

# Local Liberty



VOL. 2 NO. 1

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

## The \$1.3 Billion Solution

by Chris Norby

Gov. Arnold Schwarzenegger proposes taking \$1.3 billion in property tax revenues from local governments to balance the state budget. These funds would be transferred to the Educational Revenue Augmentation Fund (ERAF) for use by California’s public schools. This would assure education its minimum funding as required by Proposition 98.

City and county officials have attacked this proposed shift as a raid on revenues for essential public services. We all support schools, but we must not fund them on the backs of cities and counties. If this current tax shift follows the past ERAF formula, counties will lose \$915 million, with Orange County being cut by \$62 million. California cities will lose \$189 million.

Instead of complaining, however, county and city leaders should find the governor the money he needs without cutting vital local services. And the money is there, right in front of us: It’s in the \$2.5 billion in annual property tax revenue given to California’s redevelopment agencies. This huge outlay is not funding any vital public services.

Redevelopment agencies were originally created to alleviate “blight” but have become cash cows subsidizing private development. Stadiums, auto dealers, hotels, movie theaters, big-box retailers and even casinos have all received massive public grants.

Costco alone has received \$30 million in redevelopment subsidies just in Orange County. Statewide estimates range up to \$300 million in total agency handouts for the giant retailer. In San Diego, \$36 million has been paid to the Chargers for a ticket-sales guarantee. In Los Angeles, the failing Hollywood/Highland Mall took \$98 million, while Staples Center got \$50 million—all from public funds.

By law, redevelopment money cannot be used to pay police officers, firefighters, code enforcers, librarians, public health

workers, or for any local operations or maintenance. Redevelopment funds can only be used for development projects and to pay off the bonds that finance them.

Far from alleviating blight, redevelopment is merely subsidizing development that would ordinarily be privately financed—or shouldn’t be built in the first place. City officials may defend redevelopment as a tool to attract sales-tax-generating businesses, but retail giants and

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## Fighting Graft for the Price of the Morning Paper

by Conor Friedersdorf

In Lynwood, one of Southern California’s poorest cities, a *Los Angeles Times* investigation recently uncovered graft so rampant that one wonders how it could have gone unnoticed for so long.



A laundry list of misdeeds is detailed by *Times* reporter Richard Marosi: “A majority of the City Council enjoy six-figure incomes, lavish foreign travel, and the generous use of city credit cards for meals and entertainment,” he wrote, “including steakhouse dinners, a New York musical and a dance show in Rio de Janeiro.”

All that in a city where residents earn an average of \$9,500 per year, face a \$1.3 million budget gap, and pay City Council members an official salary of \$9,600 annually.

With one City Councilman charging taxpayers for a trip to a Ghana beach resort in 1999, another spending \$1,300 to attend his college fraternity reunion, and a third collect-

ing \$110,000 in salary in 2001, why wasn’t anything done about graft in Lynwood sooner?

“Lynwood’s generous pay has evolved through a combination of voter apathy, scant media scrutiny and limited access to City Hall records,” Marosi writes in his 1,700-word expose.

In fact, much of the graft exposed by the *Times* was uncovered in public documents, and closer scrutiny by residents or the press surely would have moderated the behavior of elected officials years earlier.

More than a million dollars later—money that could’ve been spent on police officers, fire fighters, or other services—the people of Lynwood have learned the hard way what happens when voters, and the press outlets that they rely on, don’t pay proper attention to local government.

Like many communities in Southern California, the *Los Angeles Times* is the only major paper to cover Lynwood. *The Long Beach Press Telegram*, which sometimes covers major events in Lynwood, doesn’t even assign a reporter to the city, though it’s only 13 miles from Long Beach.

The *Times* can’t claim to do much more. In a phone interview, Marosi said he covers more than 10 cities in an area of Los Angeles County where political corruption is common. “Right now most of these politicians are behaving because they saw what happened with the recall in Southgate,” he said. “But we’d never been in Lynwood reporting from City Hall before, and I didn’t have the

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## In This Issue:

**Brian Janiskee** on the dangers of special districts

**Review:** Willi Paul Adams’ *The First American Constitutions*

**Local Litigation:** The latest news from the Center for Constitutional Jurisprudence

# From the Editor

by Ken Masugi

## The Crisis of California Local Government

All sound morality, and by extension all sound government, is rooted in the notion of responsibility. Thus the contemporary idea that poverty or discrimination “forces” someone to act in shameful ways evades the issue of moral responsibility.

It is the same with government, especially in our fragmented system of national, state, and literally innumerable local governments. (See Brian Janiskee’s previous articles on the plurality of governments in *Local Liberty* issues one and two, at [www.claremont.org/projects/local\\_gov/localliberty.html](http://www.claremont.org/projects/local_gov/localliberty.html).) Local governments that engage in willful use of eminent domain (property seizure) may act out of what they term necessity, but this cannot be used to evade moral responsibility for their dubious actions.

A February 1 *Orange County Register* commentary suggests a means of enforcing moral resolve. Republican Assemblyman John Campbell, former Democrat Assembly Speaker Robert Hertzberg, and Anaheim Mayor and former Republican Assembly Speaker Curt Pringle note that, “. . . local residents have lost control over their own communities. City and county governments are dependent on revenues controlled by the state to provide even basic local services; desperate for funds, development decisions are often made to maximize local governments’ tax revenues instead of for what is good for their residents; and the state continues to balance its budget on the backs of cities and counties.”

Therefore, “city and county officials have been increasingly motivated to promote developments that generate sales-tax dollars. These skewed incentives that lead officials to focus on their bottom line rather than the needs of the communities have contributed to California’s dire housing shortage, long commutes, and the rapid spread of ‘big box’ stores and megalithic shopping centers across the state.”

Because they lack the ability to collect revenue, local governments are encouraged to act despotically, using their powers of eminent domain to make frequently dubious redevelopment proposals—condemning entire neighborhoods as “blighted” for “public use” and then giving financial incentives to car dealerships and other high-revenue businesses. They are even less governments than they

were before but rather marauders, taking from the weak at their pleasure.

With the rollback of the car tax, how can local government pay for needed services? Obviously, cutting the budget should be first. But, avoiding a confrontation over that issue, Campbell, Hertzberg, and Pringle propose a specific tax reform:

“We can end this reliance [on Sacramento] by replacing city and county revenues from the car tax and a portion of the local sales tax with a dollar-for-dollar amount of property taxes, then constitutionally protecting all local revenues from state action. Residents would pay the same property taxes they always have, but cities and counties would keep more of the property taxes that are now sent to Sacramento.”

Without mentioning that the root of the California concerns lies in the unintended consequences of Proposition 13, the authors conclude: “The circle of blame can be broken by constitutionally protecting local treasuries from state raids and sharply limiting the ability of the state to require local governments to provide new services without providing the funds to perform them.”

Paramount here is the idea of moral responsibility—a theme elaborated on in this third issue of *Local Liberty* by Brian Janiskee and David Tucker, who emphasize this Jeffersonian concern. It is evident as well in Steven Hayward’s skepticism about elements of New Urbanism. Appropriately, Chris Norby addresses the abuses of redevelopment. Local governments become increasingly despotic without the infusion of such Founding principles as respect for property rights and limited government, by the consent of the morally responsible governed. Moreover (a point not addressed by Campbell, Hertzberg, and Pringle), taxation, while a necessity even for the most localized of governments, must proceed with the awareness that individuals’ rights are violated by reckless spending and needless regulation.

Ken Masugi  
Editor

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## Local Liberty

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—Alexis de Tocqueville

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# The New Urbanism: A Skeptic Responds

by Steven Hayward

In the Fall 2003 issue, *Local Liberty* spoke with Phillip Bess about the new urbanist movement (“*The New Urbanism: From Aristotle and God to Baseball*”). Here, Steven Hayward responds with his thoughts about the New Urbanism’s popularity with new homebuyers, the need for less government regulation, and a tendency toward utopianism in the movement. Steven Hayward is F.K. Weyerhaeuser Fellow at the American Enterprise Institute in Washington, DC and is currently working on a book about urban sprawl.

In response to your last issue’s interview with Philip Bess regarding the New Urbanism (NU), I would like to add a few thoughts.

In regard to the first set of questions addressed by Bess, in defining the New Urbanism, I follow the short understanding of it as “neo-traditional” planning, or as a return to pre-W.W.II neighborhood forms. A thumbnail definition I sometimes use is that the New Urbanism represents the social theory that America was a better place when porches were in front and garages were in back, as opposed to the other way round that you see in typical new subdivisions today. There is much to be said for this.

I am not sure that I agree with the premise that NU has been attractive to a broad spectrum of people. It is not clear that it has large popular appeal with real homebuyers and families, though I have yet to see any good survey research on this. Visual preference surveys are one thing; real sales results are another. Some NU developments appear to have sold less well than traditional subdivisions (e.g., Laguna West versus Rocklin and Roseville in Northern California). My evidence is anecdotal, but many people tell me they like the larger yards and homogeneity of traditional subdivisions. I also suspect that many homebuyers, with resale in mind, are wary of buying into NU communities. This will change with time, but I think NU may have more of a niche appeal for the foreseeable future.

It can also be observed that we are starting to see traditional subdivisions beginning to emulate a few of the forms of NU—not Duany’s transect form of mixed uses, but more front porches, higher density (though this is as much a function of higher land prices), infill development, and some emphasis on pedestrian and neighborhood amenities. The line between NU and traditional subdivisions is starting to be blurred a bit in the real world.

Although the NU critique of typical modern subdivisions is correct in many ways, the dysfunctionality of modern subdivisions is overstated. The Classic question “compared to what?” needs to be asked. For all their drawbacks, modern subdivisions meet the needs of most families better than housing and neighborhood patterns in European cities, for example. So it is not clear that prevalent urban planning and architecture can be said to be a failure.



It is useful to recall Herbert Gans’ conclusion in *The Levittowners*, “The [suburban] community may displease the professional city planner and the intellectual defender of cosmopolitan culture, but perhaps more than any other type of community, Levittown permits most of its residents to be what they want to be—to center their lives around the home and the family, to be among neighbors whom they can trust, to find friends to share their leisure hours, and to participate in organizations that provide sociability and the opportunity to be of service to others.”

Second, NU communities may not be to everyone’s taste. Consider Joe Morgenstern’s caustic comment about the New Urbanism in his film review of *The Truman Show* (*Wall Street Journal* [6/5/98], p. W4): “Truman’s candy-colored home lacks detail; it’s a set for a TV show, after all, and this an idealization of shallow ideas. Truman’s town, Seahaven, lacks variety and texture; its blank-faced neo-Victorian houses suggest a slapdash backlot evocation of America at the turn of the century. Scarier still, the movie’s exteriors were shot in the all-too-real town of Seaside, Florida, one of those planned communities where personal taste has been excised from the plan.” There is something to this. I have heard that some Kentlands residents have a nickname for the town: Can’tlands.

Concerning American political and social traditions and NU, an irony of some New Urbanist thinking (not Duany especially) is that it is highly harmonious with classic American ideas of the democratic equality of citizens, the public square, and upward mobility, but in the hands of smart growthers, NU becomes another arena for the expansion of the administrative state through more centralized planning and expanded government power. If NU resists being absorbed by smart-growth planners, it will likely thrive. If it does not, it will become another political skirmish line and limit the contribution it can make to civic renewal.

As for some of the pitfalls facing NU and government regulations, the chief limitation of the NU is that it requires a high degree of vision and insight to be successful; in other words, modern New Urbanists are would-be Olmsteads for our time. Some NU communities, such as Kentland, are highly successful, while others (I would nominate Laguna West) are failures. The trouble is that while nearly every urban area of the country could benefit from NU, the supply of genuinely talented NU architects and planners is very small. Successful NU planning is not something that can be reduced to connect-the-dots axioms or zoning ordinances.

This is why I think attempts to mandate NU forms through planning and zoning codes are a bad idea. I think the most creative NU designers would agree. Planning and zoning codes will stifle the creativity and adaptation that will be learned along the way, both from failures and successes. Arguably what is needed is less government regulation. One point that New Urbanists and “smart growth” advocates are absolutely right about is that current planning and zoning codes are a large part of the reason for our path-dependent subdivision form.

The other pitfall of the New Urbanism is its tendency toward a utopianism. This comes to sight especially in the “Ahwahnee Principles” promulgated by the Congress for the New Urbanism about a decade ago. If made the basis for real public policy (i.e., the touchstones for zoning policy and permit decisions), they would require a large expansion of bureaucratic authority and planning power. This is not a good idea.

I believe my opinion on the EPA’s office of “smart growth” is rather more decided than Bess’s. I believe that it is a bad idea, for all of the usual reasons. I am amazed it still exists. During the Bush transition in late 2000—early 2001 (I was a member of the Bush EPA transition team), I mentioned on one of the conference calls that the EPA smart growth office should be abolished. I was told that EPA administrator designee Gov. Whitman agreed, seeing growth policy as more properly a state and local matter. Yet the office lives on. 🗑️

# Conservatives' Problems with Special Districts

by Brian Janiskee

Most conservatives who study local government, including those scholars who are sympathetic to the tradition of the American Founding, laud special districts as a vital element of American federalism. Special purpose governments, so the argument goes, complement the multi-layered tapestry of counties, cities, townships, and school districts. But unlike other forms of local government, many special districts have confusing boundaries and narrow functions and do not appear on the radar screen of most voters.

The low visibility of a special district is by design. Their primary function is to circumvent state and local tax and expenditure limitations. Instead of being a vital element in a federalist system—a system devoted to the protection of liberty—special districts are simply another seductively useful tool of the expansion of the administrative state. Why, then, do conservative analysts support special districts? The answer appears to be that special districts are part of the vast network of decentralized units of local government. There is, however, more to liberty and freedom than decentralization.

## Special Districts in America

There are approximately 35,000 special district governments in the United States. Many of these governments are similar in scope to the largest state governments and commercial banks in the United States. It is common for special district governments to maintain significant financial reserves. A recent study of special districts in California by the Little Hoover Commission found that they retained funds that were on average “nearly two and one-half times the annual gross revenues of these districts.” One such district in particular, the Metropolitan Water District of Southern California, had a reserve fund in excess of 500 percent of its annual operating costs.

These governments are a major component of the American federal system. Their influence has increased over the past 40 years. According to political scientists Ross Stephens and Nelson Wikstrom, the scope of their activity increased over 150 percent from 1957-1992, more than any other type of government. What accounts for this? Why are special districts formed?

Cities or counties may create a special district and, in addition, private citizens may petition the state for the creation of a district. Special districts are created for a variety of reasons: 1) to offer a service that has not been

provided by general-purpose government; 2) to allow unincorporated areas to provide services generally reserved for larger urban areas; 3) to provide for regional services, whose provision does not fit into the framework of existing municipal boundaries; and 4) to satisfy conditions of a federal grant.

The most pressing reason, however, for the creation of special districts is the desire of local officials to avoid tax and expenditure limitations. According to Robert Smith, a



local government expert, special purpose governments are the “borrowing machines” of local government. In their function as a method by which to evade tax limitations, another commentator has referred to special districts as “political bomb shelters.” They exist and operate below the surface and provide a smoke screen for government activities that would otherwise come under greater public scrutiny.

Special districts often have unusual boundaries whose existences are unknown to the vast majority of the public. Even professional political scientists may find the task overwhelming, as Nancy Burns attests:

Given these conditions, it is not surprising that voter participation in elections for special district boards is generally quite low, with 5 percent turnout considered high. In addition, special districts can even be hard to monitor for those who are supposedly in charge of them. Political analyst Victor Jones revealed that the directors of the Brentwood Recreation and Park District in Contra Costa County, California “were stunned when it was accidentally discovered that the district had ceased to exist seven months ago.” Special districts are for all intents and purposes invisible governments and this invisibility may be their most useful trait.

Special districts allow tax dollars to be collected and spent without a meaningful opportunity for citizen input. Large segments of policy are taken out of the arena of representative politics. Special districts hinder the vital role of local politics as a vehicle by which a citizen receives a necessary political education—an education vital to the health of a regime that claims to be self-governing. Finally, instead of creating a scope of government whereby various factions compete with one another and are forced to compromise for the sake of the common good, the single focus of a special district provides a narrow interest with its own private fiefdom whereby it can operate without the need to compromise with other competing interests. Special districts, therefore, fail the major tenets of conservative thought on local governments, yet most conservatives or likeminded scholars support them. Conservatives appear to like the chaotic features of special districts when contrasted against the centrality of a unitary system dominated by the national government.

Perhaps a way out of this theoretical dilemma is a closer examination of the American Founders’ thinking on this question. And no founder thought more deeply or felt more passionately about questions concerning proper local government design than Thomas Jefferson. Jefferson devised a system that was decentralized yet highly structured, as opposed to the chaos dominating local government in America today.

## Jefferson’s Ward-Republic System

Jefferson considered the creation of a ward-republic system of local government one of the two most important elements upon which the future of the republic depended, the other being the creation of a public education system. Jefferson devised a four-tiered system that would comprise national, state, county, and ward levels. Each county would be divided into checker-box wards of about 25 square miles, large enough to ensure an appropriate level of support for vital local functions, yet small enough to allow for regular direct participation. Jefferson’s goal was to encourage citizens to be active members of their government. In this way, the revolutionary spirit of the regime would survive the potentially ossifying characteristics of an established constitutional government.

Hannah Arendt claims that the ward system, although never implemented, was Jefferson’s most cherished political idea. According to Arendt, Jefferson’s ward system, “with an almost weird precision,” anticipated the Soviets and Räte, which made their appearance in “every genuine revolution” in the 19<sup>th</sup> and 20<sup>th</sup> centuries. These councils or local organizations were at odds with the cen-

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tralizing tendencies of the leaders of these revolutions. According to Arendt, these leaders failed to understand the extent to which the council system “confronted them with an entirely new form of government, a new public space for freedom which was constituted and organized during the course of the revolution itself.” Arendt’s Jefferson saw the ward system as the “only possible non-violent alternative to his earlier notions about the desirability of recurring revolutions.” The ward system would institutionalize the revolution. It would simultaneously check the tyrannical tendencies of the central government and the enervating tendencies of a private local life. Such dangers include a private debasement of virtues into the selfishly commercial—devoid of politics and filled with corruption.

Jean Yarbrough concurs with Arendt that, indeed, wards are at the “heart of his mature understanding of republicanism,” an understanding which went beyond the mere maintenance of institutional forms. Without the proper revolutionary character, even the most cleverly constructed republic might not last. Understood in such a way, ward republics reveal the radical character of Jefferson’s politics. Richard Matthews calls this the politics of “perpetual revolution.” And Michael Zuckert acknowledges that ward-republics were the

“most remarkable and probably the most important feature of Jefferson’s system.” Jefferson, adds Zuckert, “had a point of continuing value, and that the amalgam for which he stands continues to have power in the political culture.”

Jefferson’s ward republic model was not developed as a result of a manic penchant for geographical neatness. It was an attempt to maintain the spiritual core of the polity, its revolutionary principles. Jefferson thought that a highly structured system of local government containing geographically concise units was central to the survival of the republic, the only means by which we could avoid a recurring need for actual revolution. The Byzantine structure of local government today stands in contrast to what Jefferson had in mind. The soul of the regime is not decentralization for decentralization’s sake. A structured decentralization like Jefferson’s ward system—not chaos—is nearer to the principled core of American federalism. In fact, the chaotic quality of local government today aids the development of a large bureaucratic government.

Jefferson’s structured decentralization concept provides geographically recognizable spaces in which citizens could potentially develop meaningful attachments to local government. Such an attachment would serve two

important purposes. First, it would allow the citizen an accessible approach to political life and would thus foster a political education in the Tocquevillean sense. Second, citizens with strong local attachments would be more likely to resist the centralizing tendencies of national governments.

During the final 16 years of his life, Thomas Jefferson pondered questions about the proper structure of American local government. He came to believe that the future of the republic depended upon the answers. By studying Jefferson’s theoretical ward republic system, it is possible to remedy a major flaw in the conservative literature on local government. Certainly, decentralization is important, but a polity cannot live on decentralization alone.



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## Self-government is Local Government

Book Review by David Tucker

**Willi Paul Adams**

*The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era.* Expanded Edition. Lanham, Maryland: Rowman & Littlefield Publishers, Inc. 400 pp. \$85.00 (cloth), \$28.95 (paper).

There was no miracle in Philadelphia. A miracle is an event without any natural causes. The framing of the world’s most successful written constitution in the city of brotherly love in 1787 had many, perhaps thousands, of preceding natural causes. This is a lesson derived from Willi Paul Adams’ recently reissued and expanded study of *The First American Constitutions*. The men who met in Philadelphia were deeply experienced in contriving governments and making them work because they, like generations before them in what became the United States, had done this in townships, counties, and colonial assemblies, and in non-importation associations and on committees of correspondence and safety as the revolutionary movement took shape. These thousands of acts of local government caused our constitution and all the good it has done.

Adams argues in effect that our Revolution succeeded where others have failed because Americans’ involvement in governing themselves at the local level prior to the revolution gave them a set of habits that they could rely on to get them through the dissolution of the colonial governments. Everyone knew what to do and how to do it because they had been doing it for years. Anarchy was never a danger. When royal governors suspended assemblies because they



questioned the authority of the king, the members simply carried on doing as they had done. When new practices were tried (e.g., unicameral legislatures), Americans judged them by experienced and shared standards of efficiency and effectiveness and adjusted as necessary. By the time the revolution

occurred, Americans had acquired from their local self-governance a shared practical wisdom in politics unequaled in the world. This made them masters at contriving workable governments.

Adams makes clear that government at every level in our founding period was not only a question of contrivance. It was contrivance informed by and in the service of principle. The fundamental principle was equality, the common understanding that men were by nature equal. All the principles and much of the practice of government flowed from this idea. If men were equal by nature, then no man had the right to rule another. Men were by nature free, therefore. Consequently, they could be ruled only by their consent. In consenting to government, however, men did not give up their natural liberty entirely or finally. Some natural liberties or rights—freedom of religion, for example—they could not give up. The liberties they did give up, they could justly take back if government became oppressive.

Because individuals held onto some of their natural liberty and could take back the rest, they were the ultimate, the sovereign source of political power. This is the origin of popular sovereignty, which manifested itself during the revolution in the new idea that constitutions, the rules governing how

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■ Friedersdorf [continued from page 1]

time to look into there until I did the investigation.”

The *Times*' size and regional focus, and the sheer number of municipalities in its coverage area, probably makes it impossible for the newspaper to effectively monitor every city where it is the paper of record. But in areas of Southern California where mid-sized local papers compete with the *Times*, readers get far better local coverage, often with a reporter assigned to cover a single city hall.

That's the case at the newspaper where I work, a 70,000-circulation daily that covers a dozen cities in the Inland Empire. A reporter is assigned to each city, regularly attends City Council meetings, maintains a database of campaign contributions, and regularly reviews municipal expenditures.

So it goes with the *Press Enterprise* in Riverside County, the *Los Angeles Daily News* in the San Fernando Valley, and the *Orange County Register* in much of Orange County. Talk to reporters on a city beat at any of those papers, and they will tell you two things—no amount of scrutiny can eliminate political corruption completely and, given the amount of corruption that occurs with press outlets watching, extreme graft is not surprising when no one is watching.

Of course, reporters conduct interviews and cultivate sources within city governments in order to uncover corruption. But many other tools used by reporters are readily accessible to the public. For example, municipalities must provide copies of most documents to residents upon request, and elected officials must disclose campaign contributions and financial interests.

Many times graft can be uncovered with minimal effort—if only anyone cares enough to look.

“Lawmakers in California have attempted to craft open meeting and public records laws so that government is an open process,” according to Richard McKee of the California First Amendment Coalition.

McKee, who often threatens cities with court challenges when misdeeds persist, said

newspaper coverage often prompts the involvement of his organization.

That wasn't the case, however, in Lynwood.

Before the *Times* launched its investigation, resident Miguel Figueroa spent two years pursuing a lawsuit to force the city to turn over credit card records and council earnings information.

“When he finally got them he turned over the credit card records to me,” Marosi said. “That's when I launched my investigation.”

Without gadflies like Figueroa, reporters at major newspapers like the *Times* might never investigate a city like Lynwood.

So should residents take a day off work, file a records request at city hall, spend a week-end pouring over the paperwork, then tune in to the council meeting after work Wednesday night to see if the mayor recuses himself on the fifth item?

A more realistic solution is increased patronage of local newspapers.

Whether citizens lean on the *Times* to assign more reporters to local beats, increase subscriptions at local newspapers, or create a demand for new newspapers to begin publication, more press scrutiny fueled by reader demand is the most cost-effective means of preventing government corruption.

There's no more practical way to learn that the city council bought second-hand fire hoses from the mayor's college buddy, or which day the planning commission will determine whether or not your neighbor can sell sex toys out of his garage.

Unlike most citizens, reporters have the advantage of knowing public records laws as well as city officials. And even mid-sized newspapers often retain an attorney to challenge municipalities who will not comply.

Moreover, in a rare case like Figueroa's (few citizens pursue legal action against city officials on their own), the *Times* had the resources to take a couple of public records and launch a full investigation into City Hall. And the publication of its findings, in a front page article on September 15, served as a far more influential wake up call to voters than Figueroa could have mustered on his own.

Local coverage aside, the advantages of newspapers like the *New York Times*, the *Los Angeles Times*, and the *Wall Street Journal* are clear. The writing, editing, and layout are first class. Staff writers around the world often provide top-notch national and international coverage. Op-ed contributors are world figures, the columnists are at the top of their field, and the extra sections (arts, science, technology, etc.) . . . well, they exist.

And sure, it may be boring to read about the councilman who siphoned \$500 a year from city coffers.

Yet, if no one pays to read about such things, no one will bother to cover them at all. Soon, an emboldened councilman will steal hundreds of thousands of dollars and by the time he is caught the city will be forced to lay off three firefighters and two librarians to cover the cost.

Clearly, citizens can't afford a local government—the government that affects them most directly and is influenced by them most easily—that squanders their tax dollars on graft.

Civic responsibility demands a better-informed electorate, lest we accept local governments that are doomed to corruption and failure while no one watches to prevent such things.

Fortunately, local newspapers are inexpensive, efficient, and willing little watchdogs—as long as anyone cares to support them. 🐕

Conor Friedersdorf works as a journalist in Southern California.

The Center for Local Government sponsors a **major conference on property rights, natural law, and the common good**, featuring presentations by Orange County Supervisor Chris Norby, Carroll W. Westfall, Steven Eagle, Steven Hayward, Eric Claeys, Edward Erler, Randal O'Toole, Samuel Staley, and David Brain. It will be held **September 17-18** in Claremont, California. Contact Ami Naramor for details: [anaramor@claremont.org](mailto:anaramor@claremont.org).

## Next Issue . . .

Keep your eyes open for the next issue of *Local Liberty*. Conor Friedersdorf discusses how bureaucratic policies hinder the success of independent stores and gives way to corporate chains like Starbucks. Elliott Banfield illuminates *Sreetlights*, a study of Los Angeles. Also, look for more commentary on the New Urbanism, new legal

developments at the Center for Constitutional Jurisprudence, discussions of local government and houses of worship, and reflections on Islam and the inner city.

## Past Issues . . .

If you like this issue and look forward to our next, be sure to check out the first two issues of *Local Liberty* online at . . .

[www.claremont.org/static/ll\\_fall\\_03\\_final.pdf](http://www.claremont.org/static/ll_fall_03_final.pdf)  
and  
[www.claremont.org/static/ll\\_winter2003.pdf](http://www.claremont.org/static/ll_winter2003.pdf)

## ■ Tucker [continued from page 5]

equal and free individuals would rule themselves, should be drawn up by assemblies elected especially for that purpose and then ratified by the people, subject to subsequent amendment. This arrangement established a constitution as superior to ordinary legislation, an important way of assuring that men were governed not by the whims of other men but only by laws to which they had consented, as required by their natural equality and freedom. This fundamental procedure was worked out at the local level of American politics, first in Massachusetts, before it was used at the national level.

The prevalence of the idea of equality gave rise to a question. If men were equal by nature, should they be equal in society as well? The two most prominent ways this question arose were with regard to slavery and property. Most in the founding generation recognized that slavery contradicted the natural equality of men. Few wanted to do anything about it, even at the state level, because Southern concern with emancipation threatened to dissolve the new Union. Yet, the strength of local government meant that the issue of slavery was dealt with eventually at that level. While only Vermont, not yet part of the Union, abolished slavery in its constitution (1777), Pennsylvania began the process of abolition by legislation in the northern states in 1780.

On the relation between property and equality, no disagreement existed. Natural equality did not imply the need for equality of property in society or any limitation on its accumulation. The reasoning here was simple. Property was necessary for survival. If the government could control a man's property, then it could control him. His equality and freedom would be no more. The founding generation recognized that this deference to property would lead to differences in wealth among Americans. With an abundance of land available and corporations not yet powers in America's economic life, the effects of these differences in wealth were not a pressing matter.

The founding generation recognized also that protecting property would lead not just to differences in the quantities of property that individuals held. It would lead as well to the accumulation of different kinds of property. The founding generation knew too that each kind of property would create an interest that would express itself politically. Farmers, manu-

facturers and merchants, for example, did not have the same interests. Farmers wanted to pay as little for manufactured goods as possible, while manufacturers wanted tariffs raised to keep foreign competition out even though this raised the price of manufactured goods.

Problems like this gave rise to discussions of what the common good might be. Adams argues that the Founding generation was so focused on the rights of individuals that it could conceive of the common good only as the sum of the individual goods of every citizen. Their practical experience in local govern-

ment taught Americans that they could reconcile the different interests in their communities by a system of government that represented every interest. The right to vote was widely shared but the drafters of our first constitutions set requirements for office that often included certain amounts or kinds of property. They designed bicameral legislatures to represent different interests. This practical approach was a better solution to the problem of the common good, Adams suggests, than what men

had before contrived, clouds of idealistic rhetoric attempting to obscure the sacrifice of every good to that of a very few.

Not every interpretation that Adams offers of local practice and principle rings true. He claims, for example, that equality meant nothing more than the equality of the colonists with Englishmen, despite his careful attention to the issue of slavery which shows that the founding generation understand the profound revolutionary force of this idea. Similarly, his claim that the founding generation understood the common good only in procedural terms misses something. For the procedures of self-government as local government to work, citizens had to possess certain characteristics. They had to be independent, active, assertive, tolerant, and skeptical. Not only did local government require these traits among those involved in it but, by affecting their interests, it encouraged them. These traits are really virtues, of course, and as such show that local government did require and encourage a common good.

Whatever might be the limitations of Adams' interpretation, its own virtues remain paramount. Adams shows clearly the importance of traditions and habits of local government for the success of our experiment in self-government on a continental scale. Adams notes that among the founding generation it

was commonly believed that a republican government could survive only if it periodically returned to its first principles. In the United States, we should understand the recurrence to first principles to mean a return to the virtues of local self-government. ¶

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## ■ Norby [continued from page 1]

team owners are pitting city against city for more public handouts. Cities often give away future tax revenues in the form of rebates and land write-downs. The resulting fiscalization of land use has subsidized a vast overbuilding of commercial development.

We can and must restore these public funds for public use.

The math is simple: Redevelopment agencies annually consume \$2.5 billion in local property taxes. Their current annual bond payment obligation is \$1.2 billion (principal plus interest). That leaves \$1.3 billion in discretionary spending.

This is the \$1.3 billion the governor can use to fully fund education, without touching city or county budgets.

Some may claim that diverting this money will jeopardize redevelopment projects. But where is public money better spent? For Costcos or classrooms? For Wal-Marts or fire stations? For new malls or to fix our streets? To raise pro football salaries or pay police officers?

Redevelopment agencies were never intended to be permanent. When an agency is created, by law it is supposed to exist for 30 years; this is so when the blight is alleviated, the agency would shut down. But few agencies actually do shut down. Instead, they continue to be extended indefinitely, and continue to divert property taxes into private development schemes.

Even without subsidies, malls, auto dealers, and hotels still will be built by private investors—if there is a market for them. That is a private, not a public, responsibility.

If redevelopment is to relieve blight, we can use it now to end California's budgetary blight. By using this \$1.3 billion in available redevelopment revenue, the governor can fully fund the schools—and do so without adding to the fiscal problems facing cities and counties. ¶

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# Local Litigation by John Eastman

In the last issue of *Local Liberty*, *Local Litigation* reported a constitutional crisis in Nevada. The crisis, sparked last summer by the Nevada Supreme Court's directing the Nevada Legislature to ignore a key structural provision



Eastman with Nevada clients at the Federal Courthouse in Reno, NV

of the state constitution requiring a 2/3 of each house of the legislature to raise taxes, compelled the Center for Constitutional Jurisprudence to petition the U.S. Supreme Court to review the decision. The petition was filed on behalf of a group of Nevada legislators. Alongside my signature was that of former U.S. Attorney General Edwin Meese, III, Erik S. Jaffe (a former Supreme Court clerk of Justice Clarence Thomas), and Steven Imhoof and Hugh Hewitt of the law firm of Hewitt & O'Neil. This month, the Nevada Legislature submitted a response brief to the United States Supreme Court. The Supreme Court is expected to issue its decision whether or not to take the case sometime in late March.



Eastman argues before the full federal court for the District of Nevada

In addition, the Center for Constitutional Jurisprudence has also been pressing a suit before the Supreme Court involving a challenge of the extension of the federal Endangered Species Act to wholly intra-state, non-commercial species. I contended that the federal regulation of the arroyo toad intrudes upon core state powers, without any connection to interstate commerce that would give the federal government power in the area. For those in Southern California still reeling from the effects of last fall's wildfires, this case is critically important: the federal government's

refusal to permit controlled burns for six years running, due to the presence of potential arroyo toad habitats, has been identified as a key cause of the fires and their resulting loss of life and property. The Supreme Court declined to take the case on Monday, March 1, but on the same day six judges on the Fifth Circuit Court of Appeals released a stinging dissent in a parallel case involving Texas Cave Bugs. The Center for Constitutional Jurisprudence anticipates filing a request for reconsideration with the Supreme Court in light of the new development, and will be actively involved as the Texas case proceeds to the Supreme Court as well.

The Center for Constitutional Jurisprudence has also weighed in in support of the Boy Scouts in yet another threat to the Boy Scouts' constitutional rights. For nearly a century, the Boy Scouts have leased a portion of Balboa Park in San Diego County for a summer camp. They have put millions of dollars of their own financial resources into the camp, constructing camp facilities that, when not in use by the Boy Scouts itself, are open to the general public. Nevertheless, a suit filed by the ACLU on behalf of a lesbian couple and an atheist couple challenged the constitutionality of the Boy Scouts' lease, and a federal court ruled that the Boy Scouts was a religion because the Boy Scouts require its members to acknowledge a duty to God, and as a result the City's lease with them amounted to an unconstitutional establishment of religion. The Center filed a brief in support of the Boy Scouts' appeal. The case is now back before the same district court judge for further proceedings to address whether the Boy Scouts' lease of a sea base is also an unconstitutional establishment of religion, and the Center is preparing to assist again.

To catch up on all the happenings and breaking developments at The Center for Constitutional Jurisprudence, please visit [www.claremont.org/projects/jurisprudence/index.html](http://www.claremont.org/projects/jurisprudence/index.html)

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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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