. All these two groups have to do is to find one another and to begin the conversation, preferably without the *a priori* interference of organizations like the Freedom from Religion Foundation, the Americans United for the Separation of Church and State, and the Interfaith Alliance, all of whom seem devoted to throwing up barriers to genuine interfaith and public-private alliances.

*Joseph M. Knippenberg is Professor of Politics and Director of the Rich Foundation Urban Leadership Program at Oglethorpe University in Atlanta, Georgia.* 📖

## ■ Friedersdorf [ continued from page 1 ]

*of the student is liable for such damages, not exceeding \$5000.*

In English, this might read as follows: “If your child steals or damages school property we will hold you liable up to \$5,000.” Romer, who acknowledges that such horrific prose demands an apology, offers a questionable excuse: *The lawyers make us write that way!* Setting that aside, we’re left with a representative example of how people in government write and speak—and, by extension, what the reporters assigned to cover those people are up against.

Reporters, however, neither apologize nor have an excuse for their horrific prose. Ideally, of course, local governments would simplify their own language, a fix that would go a long way toward improving local journalism. Consider a press release that the City of Rancho Cucamonga sent to my former newspaper:

*The City of Rancho Cucamonga will celebrate the beginning of the construction journey of the Victoria Gardens Cultural Center by holding a celebration event...at the Town Square area of the new Victoria Gardens open-air retail center.*

Of course, Joe Resident knows nothing of “construction journeys,” and “outdoor mall” seems much more accessible than “open-air retail center”—so why does the city, which presumably wants people to attend the event, use such language? If the press release had said “The city will host a groundbreaking party at the outdoor mall this week...” it’s a safe assumption that even the worst reporter wouldn’t translate the words into government-speak.

But the celebration event I’m planning when government types start speaking English isn’t likely to happen anytime soon. In the meantime, then, local reporters must translate from jargon into plain English.

As George Orwell notes in *Politics and the English Language*, “modern writing at its worst does not consist in picking out words for the sake of their meaning and inventing images in order to make the meaning clearer. It consists in gumming together long strips of words which have already been set in order by someone else, and making the results presentable by sheer humbug.”

Too often, reporters rely on words already set in order by someone else, often because it

[ see Friedersdorf on page 6 ]



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# Claremont Publications

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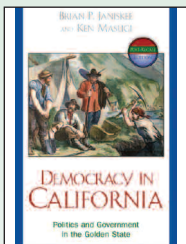
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## Claremont Books Review California



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.



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## Friedersdorf [ continued from page 5 ]

takes time and effort to rephrase things more clearly. Much easier, for example, to write about "the Southern California Association of Governments"—an entity few Californians are familiar with—than to write about "the board of elected leaders who must make plans for improving transportation in the region."

As often as not, this laziness rears its head when the writer includes a direct quote that should have been paraphrased.

Consider the following quote from an *Auburn Journal* story about an asphalt plant:

*Right now (the operation) is a vested mining operation, meaning they have approval to mine the limestone and native rock to create aggregate materials with no limit of the number of trucks moving out of there," Evans said Friday. "The mitigated negative declaration capped the truck traffic for the quarry and proposed asphalt plant to a maximum of 350 trucks in and out during the 6 p.m. to 6 a.m. operation time frame and limited the total material per operation day to 3,200 tons.*

Typical government-speak—and typically quoted in full, I'm afraid, though it's hard to see what use a casual reader has for such a remark. The writer should have used the following paraphrase: *Right now there's no limit on the number of trucks that can haul material from the mine, Evans said. But if the asphalt plant is built truck traffic will be limited to 350 trucks per 12 hour shift.*

Of course, some faltering reporters aren't lazy—they're confused.

Imagine yourself as a rookie reporter at a City Council meeting, furiously scribbling down notes, constantly falling behind as motion after motion passes. Upon returning to the office, your editor asks you to write a brief on the third item. You consult your City Council agenda to refresh your memory:

CONSIDERATION OF PUBLIC INTEREST, CONVENIENCE AND NECESSITY IN GRANTING A TAXICAB SERVICE PERMIT TO AAA INLAND EMPIRE CAB

Like most of the paper's readers, you have no idea what that means—so how can you paraphrase it? But you know that the item passed unanimously. Thus, instead of writing that the City Council decided to allow AAA Inland Empire Cab to operate cabs in the city—the essence of what happened—you might write that "In a unanimous vote, the City Council determined that AAA Inland Empire Cab meets the public interest, convenience and necessity necessary to be granted a taxicab service permit."

It's accurate... but incomprehensible, even to the reporter. Much like this lead, taken from the *Inland Valley Daily Bulletin*: "The proposed California State University budget that trustees will consider approving today asks for what the governor promised in the Higher Education Compact."

We'll never know if that reporter understood the essence of the story, but I'd bet against it.

Ironically, too much knowledge can be as disastrous as too little when reporters forget that their readers are not as familiar with the jargon and minutiae of local government as they are.

In California newspapers, one of the most common examples is the phrase "mitigated negative declaration of environmental impacts." It refers to a section in the state's environmental law for new developments. Say, for example, that you're building a new house. The law requires you to perform a study on how that house will impact the environment. If you find that it won't affect the environment at all, you'd file a "negative declaration of environmental impacts."

But say it will affect the environment—the air-conditioning unit you plan to install, for example, will produce 5 decibels of noise. If you can "mitigate" that noise—make it go away by, for example, building a wall around the air-conditioning unit—you then file a "mitigated negative declaration of environmental impacts."

Most reporters understand all this immediately, having heard that term countless times on the job. That fact—and the rather lengthy explanation required to explain the term to unfamiliar readers—causes some journalists to slip it into their copy as is. Astonishingly, some desk editors let it slip past too—no doubt because they've seen the term enough to know what it means, and aren't startled by it, as the average reader would be, when they read through the reporter's story.

Finally some reporters are too easily manipulated—usually by savvy public officials trying to obscure controversy or wrongdoing by using euphemisms to describe their actions, or by the public relations industry, which thrives by manipulating impressionable reporters.

After countless encounters with one such public relations firm, my favorite example is the term "lifestyle center," a euphemism for a mall that is outdoors. One such mall, in Rancho Cucamonga, opened earlier this year, when I still covered that city as a beat reporter.

[ see Friedersdorf on page 7 ]

## ■ Friedersdorf [ continued from page 6 ]

“We’ve noticed in all of your stories you refer to Victoria Gardens as a mall,” the Vice-President of P.R. told me at a press event prior to the grand opening. “But it’s actually a lifestyle center.”

On the subsequent tour, I saw a Macy’s, a J.C. Penney, a Banana Republic and a food court. Thus it remained a mall for me and the people of Rancho Cucamonga. Elsewhere, however, reporters are proving Orwell’s claim that “a bad usage can spread by tradition and imitation even among people who should and do know better.” Consider a recent passage from *The Coloradoan*:

*Since Poag & McEwen and Bayer Properties announced plans to build dueling lifestyle centers early last year, they’ve been taking turns announcing tenants for their centers. The Shops at Centerra has landed Victoria’s Secret, Barnes & Noble Booksellers and Clearwater Creek, among others. In addition to Dillard’s and Wild Oats, The Summit Front Range will have a Borders Books and Music and a branch of the Fort Collins library.*

In this example, readers will quickly deduce what type of place this new “lifestyle center” will be. Of course, once the euphemism fades completely—that is, when readers hear it and think “outdoor mall”—the public relations whizzes who work for the mall developer will invent a new term to create buzz around their newest project.

“It’s really not a lifestyle center,” they’ll insist. And somewhere a reporter will believe them.

Conor Friedersdorf is Senior Correspondent for Local Liberty. 📌

### Next Issue:

**C. Robert Ferguson on the Kelo Case and California Redevelopment.**

**Conor Friedersdorf on the Future of Local Newspapers.**

**John C. Eastman on Local Litigation**

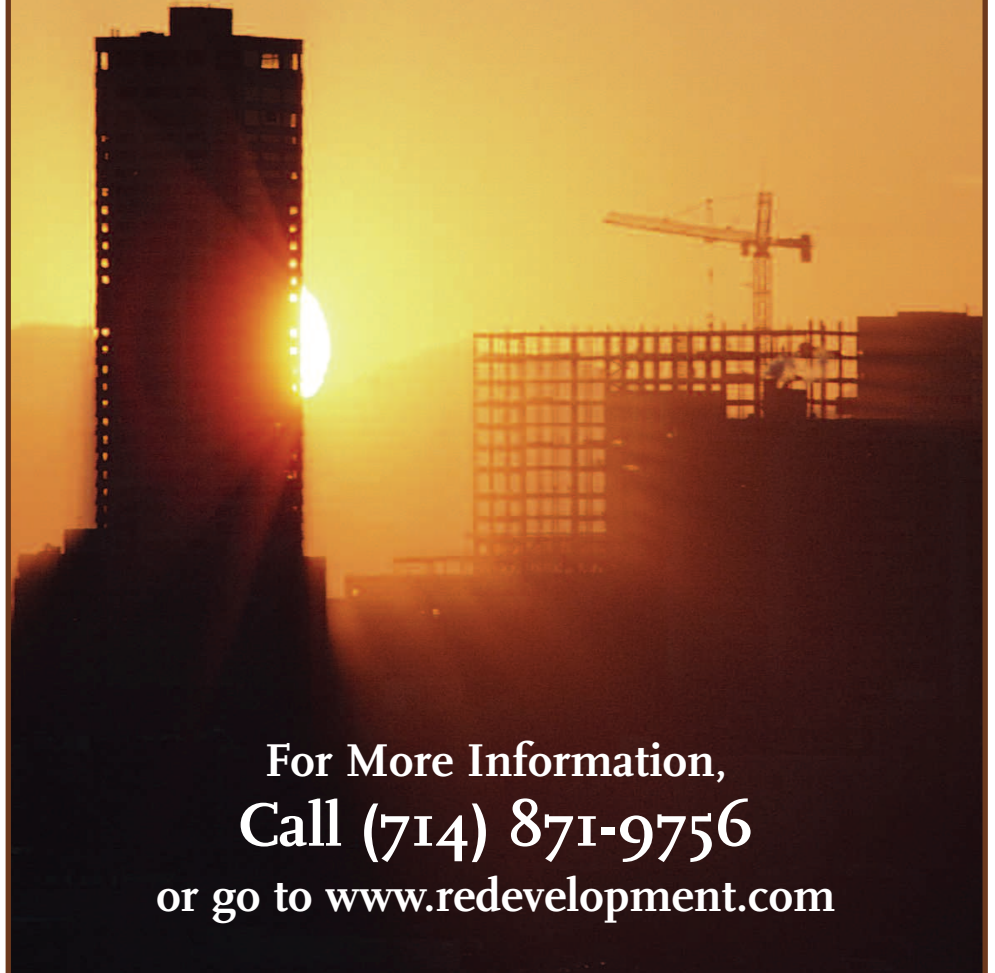
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