

Local Liberty



“Local liberty is a rare and fragile thing.”

—Alexis de Tocqueville, *Democracy in America*

The Challenge of the New Immigration

by Michael D. Antonovich

The Claremont Institute sponsored, with the generous support of the Salvatori Center of Claremont McKenna College and Chapman University Law School, a conference, “Reviving American Citizenship: The Challenge of Multicultural Immigration,” held March 20-22, 2003. On the panel “What Should America Expect From Her Immigrants” Los Angeles County Supervisor Michael D. Antonovich gave the following remarks, which have been slightly revised for publication. Several of the papers from the conference will be published in a Claremont Institute-edited book on immigration and citizenship.

In any discussion of immigration, we must first distinguish between legal immigration and illegal immigration. When we talk about what we expect from our immigrants, we ought to expect from them, as we expect from all other Americans, that they follow and respect the law. You can only do that if you legally immigrate. Illegal immigrants are a slap in the face to those who are patiently waiting to immigrate legally.

Political decisions coming out of Washington that enact amnesty for illegals provide incentives for continued illegal entry into the United States. People who have been waiting patiently are then penalized because Congress passes laws to downsize the number of immigrants allowed into the U.S.—rewarding those who are breaking the law and harming those who follow it is not in the best interests of our nation.

With ten million people, Los Angeles County is really a diverse nation unto itself. We have the largest Asian, Iranian, Romanian, and Japanese populations in the United States, and the largest population of persons of Filipino, Guatemalan, Korean, Mexican, Salvadoran and Thai descent outside of their native countries. The county is really a melting pot much like the United Nations.

Legal immigration is a positive benefit for our nation—economically and culturally. Unfortunately, illegal immigration has had a catastrophic economic impact on our County. Our health care delivery system has become an

HMO for the world. Our education system is basically a voucher program for people of other countries to illegally come here and go to our schools. As a result of those costs, our healthcare system is bankrupt and we’ve had a meltdown in our public schools—predominately the Los Angeles Unified School District.

Within our health care delivery system, we have approximately 30% illegals who are being treated annually at a cost of roughly \$360 million dollars. This includes hospital stays, hospital outpatient services and mental health and health center services.

Our County’s Department of Health Services estimates that nearly 26% of the ambulatory care visits were to illegal immigrants. The federal government, meanwhile, is reimbursing us for pre-natal costs.

Every child born to an illegal alien is entitled to full welfare until they are 18 years of age. And in January, we will have the issuing of an official state document, the driver’s license, to illegal immigrants.

We are one of the few countries in the world where, if you are born here, you are considered a legal citizen regardless of how your mother got here. Other countries do not allow

[see **Immigration** on page 6]

The Right Size for L.A.: An Exchange

by Howard F. Ahmanson

In his reflections on suburb secession (LL #1), Brian Janiskee did an excellent job of pointing out the injustice in the consolidation of metropolitan governments. However, there is an argument to be made for a democratic, central authority for metropolitan areas which would restore the original intent of the Constitution and its principles of limited government and protection of individual rights.

The Public Choice argument that professor Janiskee makes is an excellent one. Public Choice was discovered when political economists, such as Charles Tiebout in 1956, were “shocked! shocked!” to discover that people as actors in the political world behaved with the same motivations of seeking pleasure and profit as did Economic Man in all those economic models.

Yes, there is indeed a Marketplace of Municipalities, and it has a nicely alliterative name. Municipalities compete against each other for business, for jobs, and for affluent residents. This marketplace may not be as good as the free-market place of landowners competing against each other, but it is better than no competition at all. The municipalities compete, in fact, not only on the basis of levels of taxation, but of regulation (including regulation of homebuilding, which affects the number and nature of new residents); of infrastructure; of (taxable) retail dollars (the big one in California); of being a desirable place to have a business, especially for knowledge workers; and, it is often asserted, a nice place for the CEO—and even more so, his wife or trophy wife—to reside.

The problem, however, is that being governments, with civil authority, in the pursuit of capitalistic goals of this sort, they begin to behave like the mercantilistic kingdoms of Europe in the time leading up to Adam Smith. They regulate and condemn land in order to have more retail dollars and greater desirability to knowledge worker businesses; to have more affluent residents and fewer unaffluent ones, in order to have more revenue and fewer problems, and also because affluent people who live in large houses, in a society where even the unaffluent mostly drive, produce fewer car trips per square mile, and less traffic, than unaffluent people who live in dense housing; and so on and so on.

Sometimes the good people thereof vote not to let their more affluent residents (or

[see **Exchange** on page 4]

This Issue:

Review: Victor Davis Hanson’s *Mexifornia*

Elliott Banfield on 9/11 Public Architecture

Local Legal: Litigation and other legal proceedings from the Center for Constitutional Jurisprudence

The New Urbanism: Architect and author Philip Bess on how Aristotle, God, and baseball teach us how to understand cities. **page 3**

From the Editor by Ken Masugi

Mexifornia: Reclaiming California

In this issue of *Local Liberty* we continue our defense of American political principles against the arbitrary actions of local government. Local government is often beset by problems that require national solution—most notably immigration. Undoubtedly the best starting-point for a serious discussion is a recent book by Claremont Institute California Studies Fellow Victor Davis Hanson, who has come to prominence for his writings on Iraq and the confrontation with terrorism, especially on NRO, the website Nationalreview.com.

In *Mexifornia* (Encounter Books) classicist, military historian, and farmer Hanson writes movingly about the deterioration of California caused by unlimited immigration and a mindset that denies the need for an aggressive program of Americanization. But he also praises the ambition of immigrants and the energy and lower cost of living they bring to the country. Thus, he takes head-on the “paradoxes, hypocrisies, and hilarities that characterize California as a result of changing attitude and more immigrants” His reflections should become the reference point for conversation—and action—both here in California and throughout the country about immigration.

Hanson writes with a grace that makes any easy summary a distortion of the author’s soul: “Because of the disparate angles of my perception, this book is part melancholy remembrance of a world gone by, part detached analysis by a historian who knows well the treacherous sirens of romance and nostalgia, and part advocacy by a teacher who always wanted his students to be second to none.” Having grown up in the 1950s as a minority in the predominantly Mexican central California town of Selma, he now sees a cultural chasm between the Mexican-Americans he grew up with and the new immigrants. The latter have brought chaos with them and make life on his family farm

not only burdensome but increasingly dangerous.

Hanson dedicates the book to his classics students at California State University, Fresno, 1984-2003. “For two decades I have driven up daily to the college campus at Fresno to teach persons, not ‘peoples,’ and so have seen that assimilation is still possible during the current immigration onslaught—if we forget group causes and the rhetoric of the multicultural industry, and simply concentrate on providing interested students with opportunities that match their often ignored aptitudes.” He movingly describes how these often illegal immigrants and their descendants have often been superlative, award-winning students, going on to graduate study in prestigious programs. (He and his colleague Bruce Thornton must run the best undergraduate classics program in the country.) These young scholars, to their disgust, are of course noisily acclaimed as successes by the Chicano studies professional Latinos, who have no use for Cicero or Socrates. The university, dominated by French and German theory, is more the enemy of America than these Mexican-Americans.

Moreover, as a fifth-generation farmer of vines and grapes, Hanson has seen the well-touted economic benefits that immigrants provide—not only in the fields but also in restaurants, hotels, and construction and caring for lawns and for children. Hanson calculates that the financial return to a young worker can equal the cash a young professor receives. In return, agricultural workers destroy their bodies by the time they are 50. But Hanson also gives a shocking litany of crimes and misdemeanors committed by illegal aliens, just involving his farm and family. He finds more of his time occupied with crime and criminals— theft (of produce, tools, a manuscript of Mexifornia); trespassing (with arms); littering and abandoning vehicles, sometimes driven off the road, in drunken accidents. “These roving criminals offer a stark contrast to their hard-working fathers and mothers—and make us wonder what is wrong with Mexico or America, or both.” The burden on local law enforcement, schools, health, and other public services is staggering.

Throughout the book Hanson musters a stunning array of facts about immigration. These range from depressing statistics about the economic burden, educational backwardness, and health problems to memories growing up in an era that demanded discipline and preparation for being an American. Can one

[see Hanson on page 6]

Local Liberty

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

Ken Masugi, *Editor*
Matt Peterson, *Assistant Editor*
Brian T. Kennedy, *Publisher*

Editorial Board

John C. Eastman
Chapman University School of Law
Edward J. Erlar
The Claremont Institute
Steven F. Hayward
The American Enterprise Institute
Brian P. Janiskee
California State University, San Bernardino



THE CLAREMONT INSTITUTE

937 West Foothill Blvd., Suite E
Claremont, California 91711

Local Liberty is the newsletter of the Center for Local Government of the Claremont Institute. The Claremont Institute is a 501c(3) non-profit.

Published quarterly with occasional special issues by the Claremont Institute for the Study of Statesmanship and Political Philosophy, 937 West Foothill Blvd., Suite E, Claremont, CA 91711. Phone: (909) 621-6825 Fax: (909) 626-8724

Periodicals postage pending at Claremont, CA, and additional mailing offices. Postmaster send address changes to *Local Liberty* Address Change, 937 West Foothill Blvd., Suite E, Claremont, California 91711.

Unsolicited manuscripts must be accompanied by a self-addressed, stamped envelope; or may be send via email to mpeterson@claremont.org.

Subscriptions for the electronic version are free.

Visit us online at www.claremont.org

Opinions expressed in signed articles do not necessarily represent the views of the editors, the Claremont Institute, or its board of directors. Send all letters to the editor to the above addresses.

All contents Copyright ©2003 the Claremont Institute, except where otherwise noted.

The New Urbanism: From Aristotle and God to Baseball

Local Liberty interviewed architect and author Philip Bess on the moral, aesthetic, and political significance of the new urbanist movement. Bess is author of *Inland Architecture: Subterranean Essays on Moral Order and Formal Order in Chicago* and *City Baseball Magic: Plain Talk and Uncommon Sense about Cities and Baseball Parks*. He teaches at Andrews University; his Chicago architecture firm is Thursday Architects.

LL: Why has the New Urbanism—please define this movement—been so attractive to a fairly broad spectrum of people? What does this say about the failure of the prevalent urban architecture and planning?

PB: This is not an entirely uncontroversial definition, but New Urbanism is really nothing more than traditional urbanism advocated and pursued in the legal and cultural context of post-WWII sprawl. The essence of traditional urbanism—and *inter alia*, of New Urbanism—is entirely Aristotelian (in reality if not necessarily theory): the city [*polis*] is a community of communities that exists to promote the best life possible for its citizens, both individually and collectively. Hence, this view of cities assumes that the best human life necessarily entails both individual freedom and communal belonging and obligation, and recognizes both of these as goods necessary for the good life for human beings. Nevertheless, it has also been recognized that these goods also exist in tension, and each is subject to corruption: freedom can become license; communal belonging and obligation can become tyranny. So the first point about New Urbanism (in contrast to the view that has grown since the rise of the Industrial City from the mid-18th century and now prevails in much of contemporary culture) is that it views urbanism positively, as something that human beings will naturally do in order to live a good life.

The second point is that traditional urbanism has recognizable formal characteristics that are directly related to the physiology and comfort of the human person, viz.: a mix of uses—housing, commercial, civic, recreational—arranged within easy walking distance (about a half-mile diameter, which translates as a ten-minute walk from edge to edge, and a five-minute walk from center to edge) in networks of streets and blocks that form a public realm of squares, streets, and civic buildings, and a private realm of houses and commercial buildings (and frequently buildings that combine both of these private functions in one, on different floors). Such a formal environment—

approximately 150 acres—is about the size of the smallest communities that Aristotle would have recognized as a *polis*; and is the size both of what we would recognize as a small town or an urban quarter or neighborhood, larger towns and cities being made up of lesser or greater accumulations of these mixed-use neighborhoods. This is the pattern of all great cities and small towns in Europe and the United States; and has its analogues in non-Western cultures as well.

New Urbanists view modern transportation technologies as extenders of the freedom of human beings, but not as replacements for the traditional mixed-use formal order of



town/neighborhood/city. Now the reality of post-WWII sprawl culture is this: that it has through its zoning ordinances and street design regulations made illegal the creation of mixed-use traditional urban environments that before 1945 were both legally and culturally normative. Thus what is new about New Urbanism is its promotion of traditional urbanism—not uninformed by the positive technological achievements of modern society—in the legal and cultural context of sprawl.

Why is this so attractive to so many people? There are no doubt many reasons; but I will suggest it is due in no small part to the fact that good traditional urban neighborhoods are both convenient and beautiful, whereas sprawl suburbs (as opposed to, say, 19th century railroad suburbs, which are formally just another version of traditional small towns) are typically both inconvenient and ugly; and that traditional urban neighborhoods really are conducive to common life and the common good, while at the same time affording indi-

viduals as much privacy and even anonymity as they like. It is freeing (and even more importantly, good) to be able to perform daily tasks in a beautiful environment that can be traversed without the necessity of an automobile for each of those separate tasks. And there is a reason why words like “civility,” “polite,” “polished,” and “urbane” are all derived from root words meaning “city,” which is that for most people throughout most of human history urban life really has been and is the way of life most conducive to human well-being.

As to what this says about the failure of modern planning: it has to be understood that modern planning is first of all a reflection of the positivist and Cartesian bureaucratic sensibilities that characterize the modern world; and second of all that it has been implemented not by market forces alone (or even primarily) but rather by post-war governmental housing and transportation policies that favored sprawl development over traditional urban development. That said, it is undeniable that these policies had and continue to have significant popular (and hence political) appeal; and I attribute this to one of the darker cultural tendencies of the general good of democratic politics, which is that democracies of their very nature tend to encourage what Tocqueville famously identified as “individualism” (of which sprawl is precisely the physical embodiment), which he correctly recognized as a corrosive threat to democracy itself; and about which I will say a little more below.

LL: Is there something peculiarly American about the New Urbanism, and how would you relate it to American political and social traditions? We certainly see architectural and design atrocities abroad—what about good ideas for us?

PB: There is in my opinion something peculiarly American indeed about New Urbanism; and it goes directly back to Tocqueville's observations about American tendencies to individualism and how Americans tend to pursue matters of the common good and in the process fight this individualist tendency: through free associations. The CNU is derided by critics from the left as tools of market interests, and by critics from the right as harbingers of Big Government; but New Urbanists are nothing if not a classic Tocquevillian association formed and impressively organized to promote the virtues of traditional urbanism. Jennifer Hurley, a fellow New Urbanist private sector planner from Philadelphia, recently described succinctly and eloquently the way that New Urbanists work:

“New Urbanists have developed a methodology for dealing with obstacles: co-opt specialized fields, look to history, and develop new solutions

[see **Urbanism** on page 5]

■ Exchange [continued from page 1]

those perceived as such) to secede. Most people in Newport Beach might be amused to hear that San Fernando Valley is considered an affluent neighborhood, but in vast stretches of Los Angeles south of the mountains it is evidently considered to be such. So the good people of Los Angeles made the Public Choice to keep this gold mine under their control. The vote to prohibit San Fernando Valley secession was, then, not a rejection of Public Choice, but an expression of it. We might well ask, at this point, whether the Marketplace of Municipalities needs regulation of its own.

There are functions that the Marketplace of Municipalities does not perform well. (A marketplace of landowners, with free rein to the charitable impulse, might perform them well, but most of us would not be willing to make the Public Choice to live with the result.) One principal one is the location of what are called in the trade LULUs—Locally Undesirable Land Uses. According to Duany, Plater-Zyberk, and Speck, in *Suburban Nation*, these include solid waste dumps, power plants, and prisons, large high schools to which students drive, homeless shelters, group homes, and other social services, and “affordable housing,” which in most of the U. S. means any housing of higher density, because it uses scarce land more efficiently and is therefore more affordable. *Suburban Nation* suggests that the location and allocation of LULUs, as well as “environmental conservation and restoration, transportation, social services . . . and economic development” should be handled by a more regional government.

For the “regional government,” we do not need to set up a European Union-like bureaucracy. A level of government known as the county already exists. If anything, it—and cities as well—could benefit being made into a more “republican form of government,” as Article IV of the U. S. Constitution calls it, with separation of powers instead of a single panel of High Commissioners performing executive, legislative, and (through the conditional use permit) judicial powers. Maybe as the U. S. government is supposed to guarantee the states a “republican form of government,” the states might guarantee the same to the local governments that they comprise.

So, break up Los Angeles, Houston, and Phoenix. It would be better for everyone. But give more authority, and a bigger role, to Los Angeles, Harris, and Maricopa Counties. The county’s relationship to the cities today is like that of the federal “government” under the Articles of Confederation. It should be more like that which prevailed under the original intent of the Constitution. 🦋

Howard Ahmanson, President of Fieldstead & Company, is Senior Counselor of the Center for Local Government.

Rejoinder

by Brian P. Janiskee

I thank Howard Ahmanson for his bold development of my arguments in “Suburban Secession” (*Local Liberty*, #1). I had addressed the failed San Fernando Valley secession measure in light of the theoretical debate that has raged in the academy over the proper structure of local government. That debate has largely been between liberal public administration types who favor super-sized regional governments and conservatives of one stripe or another who favor a more decentralized approach. The liberal mega-government vision—what one might call the Consolidationist perspective—is derived from Progressivist notions of a pure politics, run by administrators, devoid of the messy and noisy institutions of democracy.

The core of the Progressive vision is that the problems of government are not inherent to human nature. They are simply the result of an absence of proper organization and leadership by those educated in the modern university, preferably in the social sciences. The conservative view, or what passes for it, can be called the public choice perspective. This view, overwhelmingly in the minority among elite received opinion, sees a healthy local government structure as one that is allowed free reign to take on many forms, break apart, or maintain the status quo according to local necessity or choice; let cities behave like firms who search for customers (residents).

In his reply, Mr. Ahmanson gives a detailed critique of the Public Choice position. Although more critical of the Consolidationist perspective, Mr. Ahmanson holds deep reservations about a situation where local governments “in pursuit of capitalistic goals..begin to behave like the mercantilistic kingdoms of Europe.” Furthermore, Mr. Ahmanson argues that public choice itself is no panacea for the onrushing juggernaut of the administrative state. The people could reject freedom: “The vote to prohibit San Fernando Valley secession was, then, not a rejection of Public Choice, but an expression of it.” Finally, Mr. Ahmanson reiterates the basic point that cities should be allowed a great deal of freedom to organize

their affairs as they see fit. However, he adds a daring suggestion of his own that counties be granted stronger powers in order to prevent the chaos brought on by LULUs and NIMBYs.

I find very little that is objectionable in Mr. Ahmanson’s response. First, I agree with Mr. Ahmanson’s assessment of public choice theory as insufficient because it is focused too much on economic matters instead of political ones. In the original article, I argued that, “Public Choice theorists play into the hands of the Consolidationists by using the same vocabulary. Perhaps future arguments could move beyond the vocabulary of the public cost accountants and more towards questions of justice, the principled reason for the desire for human freedom.”

Second, I concur with Mr. Ahmanson’s recognition that public choice qua choice is insufficient, because people can choose tyranny. In my original piece I make it clear that such choice is vindicated in the end by an attachment to firm principles grounded in human nature: “What drives the Public Choice model is not consumer activity but, more fundamentally, human equality in light of what Thomas Jefferson in the Declaration of Independence called the ‘laws of Nature and of nature’s God.’” Third, I would not object to the creation of stronger counties as long as the government of these counties would be political and not administrative. The form is not as important as the substance. The questions of county government—where to put an airport, landfill, or nuclear plant—should be placed clearly in the hands of the political branches of government instead of administrative bodies whose decisions are made in *camera obscura*.

Let the questions of government truly be public. Let those who make the choices truly be held accountable. Let political questions rise to the surface where the agitation of controversy can breathe new life into the depleted soil of local liberty. Certainly, this is a vision of public choice upon which we can all agree. 🦋

Brian Janiskee teaches political science at California State University, San Bernardino. With Ken Masugi he is co-author of Democracy in California and co-editor of The California Republic.

Next Issue . . .

In the next issue of *Local Liberty*, look for Steven Hayward’s response to Philip Bess’s interview on the New Urbanism. We will report on the new Frank Gehry creation, the Walt Disney Concert Hall, in Los Angeles. Brian Janiskee will explain how the study of local government illuminates

larger issues about the nature of democracy and liberty. We will have some thoughts on the recall of Governor Gray Davis and its implications for cities and counties. Book reviews will include Kenneth Kolson’s *Big Plans* and Willi Paul Adams’ *The First American Constitutions*. And, of course, there will be more on public architecture, and our latest litigation in *Local Legal*.

■ Urbanism [continued from page 3]

When New Urbanists had trouble getting good places built because of rules by traffic engineers, they learned basic traffic engineering, found sympathetic traffic engineers to become New Urban road design experts, and re-wrote the standards. When New Urbanists were disappointed in the quality of built places, they looked to history and renewed the practice of using pattern books to guide builders. When municipal officials refused to approve new urban developments because they did not meet zoning codes, New Urbanists developed entirely new kinds of codes.”

And sociologist David Brain notes another feature of the practical consequences of New Urbanist efforts to build community consensus by means of the intensive public design workshops known among New Urbanists as “charrettes”:

“[T]he New Urbanism represents a fascinating and pragmatic effort . . . to re-build the public sphere by way of re-creating the techniques of place-making. It’s actually a perfect reversal of the trajectory of technical specialization, bureaucratization, and modernist state-building that has taken place since the Progressive era, quite in line . . . with the contemporary convergence between certain left wing political theory and the revival of interest in civic republicanism. [Of interest to the social theorist] is that New Urbanist practice represents a tangible and practical manifestation of what have been little more than broad notions and wishful thinking among some political theorists.”

This convergence across political lines occasions interesting methodological debates among New Urbanists; but is in fact a good and salutary thing in that it underscores how New Urbanists themselves embody one of the essential features of traditional urban life, viz.: the city as a community that embraces debate about its common life as essential to the vitality to the community itself. Critics may deride New Urbanists as just another “special interest group;” but the New Urbanist point is that the city is precisely that larger community that embraces all “special interests” and attempts (literally) to civilize them.

As to “architectural and design atrocities abroad”: the culture of modern architecture is largely in intellectual, academic, and professional disarray on both sides of the Atlantic; and sprawl is not one of our better American cultural exports. As a largely but not exclusively American phenomenon, New Urbanists tend to take as our preferred models for American contexts the best cities and small towns of America: Boston, New York, Chicago, San Francisco, Charleston, Savannah, Annapolis, Cooperstown, Nantucket, Key West, Santa Fe, Santa Barbara, etc.—though I would hasten to add that virtually any place in America that has

an intact pre-1945 neighborhood or town center could serve as such a model. But the issues at stake with regard to American cultural exports (including sprawl) include not only political freedom—a great good—but also the goods (including communal goods) toward and in service to which that political freedom is to be directed. Many Americans cease our philosophical commitments with the advocacy of freedom, but we shouldn’t stop there. New Urbanists are pressing the question about what really are the best ways to order the public realm; and are doing so as responsible citizens in the context of democratic political processes of self-government.

LL: What are the principal promises and pitfalls you see in the New Urbanism? Does it necessarily require more or less government regulation? What are their best ideas, their worst?

PB: The principal promise of New Urbanism is that it will succeed in helping to create a cultural (and following that a political and legal) climate for traditional urbanism in the United States. The principal pitfall is if New Urbanists think that this goal will be accomplished quickly; or if they think it can be achieved simply by making better physical environments (and a legal environment in which they are permitted), which is a necessary but not a sufficient condition for good urbanism. The danger is if New Urbanism is satisfied simply to occupy a specific market niche—which I suspect a refined and sophisticated real estate market would be only too happy to supply—and becomes just another aesthetic choice for that class of people that can afford to buy a living environment as art. This would be tantamount to a retreat from the issues of community-building and justice and environmental responsibility that are so prominent in the New Urbanists’ own founding Charter.

The reality is that there is a reciprocal relationship between cultural character and the physical environment. “We shape our buildings, and then our buildings shape us,” said Winston Churchill famously; and, I might add, vice versa. Sprawl is a (perhaps unintended) flower of a long modernizing cultural process that has produced great goods for the United States and the world; but a process that has also produced a kind of therapeutic individualism that formidable and sympathetic (and culturally conservative) contemporary thinkers like Philip Rieff, Alasdair MacIntyre, Christopher Lasch, Daniel Bell, and others have aptly characterized as an impossible and incoherent culture. There’s no reason I can see to think that a revival of communal sensibility—and *eo ipso*, of urban culture—is not a long term cultural project that will require both all the communal cultural resources at our disposal (especially

Tocquevillian/American free associations, including churches: see below) and careful attention to that balance between communal obligation and individual freedom that has always been the ideal of the mainstream Western political tradition.

Regarding the need for more or less government regulation: the paradox of the New Urbanist political agenda—and given our current cultural situation, it’s a necessary paradox—is that the urban and architectural order of the great cities of the past was largely a consequence of shared cultural habits of city-building. There were laws and codes; but these tended to be minimal. Those traditional city-building cultural habits have been lost, and replaced by a modernist/positivist/ bureaucratic structure of law that over the past two-to-three generations itself has engendered a new set of cultural habits. The paradox of New Urbanism is that what it seeks is to relearn and restore the habits of good urbanism; but that in order to do that, it must first change the legal environment to make traditional urbanism even possible. (Again, changing the current legal environment is a necessary but not sufficient condition for good urbanism.) So the New Urbanists of necessity DO stress the need to establish a regulatory environment conducive to good urbanism. But the way that New Urbanists in fact press this agenda is not in the “top down” manner that its critics claim, but in fact is exactly the opposite. The New Urbanists, primarily through the charrette process, seek above all to build local consensus in specific places on behalf of good urbanism; and then to fight the larger existing prohibitive legal structure with specific alternatives for which there exists a significant political constituency—i.e., New Urbanism is arguably democracy in action! And if New Urbanists also succeed in getting some larger regulatory framework changed to become more sympathetic to traditional urbanism? Well, that too seems to me part of the workings of democracy, and consistent with the recognition that what new Urbanists are trying to change is the culture.

As to the best ideas of New Urbanism? Well, as a traditional urbanist (and looking at the CNU Charter), I have yet to see the CNU as an organization officially embrace a bad idea; and they have a very good track record of either fashioning good responses to the arguments of their critics, or of embracing those arguments and incorporating them into their own critique of the culture of sprawl. As to the worst of their ideas? There is a kind of default secularist liberalism evident among some my urbanist confreres; but this seems to me more attributable to the mental habits common to

[see Urbanism on page 7]

■ Hanson [continued from page 2]

imagine a schoolteacher saying today as she did to young Victor's classmates: "Okay, keep talking during class, Esperanza, and you will end up picking grapes the rest of your life"? As Hanson will conclude, the problem here lies not ultimately with the immigrants.

Yet despite his criticisms of current immigration policies, Hanson also sneers at the lighter-skinned Mexican elites, who "privately laugh that they are exporting their Indians and Mestizos, their unwanted, into the United States." Hanson's retort: "we instead figure what they suppose to be riffraff are the real cream of Mexican society: frontiersmen and women whose endurance and courage are good prerequisites for Americanization, and who in fact are superior people to those who oppress them at home." This acceptance, or more, is seen in the close relationships developed by Hanson's family and children with Mexican immigrants.

Thus Hanson looks at a California that had been, in his own lifetime, extraordinarily successful, the most successful place in the entire world, at transforming aliens into fellow citizens. Writing in the spirit of the American founders, Hanson says our future, both as Californians and Americans, "is entirely in the hands of its current residents. California will become exactly what its people in the present generation choose to make it." Here he makes his most questionable argument, that American popular culture, with its inexorable homogenization by appeal to a lowest common denominator, may prevent Mexifornia. "Just as age or gender distinctions have been absorbed by media and entertainment, so it is, at last, with race and national heritage—the last and most stubborn of man's traditional pecking

orders to fall." If we must have Chicana Studies, let them pursue Jennifer Lopez. Here (as in other places) Hanson reminds me of Richard Rodriguez, who left the world of his house and family to become part of a public—which enabled him to become educated but also deprived him. Hanson's hope may be a variant on destroying a village in order to save it; to rely on popular culture brings to light the cowardice of those officially charged with the duty to act, not to mention the animality and vulgarity on display in popular music, clothing, and other tastes.

He concludes we are faced with four choices. Of the first two, we could insist on rapid cultural immersion; or we could take massive steps to close the border. Given current inaction, neither seems realistic. But Hanson prefers a third alternative: do both. The "more radical and holistic ... solution would be to adopt sweeping restrictions on immigration and put an end to separatist ideology along with the two-tier legal system for illegal aliens." Given our failure of nerve, we are faced with the horror of the fourth possibility: Mexifornia—an "apartheid nation, with great distances between its elite and mass, which threatens all prosperity and turns the state into the poorest part."

Mass immigration didn't drive out paradise and create the People's Republic of California. The skids were greased for that decline from the Progressive Era on. But it adds to the momentum toward a socialist state. That is the choice we make by our current policy of doing nothing. As a policy advisor Hanson is resolute—and on target.

If in theory Hanson seems to be of divided mind, he simply reflects the paradox in the Declaration of Independence: We are a distinct nation with a distinct political identity—not only separate from Britain but from all other hitherto existing regimes. But we are also a nation distinct by virtue of our founding principle—all men are created equal. That principle means that any human being at any time in history has the essential quality to be an American. My friend Peter Schramm recounts the wonderful story of his Hungarian father explaining to him why they were leaving home and going, in late 1956, to America: We were born Americans but in the wrong place. In *Mexifornia* Victor Davis Hanson, a real American, portrays how sophisticated intellectuals, cynical growers, craven political leaders, and ambitious Mexicans have brought about a crisis in which neither immigrant nor native-born show interest in thinking and acting like Americans. 🍀



Ken Masugi
Editor

We welcome your responses, by e-mail and letter. Subscriptions to Local Liberty are free for the asking. Contributions to its publisher, the Claremont Institute, which is a 501c(3) education and public policy center, are tax-deductible.

■ Immigration [continued from page 1]

you to have that opportunity. In fact, in a conversation with the ambassador of China, he thought it preposterous that the United States would grant citizenship and all its benefits just because you happen to be born in the United States.

In our county jail, 25% of our inmates are illegal. The resulting cost to our justice system, just in our county, is \$150 million a year. We have to provide room and board, a public defender, district attorney to prosecute, and a probation office to administer justice.

All of these services are costs passed on to county taxpayers. Those who come here legally absorb those costs incurred by illegals who have broken the law.

Even though Los Angeles County has nearly 12% of illegal aliens nationwide, the most of any other county, we receive only 3.3% of the federal money allocated to deal with criminal illegal aliens.

We have made some reforms. One of the programs I initiated with my longtime chief of

staff, the late Dr. Tom Silver, took us about eight years to get adopted. The High Intensity Criminal Alien Apprehension and Prosecution program (HI-CAPP) creates an effective interface with the old INS and local, state, and federal law enforcement agencies. This program ensures that when a suspect is arrested and in our County jail, we can find out if they are here legally or illegally. Half of all deported illegal aliens return to the United States—often within twelve months.

The Mexican Supreme Court has created a haven for people that commit these types of crimes and put out a welcome mat for cop-killers and other criminals.

Congressman Buck McKeon has introduced legislation to encourage that we make adjustments to our relations with the Mexican government until they begin to apply the law of extradition to people who are committing these types of crimes.

Illegal immigration has impacted the social fiber and the effective operation of our county. Our county is the largest in the United States,

and the fiscal drain on the nearly \$17 billion budget by those who are here illegally is very difficult to absorb.

One suggestion I have made to Federal officials and legislators on a recent trip to Washington is what I believe is a win-win situation. The border states, working cooperatively with local medical schools and the Mexican government, ought to establish medical centers on the Mexican side of the border. American doctors and medical students and Mexican doctors and medical students can provide medical service while sharing new medical techniques and advancing their mutual clinical education.

Our county hospitals are teaching hospitals where doctors learn how to become qualified physicians. Having these hospitals on the Mexican side of the border would help the Mexican medical students learn skills to be better medical providers. It makes sense and would be cheaper to provide medical service

[see Immigration on page 9]

■ Urbanism [continued from page 5]

those on the left than to anything inherent in New Urbanism itself.

LL: What should be the place of churches and other religious institutions in New Urbanist thinking?

PB: I think religious institutions should be of great importance to New Urbanism as part of a vital civic realm. The formal order of towns and cities also manifest and promote both a moral order and an economic order, so churches clearly have an interest in the form of cities and a potentially important role to play in the revival of traditional urbanism. It is worth noting that that New Urbanists derive their ideas about public space and formal order in large part from traditional cities in which churches and their ancillary institutions have been key players. Church communities continue to erect buildings—for worship, for education, for health care, for dwelling—that are potentially important components of traditional neighborhoods. Moreover, churches are a kind of community in which at least in principle (unlike suburbia) membership is not primarily a function of class or age. Religious communities therefore would seem to have much to offer the New Urbanist enterprise out of their own specific intellectual and spiritual traditions—not least (in the case of Judaism and Christianity) a serious and sophisticated view of human nature and human community, a pastoral mandate to rich and poor, and (in the case of Christianity) a long history of urban and architectural patronage.

At the same time, the lessons about place and character that the New Urbanists are relearning are lessons that many religious communities also need to relearn. All too often religious communities unthinkingly comply with the cultural presuppositions of suburban sprawl. This compliance is evident in new religious buildings located in the midst of large surface parking lots; in the frequent attempts by older neighborhood churches or synagogues to tear down adjacent buildings to provide parking for a suburban constituency; in well-meaning but misconceived programs that create housing for elderly or low-income persons as concentrated enclaves rather than components of walkable mixed-use neighborhoods; and in their almost complete indifference to the aesthetics of a shared public realm.

The First Amendment guarantees of non-establishment and free exercise have historically provided ample room for physical expressions of religious faith in the civic realm; and to the extent that New Urbanists are serious about the trans-generational and inclusive character of cities as an ideal, religious institutions should be seen and should see themselves as allies.

LL: The EPA has an office of “Smart Growth.” Good or bad idea?

PB: This is a tough one. Why the EPA rather than the Department of the Interior or HUD? The Charter for the New Urbanism in its first article says that “The Congress for the New Urbanism views disinvestment in central cities, the spread of placeless sprawl, increasing separation by race and income, environmental deterioration, loss of agricultural lands and wilderness, and the erosion of society’s built heritage as one interrelated community-building challenge.”

So implicit in the New Urbanist view of things is that the bureaucratic division of these issues is an inadequate response to the inherent inter-related complexity of the problems. That said, I think New Urbanists are generally happy to leverage whatever kind of political influence they can in order to forward their agenda.

I am not enough of a scientist or ecologist to claim competence on issues such as “environmental protection” or the virtues of biodiversity. New Urbanists are adamant in opposing radical environmentalist suggestions or claims that all species have rights except human beings. But although New Urbanists are interested above all in creating human habitats, they recognize that human beings have an interest in not fouling the natural environment; an interest in environmental “sustainability” if you will. And there is a clear potential convergence of Conservationist and New Urbanist agendas in this respect: preservation of the natural and/or agricultural landscape is better promoted by compact human settlements with distinct boundaries between the settlement and the landscape (i.e., by traditional towns and cities) than by suburban sprawl; and the former are also both more convenient for their inhabitants and generally more attractive places to live. This raises the issue of to what extent it should be public policy to promote traditional urbanism in lieu of sprawl (and vice versa); and at what levels of government such public policy should be pursued.

At present, it would be a major achievement for the New Urbanists to be able to compete on a level legal playing field; and most New Urbanist objectives are pursued at local rather than state or federal levels of government. But there are major issues—open land conservation and transportation (whether cars or alternatives such as rail) in particular—that are at least regional and arguably national in scope. I am as occasionally frustrated by bureaucratic administration as anybody; and I’m willing to entertain alternative suggestions for addressing at regional and national levels issues pertaining to the common good. But

there are issues—and land use issues are among them—that do pertain to “the general welfare,” and that therefore need to be identified and addressed as such. Should that be done through the EPA? I don’t know . . .

LL: Philip, you have written quite a bit about baseball stadiums. Is the desire for old-style baseball parks (Jacobs Field, Coors Field, and Camden Yards, for example) related to New Urbanism?

PB: I think so, but only indirectly. I’ve tried for almost twenty years (and with only varying degrees of success) to use baseball parks to make an argument on behalf of architecture and urbanism. The argument goes something like this: the primary symbolic import of architecture is not as an emblem of its “age” or its structural “honesty,” but rather as a symbol of its commissioning institution; and ultimately, of the legitimate authority of the community represented by that institution. I’ve chosen to focus upon ballparks as an example of this once intuitively understood but now largely forgotten sensibility because there truly is a “community of baseball” of which baseball parks are and remain tangible architectural symbols. Nevertheless, the community of professional baseball is now in my opinion every bit as disarrayed as the community of architecture; and stadiums have become weapons wielded by the professional sports industry to extort public monies that are justified by both the sports industry and public agencies by appeals to what remains of this communal sensibility about and affection for baseball and other sports.

That’s my one-paragraph critique of the stadium boom of the fifteen years. To the extent that stadiums such as Camden Yards, Jacobs Field, and Coors Field are located in urban rather than suburban locations, I think this is an improvement over the generation of stadia that were built in the 1960s and 70s. But there are two huge differences between the former and the ballparks such as Wrigley Field and Fenway Park that they are supposedly emulating. First, Wrigley and Fenway are both much smaller in scale (and hence more intimate) than the newest generation of urban stadia. Second (and more importantly), Wrigley and Fenway are located in traditional mixed-use neighborhoods, whereas the new downtown stadia are located where they are to be a destination component of a downtown “entertainment zone.” In other words, the former were (and are) components of traditional urban neighborhoods. The latter still reflect the suburban cultural bias that cities are good

[see Urbanism on page 8]

Postmodernism at the Pentagon

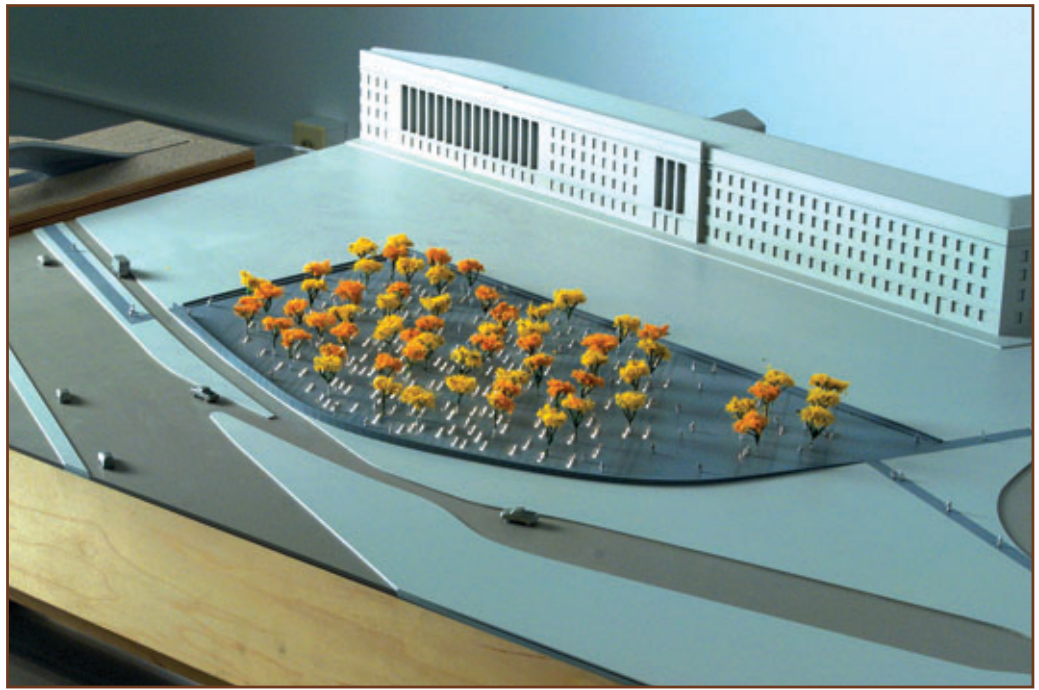
by Elliott Banfield

Is George W. Bush a postmodernist? Judging by the September 11 memorial planned for the Pentagon, the answer, sadly, is yes.

According to Julie Beckman, one of the memorial's designers, September 11, 2001 was a unique day in American history, so her design should likewise be unique. And it will be. A two-acre plot will be carved out of a parking lot: onto this area will be planted 75 maple trees. So far so good. There will be no grass, however. Gravel instead. And the memorial? A scattering of 184 aluminum "benches," each with halogen lights that will somehow illuminate at night pools of water that will be located under each bench. Why 184? Because that's the number of people who died—minus the hijackers, of course. The name of a victim will be inscribed on each bench. So one can rest one's behind on the person's tombstone, as it were, and contemplate the profound lack of significance of it all.

In the battle of the giants versus the gods, the giants have won. Note how every element of the plan establishes the particular at the expense of the universal:

1. September 11 was unique, unrelated to any other day, or to history in general. And therefore, according to the historicist way of thinking, it calls for a unique design, unlike anything conceived before. (Although the idea of benches bears a suspicious resemblance to the chairs of the Oklahoma City memorial.) The insistence on the particular rules out representations of the ideal: hence the rejection of sculpture, military insignia, or any elements associated with classical art, which were the reliable standbys in earlier, less enlightened times. Architecture, bereft of its precedents, ceases to be a profession. The architect becomes an "artist," a person who is admired by all for his uniqueness and creativity—i.e., his nuttiness.



2. The memorial is not dedicated to a group of people sharing a human nature, but to scattered individuals, isolated in death as they were in life. (That these people, as individuals, will be forgotten in the course of a few decades does not deter the business of tagging each bench with the name of a particular person.)

3. Because there is no axis of symmetry and no focal point of interest, each visitor will experience the memorial from his unique point of view. The person who comes to mourn and the person who comes to eat a ham sandwich will be equally welcome.

Most disturbing about this work is its location. When a postmodern artifact finds its way into some fashionable apartment or some white-walled gallery, where everyone is speaking French, one can shrug it off. But when it's placed in front of an American public building, with the intention of articulating the significance of a great historical event, the alarm bells ring. The technicians in our military headquarters are (let us hope) good at their work; but so were Hitler's men. Unless wise

and good leaders direct our generals, we are lost. Postmodernism, which denies truth, cannot be the basis of a wise and good regime. Yet, with the tacit approval of the President of the United States, one of its emblems is now destined for the Pentagon.

Back in 1850, the United States faced a crisis greater than that of September 11. The North and the South were at odds over the question of slavery. The future of the Union was in doubt. A compromise was worked out, one that postponed the Civil War for a while. America celebrated by extensively rebuilding its Capitol. A great dome, which is also a great symbol, was designed as its final embellishment. This dome should remind us of a time when our art and our politics complemented one another. A time, sadly, far off. ♣

Elliott Banfield is the Art Director of the Claremont Review of Books and an artist who lives and works in New York City.
www.elliottbanfield.com

■ Urbanism [continued from page 7]

places in which to be entertained, but only poor people and chumps would actually live there. But I take it as evidence of the truth of the New Urbanist thesis that 1) Wrigley and Fenway arguably remain the two most popular venues not only in baseball but in all of professional sports; and 2) the value of residential and

commercial real estate in their neighborhoods is very high and continues to appreciate. Good urban neighborhoods are expensive; and the reason is because people like living in them. The way to make traditional urbanism less expensive is to make it less rare.

LL: Thanks very much, we look forward to future contributions to *Local Liberty*. ♣

Philip Bess is professor of architecture at Andrews University and the principal of Thursday Architects, in Chicago.

Local Litigation

by John Eastman

Among several other projects, the Center for Constitutional Jurisprudence was at the center of a major constitutional crisis involving the Nevada Supreme Court and state legislature. In the face of a constitutional amendment requiring a 2/3 vote in each House of the legislature for any bill which would increase taxes, the Governor of Nevada attempted to pass a nearly \$1 billion tax increase to fund education. When the legislature was unable to secure the 2/3 vote necessary to pass the bill, the Governor sued the legislature, asking the state supreme court for a writ of mandamus. The Supreme Court played its part on Thursday, July 10, ordering the Legislature to proceed to consider the tax increase by simple majority vote, in violation of the explicit command of the Nevada Constitution.

The Center for Constitutional Jurisprudence, led by myself and several interns, developed a legal strategy and prepared and filed a federal complaint and application for an emergency restraining order. We flew to Reno, Nevada for an emergency hearing and prepared a reply brief to respond to the briefs of the legislature and Governor. The Center for Constitutional Jurisprudence was involved with this crisis until the very end, when the Nevada state constitution and the will of the citizenry expressed in it was vindicated.

The interns who assisted me so ably came from the Blackstone Fellows Program. The Claremont Institute has launched collaboration with the Phoenix-based Alliance Defense Fund that will bring law students to Claremont every summer for a six-week internship with the Center for Constitutional Jurisprudence. The principal focus of the Blackstone Fellows Program is on litigation projects involving religious liberty and morality, including the Boy Scout's rights and invocations before city council meetings.

This year's Blackstone Fellows were: Leah Boyd (Washington and Lee Law School); Elizabeth Kim (NYU Law School); Karin Moore (St. Thomas School of Law); and Dina Nam (Brooklyn Law School).

A major project of the Center has been continuing litigation to rein in the administrative state. In the past few months, with major amicus briefs before the U.S. Supreme Court, it has in the past few years helped the Supreme Court uphold the limits of the commerce clause. And the Center has been pressing the battle before the U.S. Court of Appeals for the D.C. Circuit on behalf of a California landowner who was threatened with federal prosecution for erecting a fence on his property, which might have prevented southeastern arroyo toads from hopping beyond the fence. Though our commerce clause argument lost, the strong dissents on our behalf may prove to be a beacon for the Supreme Court, as it continues to struggle with its interpretation of legitimate national powers.

John Eastman is Director of the Center for Constitutional Jurisprudence, of the Claremont Institute. A former clerk of Judge Michael Luttig and Justice Clarence Thomas, he teaches at Chapman University School of Law. He has also served on the staff of the U.S. Commission on Civil Rights. He has earned a Ph.D. in government from Claremont Graduate University, and a J.D. from the University of Chicago Law School.

■ Immigration [continued from page 6]

than to have incentives for people to come here illegally. That's a good investment in foreign aid.

Further, a bonded guest worker program would allow an immigrant to work here temporarily while bonded for any medical care he or she may need while in the United States.

The failure to control our borders and the lack of reimbursement from the state and federal government is breaking the back of local government. The costs of illegal immigration in terms of government expenditures for education, criminal justice, and emergency medical care in California approach \$3 billion a year.

Illegal immigration is an affront to those who legally immigrate to the United States. It is crime that should not be rewarded. It tears at the moral fabric of our society and its social and fiscal impact is seen in every aspect of American life.

Concerning multiculturalism, it is important that we encourage the ability to speak more than one language. Foreign languages should begin being taught in our elementary schools. Children can learn faster instead of waiting until high school. A multilingual child's educational and career opportunities are enhanced. They are in a unique position to be effective leaders representing the values of the American system—provided by the Declaration of Independence and our Creator.

The term Multiculturalism has been hijacked by the mass media to suggest people should be kept in individual cultures at the expense of the American culture. The United States—the melting pot of the world—is a place where children are exposed to a world of different cultures and languages. Multiculturalism and knowledge of our world and all its different peoples helps our young people achieve and understand themselves and the world in which they live. 🇺🇸

Michael D. Antonovich is Los Angeles County Supervisor for the Fifth District.

About the Claremont Institute

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

The Claremont Institute publishes books and articles, sponsors lectures and debates and reports to the people on how they are governed and how their government can be improved. Its 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. Its 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.

Donations to The Claremont Institute are tax deductible under Sections 501(c)(3) of the Internal Revenue Code.

★ ★ ★ THE CLAREMONT INSTITUTE
★ ★ ★ 937 West Foothill Boulevard, Suite E
★ ★ ★ Claremont, California 91711