In This Issue

In San Francisco, where many of the world's ills are blamed on conservatives, I recently dined with a few acquaintances who bemoaned the spread of Starbucks in their city. They offered the usual complaint: big corporate chains like Starbucks drive independent coffee shops out of business, transforming unique enclaves into soulless, cookie-cutter communities….

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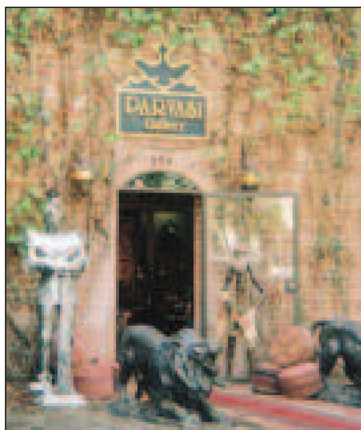
Conservative policies aren't behind the spread of chains in America. On the contrary, the liberal impulse to regulate business has helped companies like Starbucks to spread faster than they would in a less regulated economy.

—Conor Friedersdorf on more regulation, more Starbucks

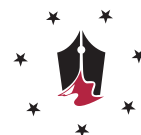

"Blight"? An upscale art gallery in Claremont's "blighted" village

From the original intent to eliminate slums, the use of eminent domain has degenerated into corruption masquerading as statesmanship and delusion sold as sound public policy. The complete arbitrariness of "blight," "public use," and "just compensation" is the point *Abuse of Power* makes over and over. Public officials have visions of a big–box retailer (or a cluster of them) or splendiferous, tax-revenue-generating malls full of exotic shops, movie theaters, and restaurants replacing apartments, a strip mall full of shops, or even respectable homes. Greenhut portrays a formidable coalition of redevelopment agencies, developers (especially big-box retailers such as Costco), and attorneys who specialize in condemning property as "blighted." Example after example completes a horrific picture of the wielding of arbitrary power and the collapse of individual rights that makes "totalitarian" seem appropriate, not hyperbolic rhetoric.

—Ken Masugi, reviewing *Abuse of Power*

Dealing with current levels and quality of legal immigration is an immense problem by itself. But it is clear that until alien criminality of every kind is punished, swiftly and surely, Americans who must live with the consequences will continue to suffer higher taxes, lower quality of life, higher threat and fear levels, and less actual safety.

—James R. Edwards, Jr. on illegal immigration



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Local Liberty

Vol. 2 No. 2

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

What a Revolting Redevelopment

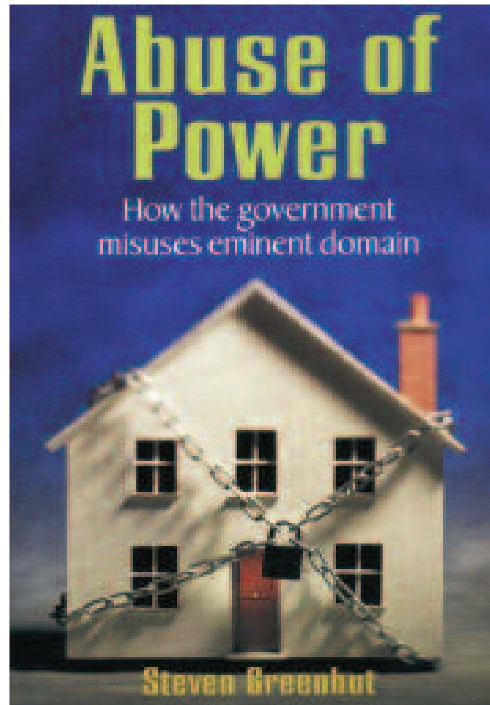
Book Review by Ken Masugi

Steven Greenhut
Abuse of Power: How the Government Misuses Eminent Domain
Santa Ana, CA: Seven Locks Press, 2004. 327 pp. $17.95 (paper)

The title *Abuse of Power* brings to mind scandal in high government offices and plush corporate suites. But Steven Greenhut instead details the almost routine yet alarming abuses by local government agencies—the public seizure of private property and its transference to other private property owners. This is the brutal practice known by the legal term eminent domain.

Greenhut's skills as an insightful and witty editorial writer for the *Orange County Register* are well-displayed in this fact-filled account. While written for a wide audience, the book will be illuminating for activists and scholars of local government as well. Greenhut performs an invaluable public service by documenting both nationally and in Southern California the growth of local governments oblivious to property rights. The property rights of ordinary citizens have been politicized, stripped of their natural rights foundations in the American political tradition.

But why would our neighbors on city councils engage in such drastic practices? City councils (who often act in the capacity of redevelopment agencies exercising eminent domain) calculate that the redeveloped areas, with the new, presumably dynamic businesses paying higher taxes, add not only their novelty, employment, and services to the local community but more tax revenue as well. Eminent domain is a major tool in this process known as redevelopment; eminent domain is local government's weapon of choice to demolish all resistance. But, as Greenhut demonstrates through instance after instance, this redevelopment dream is not only a nightmare for those whose property is taken, but a false idol for those expecting riches.



The rise of eminent domain is filled with Orwellian twists. The United States Constitution explicitly provides for eminent domain in its Fifth Amendment: "nor shall private property be taken for public use, without just compensation." But what is "public use"? What is "just compensation"? Both terms take on completely arbitrary meanings, whatever a local council or redevelopment agency wants them to mean.

[see **Masugi** on page 9]

In This Issue:

Property Rights vs. the New Regulation: The case of new urbanism.

Elliott Banfield on the problem of contemporary architecture, with special attention to Wal-Mart.

They *Take* a Village: Redevelopment in Claremont.

Lattes at the Regulatory Café

by Conor Friedersdorf

In San Francisco, where many of the world's ills are blamed on conservatives, I recently dined with a few acquaintances who bemoaned the spread of Starbucks in their city. They offered the usual complaint: big corporate chains like Starbucks drive independent coffee shops out of business, transforming unique enclaves into soulless, cookie-cutter communities.

As a resident of suburban Orange County, where every strip mall seems to contain a Starbucks, a Subway, or a Barnes & Noble, I sympathized with their frustration. I too like distinct little coffee shops, restaurants, and bookstores. But when they began to blame conservatives for the spread of chains, including businesses from Ace Hardware to Wal-Mart, I told my liberal friends that they had it exactly backwards.

Conservative policies aren't behind the spread of chains in America. On the contrary, the liberal impulse to regulate business has helped companies like Starbucks to spread faster than they would in a less regulated economy.

As the ordinances and laws that affect businesses grow, larger companies that are much better equipped to handle the complexities of these regulations have a decided advantage over smaller, single-store operators. And government leaders at every level—through ever-expanding regulatory, tort, and tax laws—continue to unwittingly shift the advantage to the big players.

Any small business owner could explain why.

Even a lemonade stand in Anytown, CA technically requires a business license, a visit from health inspectors, and a permit from the planning commission before it opens. A coffee shop presents a more daunting challenge—there will need to be bathrooms accessible to the handicapped, workplace safety rules posted on the wall, and liability insurance should a customer scald herself on a chai mocha.

"Reducing regulatory costs would help the independent business more than the chain, because it's a bigger percentage of their costs," Southern California economist John Husing said. "Chains can more easily bear high startup costs and short term losses given the staying power their financial resources afford."

Put more simply, Starbucks can afford to pay $10,000 upfront for a business license, a traffic study, and an environmental impact report. But

[see **Friedersdorf** on page 8]

The Cost of Illegal Immigration: The Burden on Law Enforcement *page 3*

Local Liberty

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

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From the Editor

Property Rights and the New Regulation

Local liberty will meet one of its most formidable tests in this year's Supreme Court term. The Court will decide a property rights case that may define the extent to which local governments can seize private property (the power of eminent domain) and transfer it to another private property owner (*Kelo v. New London* [Connecticut]). In another case from Hawaii (*Lingle v. Chevron*) the Court will determine whether a rent control law amounts to a "regulatory taking" of property. That is, does a cap on the profits an owner receives from his property amount to a seizure of it? In both cases the Court will have to address the impact of what can be called "the new regulation."

The old regulation involved direct government control of private property—for example, New Deal legislation empowering government to determine wages, prices, work conditions, and virtually any activity that has even the remotest and most indirect economic effect on "interstate commerce" or the economy. We have grown all too comfortable with such regulation but are beginning to see the deleterious consequences of much of it. We have become more appreciative of the benefits of the freedom that markets give to consumers and workers.

The new regulation moves beyond the economic security offered by the old regulation. Here the concern is for quality of life issues, such as the environment, housing, and urban design. Thus the Environmental Protection Agency has an Office of Smart Growth. The State of Maryland has a Secretary of Smart Growth. City planners learn this approach in their graduate programs. Smart growth involves a total approach to planning of communities. It might more honestly be called Total Control, a sort of communitarianism with a vengeance.

Smart growth presents a beautiful vision of urban and suburban life. Its appeal is the suburbanites one used to call Yuppies, whom journalist David Brooks has memorably dubbed Bobos—bohemian bourgeois.

But smart growth lowers the quality of life—housing is more expensive, taxes hamper growth, local government budget appetites expand. We now live under a regime in which the right to property has been politicized. That is, we no longer enjoy property as a natural right but rather at the pleasure of government. And the threat is more from local government than national.

To address this threat to property rights, the Center for Local Government convened a seminar in September that presented differing opinions on the new regulation. Besides smart growth, speakers assailed the current regulatory regime (see my page 1 review of Stephen Greenhut's book on growing eminent domain abuse), fanciful notions of redevelopment, and the worship by the urban intelligentsia of "smart growth." These are among the signs of the new regulation. Zoning remains a vital means of the older regulation. All of these threaten property rights to varying degrees.

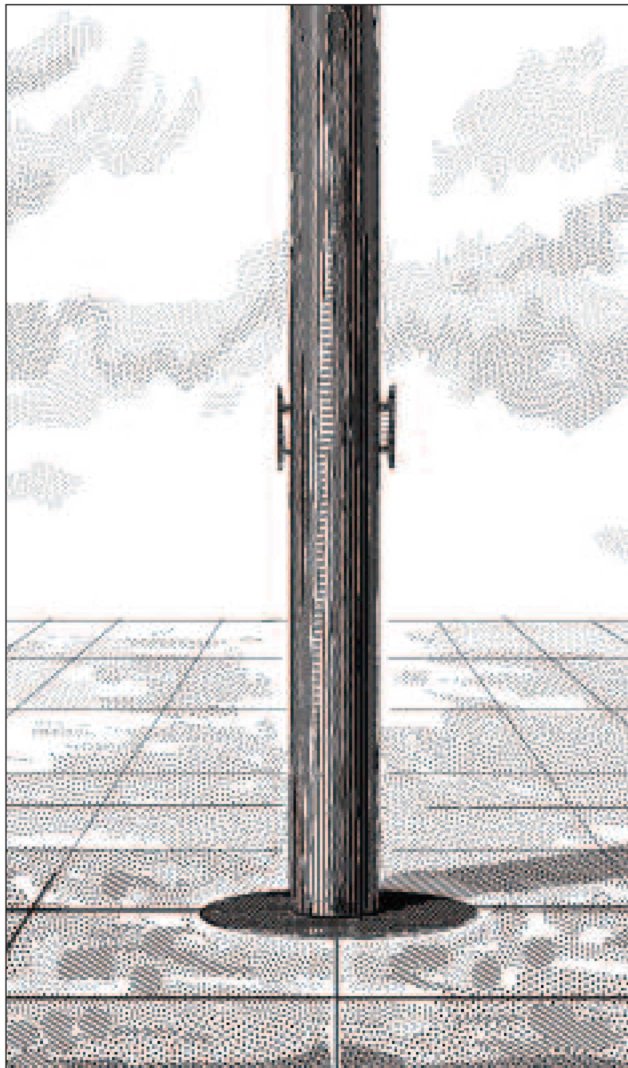
In addition, speakers addressed the serious recent movement known as New Urbanism, which does not necessarily call for all the regulation that is implicit in smart growth. The New Urbanists seek the option of organizing urban life in a way that integrates traditionalist architecture, building and street design, and town organization. They yearn for an alternative to an automobile-dependent culture. While New Urbanism does rely on a form of zoning they call the Transect, it is otherwise rebellious against much contemporary regulation, which they blame for not only encouraging but actually necessitating urban sprawl. It remains a question whether New Urbanism calls for another form of total control or whether it can actually be an ally of anti-regulatory forces. One hopeful sign is that new urbanist leaders will submit an amicus brief on behalf of the property rights advocates in the New London case. (For the Claremont Institute's brief see John Eastman's "Local Litigation" column on page 7.) With that question in mind, whether property rights are strengthened or weakened, whether communities are more livable for more people, *Local Liberty* will continue to devote much of its commentary to New Urbanist thinking.

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.*

utterly wrong. As we can tell from photos taken as recently as a century ago, the streets of our cities and towns had a "charm," or "magic" that "preservationists" try to protect wherever possible. This hard-to-define quality of magic was, in fact, due to the interlocking and interlacing of all the man-made elements in a given setting. The same piety that caused our ancestors to pray to the gods and to expect miracles and wonders was manifested in these elements and these settings.

The great discontinuity in this pattern of design burst forth around the year 1910: modernism exploded. An immense and unprecedented rejection of traditional authority began (or surfaced) at that time. History became bunk. Political revolutions shook the world. Evolution, Rationality, and Science triumphed. Classical art was demolished with a speed and a thoroughness that matched the fall of the Romanovs. A brave new world was about to be born, and many artists applied for the position of midwife. Objects like airplane propellers and shiny metal machines took the place of human and animal forms in the minds of designers. God, nature, and virtue were out; Science and machines were in. By 1940, modernism was firmly established in the various professional academies of design. Daily life (to judge from the record of artifacts) ceased to be a series of religious celebrations. Giant buildings where countless people lived and worked were constructed without any ornament or celebration of the blessings bestowed by the (deceased) Creator. Hand-painted signs that once modestly deferred to the decorum of the public street were replaced by huge billboards with pornographic images. Parking lots, shopping malls, gas stations, housing projects, office parks, trailer parks, fast food restaurants, and millions of shiny vehicles followed. Cost/benefit ratios, narrowly understood, dictated the form of urban spaces, transportation, and clothing. Visually, the harmonious mosaic of earlier times was replaced by discord in some places, by strangely menacing impersonality elsewhere.



c. 1956, from the Seagram Building; bronze, 12" dia.

For those (like Richard Posner; see page 309 of his book *Public Intellectuals*) who discern the secular aspect of the ancient style—its celebration of power and social status—these modern developments represent the triumph of democracy, progress, and rationality; the defeat of nostalgia, hauteur, superstition and melodrama. But for those who comprehend (however faintly) the symbolic meaning of the ancient style, the situation is not so rosy. For them, the newly minted objects that dominate our landscape and urban settings are loathsome symbols of nihilism and oppression. And it's not only Islamic terrorists and radical environmentalists who harbor such feelings. The vague distrust of modernism as a way of life and as a replacement for ancient piety is manifested in many ways. Let's suppose, for example, that Wal-Mart decided to build a store opposite the White House. From an economic point of view, this might make sense. But such a proposal would be greeted with outrage from the general public. And why? Economists have no answer to this question. But ordinary men, in their hearts (if not their heads), understand the situation better than the experts. They buy things at Wal-Mart, but they are also repelled by it. The blank facade with the huge logo makes an irresistible appeal to the pocket book, but it also represents a sense of futility, a sense of "what's it all for?" And to escape this moral vacuum, patrons of Wal-Mart load up their cars with their purchases, get out of the parking lot as fast as they can, and retreat to enclosed and protected spaces: to gated "communities," wildlife preserves, historic preservation areas, "New Urbanist" developments, National Parks, tropical islands; any place that allows them to forget the disturbing face of the modern world. (Economists are eager to point out the savings provided by Wal-Mart; they never talk about the cost of creating the protected spaces, nor about the costs of moving to and from them).

It is very easy to misunderstand the nature of the problem represented by the modern landscape, to which Wal-Mart makes a stylistically typical contribution. Most people would say that the problem is one of aesthetics: what we need are good designers to make our Wal-Marts beautiful. Wrong! An aesthetically attractive Wal-Mart would be just as depressing as an ugly Wal-Mart. It is the godless nature of modern philosophy—symbolized in the Wal-Mart façade—that is the root of the problem. Until the public can perceive the Wal-Mart store as a gift of God, it has no reason to regard it as anything but a boring intrusion. Once it is seen as a gift of God, on the other hand, the public will not rest until it pleases them artistically, and makes them proud.

Not long ago, a very able scientist, Steven Pinker, an expert in evolution and neuroscience, published a book *The Blank Slate* that contains a chapter titled "The Fear of Nihilism." The object of this chapter is to convince readers that Evolution is not only true, but that it offers more assurance to morality (and to morale) than faith in God. Pinker's arguments may be brilliant; they may be correct. But conviction in such matters doesn't come from the head. It comes from the heart. And, judging from the ongoing conflict over the design of our modern world, it would seem that the heart and the head are locked in unresolved combat.

Elliott Banfield is the Art Director of the Claremont Review of Books. *Samples of his artwork can be viewed at elliottbanfield.com*

The Design Dilemma

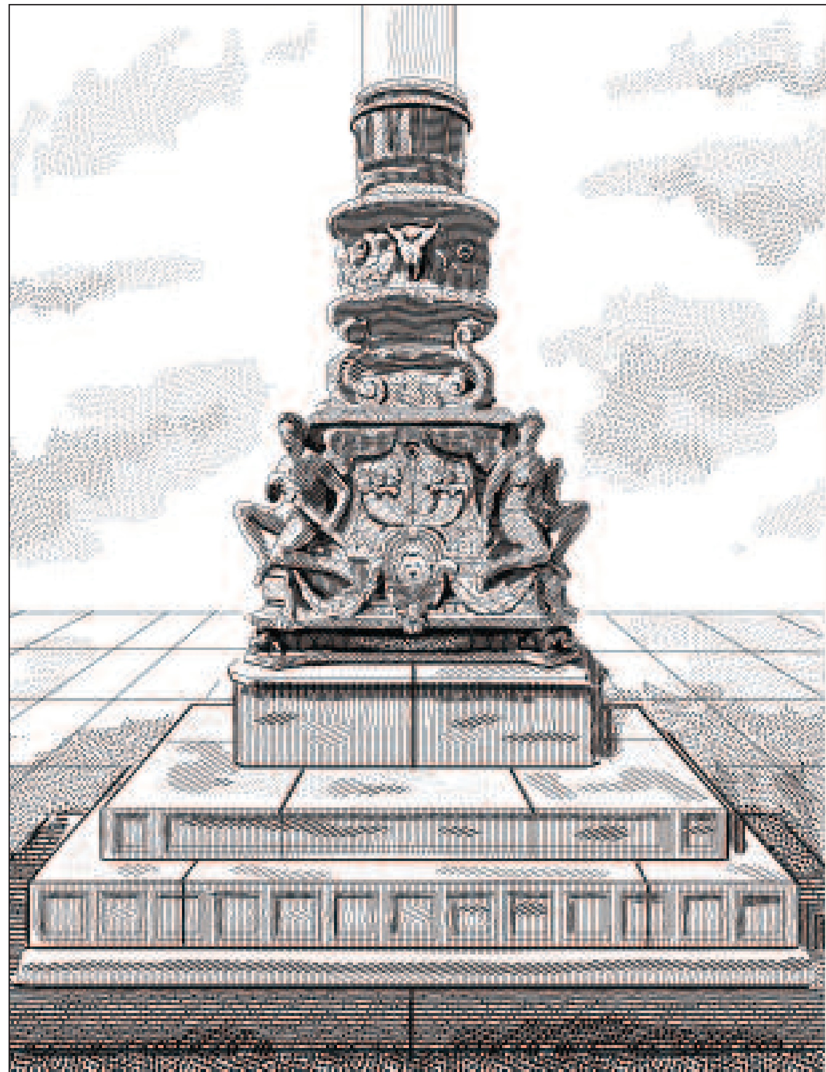
by Elliott Banfield

Back in 1959, the art critic Henry Reed published his book *The Golden City*. Its most striking feature was a series of pictures that contrasted old and new styles of architectural design. One of these comparisons is shown here. The flagpole base on the left, c.1910, is an immensely intricate and theatrical confection of marble and bronze, containing nude figures, scrolls, masks, and so forth. The newer work, c.1956, is a pole stuck into the ground. And the contrast afforded by this example is no mere accident or anomaly. The identical (and unprecedented) contrast of styles can be observed in thousands upon thousands of instances: as the decades of the 20th century passed ornate skyscrapers with broadly projecting cornices gave way to glass boxes, ornate streetlights gave way to "cobra head" streetlights, ornate banks gave way to ATM's, Fedoras gave way to baseball caps, high collars with silk cravats and jeweled stickpins gave way to tank tops, and postage stamps bearing portraits of Washington were replaced by stamps bearing doctored photos of Elvis.

But the victory of the modern "look" is not complete: the flagpole at the library is still in place. The older style of streetlight is coming back, here and there. Newly built houses often have a "traditional" look. Mass-marketed food is often packaged in ways that would not have surprised our grandparents: e.g., the Budweiser can. Today's typefaces look very much as they did in the Renaissance, despite the attempt of modernist designers to replace them with sans-serif designs. The new World War II memorial in Washington has incorporated many classical features. Of greater significance than these examples, perhaps, is a fear among the general public that "development" signifies "blight," that the old should be protected and defended from the assault of the new. In brief, I think that the battle between the two styles is not over, but is ongoing. And therefore, it's worth our time to ponder the following questions. How did such different approaches to design originate? How did the new style challenge the old style with such radical force? And what will the future bring?

In my view, the old style originated in religion: in the attempt to honor God.

Our ancestors lived precariously, subject to hardships that we can hardly imagine: in good times and in bad times they offered sacrifices to the deities they worshipped. These sacrifices entailed elaborate rituals, which required architectural display of the greatest magnificence. And everyday life was filled with ritual occasions of this sort: the act of going to war, of making love, of sharing food, of going to sleep at night, of writing a letter, of entering a house, and of merely appearing on a public street, were all occasions for addressing the deities. And throughout the ancient world, in Egypt and Babylon, in Greek cities, and throughout the Hellenistic and Roman world, people turned to artisans to mark these occasions with objects that would be pleasing to God (or the gods). The ornate flagpole base is a direct descendent of these objects: its ornamental details were copied directly from the remains of ancient temples of the Romans.



c. 1910, from the public library; marble and bronze, 12" dia.

The precedent set by the ancients was by no means put aside in later stages of history. When the Christian God became the object of worship throughout the West, the old traditions of design and craft were readily at hand. Whenever funds were available, the man-made environment was spontaneously filled with artifacts inspired by ancient works. Art historians have devoted much effort to the cataloging of different styles and periods, but their efforts have obscured the great truth that underlies, say the Greek temple, the medieval cathedral, and the Baroque church. These are like musical compositions played on different instruments: they have the same notes and same meaning.

The vast accumulation of artifacts over time in any given locality (it must be noted) formed something like a mosaic, or interlocking grid around communities. Everyday things like cobble-stoned streets, sheet metal ceilings, feathered hats, and painted signs, as well as great public buildings, constituted the pieces of this mosaic. The commonly held view that "Art" is (and should be) set aside from everyday life and placed in a special setting (such as a museum, an art gallery, or a hidden cave) is

Illegal Immigration and Crime

by James R. Edwards, Jr.

Immigrant criminality represents perhaps the worst abuse of the liberty aliens enjoy in the United States. Increasingly, the government closest to the people either finds its hands tied or cravenly abrogates its responsibility to fellow Americans within its jurisdiction. Moreover, the illegal element exacerbates the economic and other burdens caused by legal immigration.

The current high rate of sustained, mass immigration—more than one million legal immigrants plus half a million illegal aliens every year—forces many states and localities into turmoil. The illegals certainly live outside the obligations that those who live under the "consent of the governed" owe to each other: While the principles of the Declaration of Independence guarantee all human beings certain natural and unalienable rights, only parties who have consented to our government deserve the full rights of citizenship. Illegal immigrants are not part of the social contract giving legitimacy to this government. American citizens have not given their consent to higher taxes, crowded schools, jammed emergency rooms, clogged roads, unlawful turning of single-family homes into hotels or apartments into tenements, forced multicultural amenities such as bilingual education and multilingual ballots, or welfare and other services subsidizing poverty-prone immigrants. Above all, they never consented to higher crime rates.

While anyone who decries illegal immigration is required to distinguish it from legal immigration, the effects of legal immigration should first be noted. Robert Samuelson recently wrote in his *Washington Post* column that "Hispanics account for most of the increase in poverty" since 1990. "Compared with 1990, there were actually 700,000 fewer non-Hispanic whites in poverty last year . . . . Meanwhile, the number of poor Hispanics is up by 3 million since 1990. The health insurance story is similar. Last year 13 million Hispanics lacked insurance. They're 60 percent of the rise since 1990." And of course a growing proportion of the Hispanic population is immigrants poorer than their predecessors. Samuelson remarks that the black poverty rate in this period has actually dropped, from 32 to 24 percent.

To add to Samuelson's observations, consider the reports from the Center for Immigration Studies by its Steven Camarota and Harvard's George Borjas detailing the negative economic impact of recent immigrants on native-born wages and employment. Illegal immigrants impose an even greater burden, because they pay few taxes and they drain public services such as health care, education, and other benefits of the welfare state. While many federal programs deny assistance to illegals, many state and local programs and privileges are open to them.

The National Academy of Sciences found in a 1997 landmark study that immigrant-headed households in 1994-1995 placed a net annual fiscal burden on California native-born residents of $1,178 per native household. That is, each American family in California subsidized that state's immigrant population by nearly $1,200 a year.

Deputy David W. Marsh
Deputy David W. Marsh was murdered on April 29, 2002. The suspected killer is an illegal immigrant who fled back to Mexico, where anti-extradition laws prohibit his return for trial.

Photo courtesy of the *California Peace Officer's Memorial*, http://www.camemorial.org/

The NAS report also said fiscal impacts tend to benefit the federal government and drain state and local government resources. "Much like anyone else in the population, immigrants use services that are costly to provide, or that others can use less freely—so-called congestion costs. Examples include services from roads, sewers, police and fire departments, libraries, airports, and foreign embassies." Therefore, having a much larger immigrant population (29 percent of the U.S. foreign-born, a fourth of the State's population) bloats California's budget significantly.

The national government has exclusive power over immigration, and it has mandated certain public benefits for immigrants, legal or illegal, such as public education (see the 1982 Supreme Court case, *Plyler v. Doe*). States and localities then bear the costs and consequences of all immigration. And they respond differently, with differing consequences for their people.

The Florida legislature rejected a bill issuing driver's licenses to illegal aliens. Kansas state legislators voted to give illegal aliens in-state college tuition. Alabama and Florida state police work closely with federal immigration enforcers. New York, Los Angeles, and Chicago have "sanctuary" policies that keep city employees, even police, from asking about immigration status. An Idaho county commissioner billed Mexico for the $2 million illegal aliens owe for county services.

The impact is seen particularly in crime: Record-high auto thefts in Arizona, drug trafficking in Salt Lake City, human smuggling rings in Los Angeles, D.C. sniper Lee Malvo, money laundering, prostitution, gang murders, and even slavery. Immigration authorities estimate that 84,000 state inmates are aliens, though state and local figures on foreign-born prisoners are hard to come by. At least three quarters of these immigrant state inmates are in Arizona, California, Florida, Illinois, New Jersey, New York, and Texas—the top immigrant destinations.

Police officers at the local or state level are the law enforcement officials most likely to encounter illegal aliens. Local residents are the crime victims of these aliens. Local, county, or state jails house many of the foreign criminals. Local, county, or state criminal justice systems try these lawbreakers. And local, county, and state taxpayers pay the costs of law enforcement and criminal justice associated with the crimes that immigrants, legal and illegal, commit.

Figures for 1999 State Criminal Alien Assistance Program compensation show claims of $1.5 billion in documented costs incurred by state corrections and local jails for covered aliens. County governments face a special burden, a 2001 report by 24 Southwestern border counties calculated. They spent, from general funds, $894 million on law enforcement and criminal justice in fiscal year 1999. Many of the costs that criminal aliens impose on all state, county, and municipal jurisdictions are not represented in such figures. To cite just one California example, San Diego now spends $50 million a year to handle illegal criminal aliens.

The underworld network built up by millions of alien lawbreakers, who by and large have no fear of capture or of being held accountable, enabled the September 11 terrorists to operate undetected. Latino illegal aliens in Northern Virginia helpfully showed several of the terrorists the ropes on how to secure Virginia driver's licenses fraudulently.

The advancement of "political correctness" and multiculturalism has caused politicians to be less willing to challenge limitations on their authority over resources. Local and state politicians in heavy immigrant-receiving areas have instead expanded immigrant eligibility for public benefits, welfare, assistance programs, health care programs for those without private insurance, and driver's and other licenses. Some states and localities have begun to accept the Mexican *matricula consular* ID card, though it has been determined to pose a great risk to U.S. national security. Even before the recently reported crossing of 25 Chechens into Arizona, authorities knew that the illegal aliens pose a national security problem.

Dealing with current levels and quality of legal immigration is an immense problem by itself. But it is clear that until alien criminality of every kind is punished, swiftly and surely, Americans who must live with the consequences will continue to suffer higher taxes, lower quality of life, higher threat and fear levels, and less actual safety.

James R. Edwards, Jr., a 1998 Lincoln Fellow with the Claremont Institute, is an adjunct fellow with the Hudson Institute and coauthor of The Congressional Politics of Immigration Reform (1999).

They *Take* a Village:

Redevelopment in "Blighted" Claremont

By C. Robert Ferguson

Claremont is one of the most affluent cities in Southern California. It is the home of the prestigious Claremont Colleges. Property values are rising rapidly. The heart and civic center of the city is the Claremont "Village," which includes City Hall, the county library, and numerous trendy shops and restaurants within approximately 14 blocks of tree-lined streets.

In 1973, the Village and the area to the west were declared a physical, social, and economic liability. Deemed "blighted," they became a redevelopment project. With the power of redevelopment, the City, its Redevelopment Agency, and two private developers redesigned and are redeveloping the area west of the Village at the cost of five existing businesses, a storage facility, and $2.25 million.

Redevelopment in California began in 1952 after the adoption of a new state constitutional amendment, Article XVI, Section 16, which permitted the creation of redevelopment agencies and their financing through tax increment. Tax increment provides a never-ending source of revenue.

After a redevelopment project is adopted, taxes on real property in the project area are divided between the original taxing agencies and the redevelopment agency (typically the city council under a different legal label). The taxing agencies (for Claremont, 16 entities including the County, school, flood control, and water districts, fire department, etc.) and the redevelopment agency/city council receive the amounts they would have received before the adoption of the plan, plus additional, small, statutory amounts. The remainder of the tax increment—i.e., the additional property tax—is the revenue from the additional values assessed after the adoption of the redevelopment plan goes to the redevelopment agency/city council.

In addition to financing through tax increment, redevelopment agencies also have the power to take property by eminent domain and to issue bonds without the two-thirds voter approval that is otherwise required in California. The agencies are responsible for new streets, sidewalks, curbs, gutters, landscaping signage, signals, public parking, trunk lines for sewers, storm drains, and communication and electricity. Redevelopment agencies are also responsible for demolition and grading.

Cities, through their redevelopment agencies, have these extraordinary powers for a reason, however questionable. Redevelopment was intended to revitalize blighted communities by reversing the decline of urban slum neighborhoods which have been rendered economically useless and a liability to the community. Also, there must be "true blight" as exemplified by the kind of inner-city slum conditions described in the *Bunker Hill* case. There, it was found that unacceptable living conditions were 82 percent, unacceptable building conditions were 76 percent, the crime rate was double the city's average, the arrest rate was 8 times the city's average, the fire rate was 9 times the city's average, and the cost of city services was more than 7 times the cost of tax revenues.

Unfortunately, rather than curing blight, redevelopment today is primarily used to recycle real property by using eminent domain to acquire parcels and sell them at a discount to a developer. Instead of private capital paying for the construction of streets, curbs, and sidewalks, redevelopment agencies often pay for them. The benefit to the city is increased sales tax and more upscale residences and commercial businesses.

To cure this misuse of redevelopment for private commercial benefit, the California Legislature enacted a statute that requires that 20 percent of the redevelopment tax increment be used for low- and moderate-income housing. As a general rule, however, this mandate is honored more in its breach.

The City of Claremont adopted a redevelopment plan which included the Village by passing City Ordinance 73-8. By doing so, the Claremont City Council declared that "blight" existed in the Village. Yet in its description of the Village's physical, social and economic conditions, the Claremont Redevelopment Agency described it as follows: The existing structures "were fairly well maintained"; residents were described as "predominantly white, of moderate income, and either elderly or young families with children"; economic conditions were "characterized [*sic*] by relatively static retail sales and a lack of dynamic growth in the commercial facilities."

In 2000 the Agency and City Council again reviewed the question of blight in the Village. The Claremont City Council found that the Village was indeed blighted. This "finding" was made despite the fact that the Village remains a vibrant, active area where rents are so high that several local businesses went out of business. According to the Redevelopment Agency's staff, "The Claremont Village is one of the most successful small downtown areas in Southern California. Parking spaces are nearly full most hours of the day, even into the evening, and there are virtually no commercial and retail vacancies in the Village."

Home prices around the Village are no longer affordable for most of the elderly or young families with children. Because the findings of blight were not challenged within 60 days after their adoption, they cannot be challenged.

The idea of expanding the Village across Indian Hill Boulevard, the main north-south street in Claremont, began in the early 1990s. The City decided to take what it termed a "proactive approach" to the expansion. Initially, the approach was directed to potential development, which evolved into the actual development of shops, a theater, a hotel, cafes, and offices. The development was initially called "Village West." But because this label struck fear into the hearts of the existing merchants, the Agency changed the name to "Village Expansion."

The City and the Redevelopment Agency wanted to ensure that the Village grew in an orderly, thoughtful manner that reflected the community's standards, "not just the whims of private developers" (Village Expansion section of Council Briefing Paper, 2002). But the Redevelopment Agency had already hired two consultants: One was a private residential developer; the other a private commercial developer.

The governmental "process" for developing the Village west of Indian Hill Boulevard began in 1998. That year, the Claremont Planning Commission began preparing a Specific Plan for redeveloping the area west of the Village into a mixed-use residential and commercial area. In January of 2001, the Village Expansion Specific Plan was adopted by the Claremont City Council. City officials

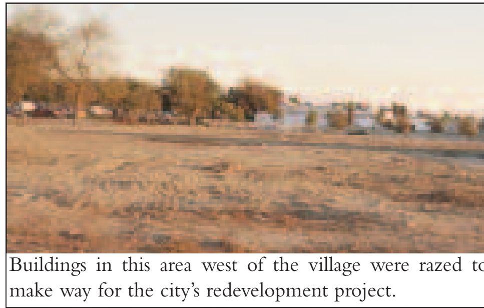
Masugi [continued from page 1]

Much of what Greenhut describes used to be known as "urban renewal." The new practices adopt the original purpose of urban renewal, the elimination of "blight," while transforming its meaning. "Blight," he explains, "now means an area a city wants to take by force. Nothing more. The city merely goes through a legal process (studies, hearings, and a redevelopment agency vote) of designating it as blight and then, voila, it is blighted." Hence, middle-class home owners, apartment dwellers, and small business owners (not wealthy huge corporate moguls) are eminent domain's victims. Indeed, big-box retailers are more likely to be its perpetrators. Local government brings in national chains (e.g., Wal-Mart) that undercut smaller, local businesses.

One stunning example is the North Hollywood redevelopment project, notable for its visions of grandeur and spectacular failure. To the cost of over $117 million in public money, the area is now worse off than before. The designation of "blight" was enough to destroy the normal, market-driven growth that might have occurred in the area, making its recovery even more difficult.

From the original intent to eliminate slums, the use of eminent domain has degenerated into corruption masquerading as statesmanship and delusion sold as sound public policy. The complete arbitrariness of "blight," "public use," and "just compensation" is the point *Abuse of Power* makes over and over. Public officials have visions of a big–box retailer (or a cluster of them) or splendiferous, tax-revenue-generating malls full of exotic shops, movie theaters, and restaurants replacing apartments, a strip mall full of shops, or even respectable homes. Greenhut portrays a formidable coalition of redevelopment agencies, developers (especially big-box retailers such as Costco), and attorneys who specialize in condemning property as "blighted." Example after example completes a horrific picture of the wielding of arbitrary power and the collapse of individual rights that makes "totalitarian" seem appropriate, not hyperbolic rhetoric.

Moreover, the promised riches are more often than not missing. The redevelopment process lends itself to financial abuse. Greenhut explains, "Redevelopment agencies must incur debt by floating bonds. It's


Buildings in this area west of the village were razed to make way for the city's redevelopment project.

part of the law.... The bonds can be floated without a public vote. As a result, the small town of Brea, 36,000 population, has total redevelopment indebtedness of nearly $435 million." Once in debt, the temptation is to win the money back in yet another gamble involving abuse of someone's property rights.

Among the vulnerable are churches and other religious institutions. Since "God does not pay taxes," houses of worship are often perceived by local government as financial losers. In a decision that may indicate a turning point, the Orange County city of Cypress recently lost a case in federal court involving their attempt to transfer property from a church to a tax-generating Costco. (Greenhut might have added physicians' offices as well, for medical bills are not taxed.)

While Greenhut's focus is on southern California communities such as Garden Grove and Brea, he spends considerable time explaining how eminent domain became readily and even routinely abused. The problem is particularly acute in California, due, oddly, to limitations on local government taxation authority imposed by Proposition 13. By restricting local government tax revenue raised from property taxes, Proposition 13 forces them to consider other sources of revenue. This is a perverse, unintended consequence of a vital tax-relief measure.

The discouraged should take heart at the halt to the redevelopment effort in Lakewood, Ohio, by Lake Ontario, featured on *60 Minutes*. Here eminent domain went dramatically too far: "So any house that didn't have three bedrooms, two baths, a two-car attached garage and central air conditioning was blight. That encompassed 90 percent of the city's homes, including that of the mayor's. These are historic neighborhoods." The homes were to be swept away in favor of luxury condominiums and chain stores that would garner more taxes for the city. A vital neighborhood was reduced to an economic statistic and was almost eliminated but for the fight in one couple who publicized the unfairness of the proceedings. They rallied their dispirited neighbors, went before the Cleveland city council, and eventually had their rights strengthened by local initiatives, after voting their local mayor out. The retiree couple kept their home, as did their relieved albeit tension-wracked neighbors.

Greenhut supplies ample evidence that the free-wielding use of eminent domain is an essential part of the early 1900s Progressive revolution's determination to overturn the principles of the American Founding, especially the protection of property rights. Particularly revealing are the astonishing arguments of two attorneys who defended eminent domain: "Judges should not use anachronistic notions of absolute property rights to thwart critical land use planning, economic growth, jobs and the communities' best interests."

There are some signs, Greenhut's book among them, that the ready embrace of redevelopment is decreasing. The corruption, the financial disappointments, and the plain unfairness of what has happened have incensed citizens. But the practice has become so entrenched in local government that it remains a struggle to de-legitimize it. Just as the Founders fought tyranny in its eighteenth-century form that deprived fundamental rights, so we 21st-century Americans must rediscover that "property rights are human rights" and fight the tyranny of eminent domain abuse.

Next Issue . . .

Ken Masugi reviews Clint Bolick's *Leviathan: The Growth of Local Government and the Erosion of Liberty.*

W.B. Allen notes Ronald Reagan's observations on local government.

Islam in the inner city, a discussion of President Bush's faith-based initiatives, new Local Litigation, and much more.

Claremont Publications

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

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Mark Helprin and Angelo M. Codevilla on how to win the war on terrorism.

Steven F. Hayward on Ronald Reagan's education.

Reviews by William A. Rusher, James Q. Wilson, Carnes Lord, Jaroslav Pelikan…and much more!

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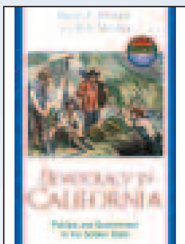
Claremont Books Review California

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



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

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

For more information and to order your copy, go to the Center for Local Government's website at: www.localliberty.org

Friedersdorf [continued from page 1]

those same costs prove prohibitive for some independent entrepreneurs. The result: a society with more chains like Starbucks and fewer independent stores.

Of course, chains do enjoy inevitable market advantages unconnected to government. A McDonald's franchisee brings a worldwide marketing campaign, a streamlined supply network, and extensive market research to the table as he or she battles the independent operator next door.

"Wal-Mart will go to China, buy a million TV sets, ship them to a local warehouse and hold them until right before a sale," Husing said. "An independent store can't compete with that." And developers often prefer to build chain stores, both because they draw customers into their shopping centers and because lenders are loathe to lend money for shopping centers that don't include known tenants.

But regulatory policies add to the advantages enjoyed by chains—and the big corporations know it. That's why corporate lobbyists, who one might expect to advocate laissez-faire capitalism, often end up backing new regulatory burdens that choke off half their industry.

As Robert Bartley famously wrote in a *Wall Street Journal* editorial:

"Self-interest finds a way to get itself expressed, and the business giants have rather equivocal interests in free enterprise. They always have the option of doing everything left-handed and backwards if that's what the government wants; indeed, that kind of regulation gives them an advantage over less durable competitors.…So don't look to big business for unequivocal defenses of capitalism. We guess that's up to the folks at XYZ Bumperlight Lens."

In California, the defenders of free market capitalism include small Italian bistro owners who want to serve wine but can't afford a state issued liquor license, and aspiring beauticians who can't afford the health department certification process required to cut hair. The result: the Olive Garden and Supercuts get richer. And Californians have fewer choices when they go to wine and dine or get their hair cut.

Tax and labor laws hurt small businesses too.

The Small Business Administration estimates that small businesses spend 60 percent more per employee than their larger counterparts to comply with federal regulations. A small business owner doesn't have time to keep current on tax and employment laws like the accountants and human resource managers at bigger enterprises.

In California, the workers' compensation system advantages larger businesses that can afford to set aside funds for payoffs; smaller businesses—which can't spare enough cash to meet the reserve requirements for opting out of the state system—pay higher premiums each year.

At the local level, state tax laws that limit property tax revenues have caused local governments to compete for big box retailers that bring in sales tax to city coffers. Redevelopment agencies, which cities use to recruit such companies, have also tipped the balance in favor of bigger operators, which get incentives when they come to town, and spawn zoning laws catered to big retailers.

Even the courts can hurt small businesses, as frivolous lawsuits—made possible by poorly written consumer protection laws—cripple small entrepreneurs who can't afford costly court battles even when they are in the right.

A Beverly Hills law firm recently proved a damning example. In less than a year, The Trevor Law Group sued thousands of small businesses for alleged violations of the now infamous Section 17200 of California's Business and Professions Code. The law allows any citizen to file suit against any business for any unfair business practice. According to the *Riverside Press-Enterprise*, the firm sought $5,000 from one business owner for the high crime of abbreviating the words "on approved credit" to "O.A.C." in a print advertisement.

Many businesses settled such shakedowns out of court to avoid a costly battle. But even when the firm's tactics were exposed—and its attorneys disbarred—Democratic lawmakers in California's legislature refused to repeal Section 17200, arguing that it served a valuable role protecting consumers.

In fact, the law did remedy unfair practices at times, helping some consumers. But it drove numerous innocent entrepreneurs from business, and raised the risks of private enterprise so that other entrepreneurs never even opened shop.

When Al's Auto Shop went out of business, consumers who preferred it to AAMCO or Midas were out of luck.

In sum, big government in any form almost inevitably hurts small business. There is hardly an end to the phenomenon, and new liberal policies currently favored by Democrats—a higher minimum wage, expanded family leave programs, employer provided health care for part-time workers—promise to exacerbate the advantages enjoyed by chains.

As government meddles more in business, campaign contributions and lobbying also become business costs, touching off a cycle that further hurts smaller players.

Of course, some laws that hurt small businesses bring benefits. It's surely desirable, for example, that people with handicaps have access to the local sandwich shop. But liberals who decide which goods to impose on business never seem to acknowledge that there's no such thing as a free lunch.

Every good comes with an attendant cost—in this case, the preponderance of chains that liberals frequently bemoan, sometimes over lattes at Starbucks.

Conor Friedersdorf is a southern California journalist.

laud the fact that during all the planning there were numerous public meetings: "The Village Expansion Specific Plan is based on a series of planning principles developed through an extensive public participation process. Each of the components of the Specific Plan was reviewed by City commissions at various meetings." Yet a majority of members of the public who attended these meetings has stated that the public's conclusions and recommendations fell on deaf ears and that city staff simply adopted the recommendations of the two consulting developers. The two developers that were originally hired as consultants to design the new Village were then hired by the Agency to build the new Village.

The Redevelopment Agency states that the success of the existing Village cannot be taken for granted and there are many examples of once-successful shopping districts that have deteriorated after being neglected by business owners and city officials. But these conclusions overlook the fact that the Village businesses do not, and because of high rents cannot, neglect their businesses, and that city officials in City Hall are in the Village.

The Agency claims that Claremont finds itself in an increasingly competitive marketplace. Will the market or the whims of two consulting developers provide the solution? The Agency argues that communities throughout Southern California are building new retail developments designed to attract consumers from outside city limits. The Village, however, is not a development. Claremont residents buy many of their goods outside of Claremont. They visit the Village for the ambiance, the good restaurants, and the specialty items available there.

The Agency seeks to create additional space for new businesses that want to open in the Village but does not answer the question of whether this includes large chain stores. The new Village would also provide larger retail spaces for businesses that want to expand. But if the demand is there, do the businesses need the Agency to grow? Thus, it is possible for the Agency to change radically the character of the Village, in defiance of public opinion.

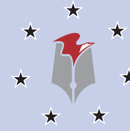
The Agency also maintains that it is addressing the community's need for additional housing and taking advantage of the demand for homes near public transit rail stops, especially in pedestrian-oriented downtown areas. This goal was consistent with the purposes of redevelopment in that the City's Vision Statement of 1999 provided that 10 percent of the homes in the new Village development would be available to low- and moderate-income buyers. This was repeated in the Agency's draft five-year Implementation Plan for 2000–2004, where the Agency's staff proposed approximately 90 new housing units with 10 percent of them affordable to low- and moderate-income buyers.

The original "Vision" is no longer there. The residential developer is now developing what appears to be up to 256 units with no affordable units available for low- and moderate-income buyers. The units are being sold in phases. The first-phase units were made available first to the developer's employees and other "VIP buyers" (developer's language from their advertising). The units are now in phases two and three and are selling for between $377,990 and $435,990. The prices have increased with each new phase. In terms of low- and moderate-income residents, the Agency will only commit to striving to make some units affordable to moderate income households.

If the Village is the heart of Claremont, the backbone of the city is Indian Hill Boulevard that bisects the existing Village from the west. Starting from the south, the properties along Indian Hill were owned or occupied by a vacant area owned by the City and the Agency, a small City parking area, a successful veterinarian, an established real estate broker, a one-story house converted into an accountant's office, and a computer service store next to a two-story office building. On the street behind was located an ice house acquired for lease by the Agency and a television studio. There was also a public storage facility—unattractive, but not visible from the street.

To make way for the planned commercial development, all business properties on the west side of Indian Hill Boulevard for 2 blocks, from the veterinarian to the computer service store, along with the ice house, television studio and storage facility, were acquired by eminent domain or its threat. All of these structures, except the property occupied by

[*see* **Ferguson** *on page 6*]



THE CLAREMONT INSTITUTE

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About the Claremont Institute

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

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

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Ferguson [continued from page 5]

the computer store, have been or will be demolished. The building that was a computer service store is now occupied by an upscale men's store leased from a new owner. (Two separate sources state that the new owner is the mother of the majority owner of the commercial developer/consultant). These previously viable businesses will be replaced by a six-screen movie theater concentrating on art films, a hotel and restaurant, a bookstore, and additional retail stores. All of these amenities, however, can already be found at nearby malls, within the Village itself, or on the campuses of the Claremont Colleges [Editor's note: The veterinarian held out the longest. The story of his struggle was published in the Winter 2002 issue of *Local Liberty* and can be found at the Center for Local Government website, www.localliberty.org.]

The Agency's initial cost is approximately $2.25 million. Significant revenues are projected, and the Agency estimates recouping costs in approximately 4 years. This does not account for the fact that the land is being sold to the developers at "fair" value instead of "fair market" value, which means a significant

discount to the developers and a corresponding loss of actual revenue to the Agency. Historically, redevelopment agencies generally project significant amounts of future revenue. In practice, little revenue is received; very often, none is.

Ultimately, at the cost of a number of viable businesses and a substantial out of pocket cost to the Agency, the Village expansion may work out well. But it may leave the existing Village a wasteland. Or it may fail and end as described by California Court of Appeal Justice Fleming when he wrote in *Regus v. City of Baldwin Park*: "But the landscape is littered with speculative real estate developments whose profits turned into *pie in the sky* . . . ." (italics by Justice Fleming).

Mr. Ferguson is an attorney who practices in the field of land use and who lectures throughout California on redevelopment abuse.

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Local Litigation

By John C. Eastman

First the status reports: The Supreme Court denied our petition for *certiorari* in *Angle v. Guinn*, in which we asked the Supreme Court to review directly the Nevada Supreme Court's decision ordering the Nevada Legislature to ignore the two-thirds tax vote requirement of the Nevada Constitution. But the case continued in the U.S. Court of Appeals for the Ninth Circuit on a parallel track, challenging the actions of the State Legislature itself. Our petition for *certiorari* in that case is due October 20.

The Supreme Court likewise denied our petition for *certiorari* in *Rancho Viejo LLC v. Norton*, in which we contended that the expansion of the federal Endangered Species Act to wholly intrastate, non-commercial toads exceeded Congress's power to regulate commerce among the states. The same day that the Supreme Court was voting to deny our petition, though, the U.S. Court of Appeals for the Fifth Circuit handed down a decision in the parallel Texas cave bugs case, *GDF Realty Investments, Ltd. v. Norton*. Six of the federal judges on the Fifth Circuit Court joined an opinion by Judge Edith Jones expressly acknowledging that the Fifth Circuit's reasoning in the case was in direct conflict with the reasoning of the D.C. *Circuit in Rancho Viejo*, and impossible to square with the Supreme Court's recent decisions in the Commerce Clause area.

The Claremont Institute filed an amicus brief in support of the petition for *certiorari* in the *GDF Realty* case in early September, urging the Court not only to take that case but to revisit the *Rancho Viejo* case as well. A decision from the Court is expected in early October, and the entire controversy over the extent to which federal environmental laws having nothing to do with interstate commerce are valid is addressed by me in a chapter in the recent issue of the *Cato Supreme Court Review*.

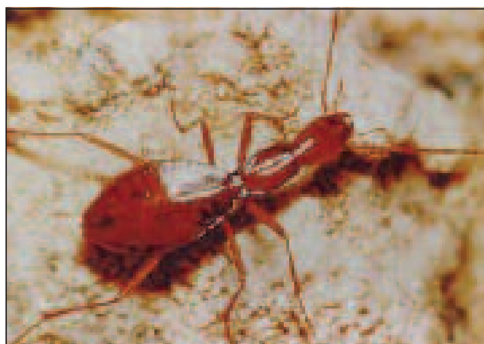
Now for the new matters. The Institute is preparing an amicus brief in yet another case involving the Boy Scouts. The ACLU filed suit in San Diego trying to invalidate the City's half century-old lease with the Boy Scouts to operate a summer camp in Balboa Park. District Judge Napoleon Jones sided with the radical claims proffered by the ACLU, finding that the Boy Scouts was a religion and that, as a result, the City's lease amounted to an unconstitutional establishment of religion. Unless the decision is overturned on appeal (and the City itself has joined forces with the ACLU, paying it $950,000 in attorneys fees and promising not to appeal the decision), the Boy Scouts will be kicked out of their summer camp, and the millions of dollars in structural improvements it has made over the years will revert to—you guessed it—the City of San Diego. The Institute's brief before the Ninth Circuit is due in mid-October.

New
The new, politically correct LA County Seal includes a mission lacking a cross.

Old
Tha ACLU got a majority of the LA County Board to drop the cross (and the goddess Pomona).

The Supreme Court granted review of an important property rights case out of New London, Connecticut, to consider whether a local redevelopment agency can take non-blighted property from one private individual and give it to another private individual merely because it likes the proposed new use better. One of the new members of Center for Constitutional Jurisprudence's Academic Board of Advisors, former Lincoln Fellow and St. Louis University Law Professor Eric Claeys, will be working with me and Claremont Institute Senior Fellows Thomas West and Edward Erler to craft an amicus brief reminding the Court of the long-ignored limits on the eminent domain power.

Finally, my students—this past summer's Blackstone Fellows and this fall's Chapman Law School clinical students—and I have been busy tracking developments in Los Angeles County, where the ACLU Foundation of Southern California threatened suit against the County if it did not remove a small cross from its County Seal. Despite numerous promises by religious groups around the country to defend the County pro bono, a 3-member majority of the County Board of Supervisors voted to excise the cross (and the religious, missionary history of the region that it represented) from the County Seal. On September 29, I and the Claremont Institute's Center for Constitutional Jurisprudence, joined by cooperating counsel Manny Klausner of the Individual Rights Foundation, William Becker, and Don Wagner, filed suit against the County and the three Supervisors in both their official and their personal capacities, contending that the decision was an illegal waste of taxpayer funds and demonstrated an unconstitutional hostility toward religion. News coverage of the suit has been extensive locally, and the matter has also received attention nationally. Be sure to check the Institute's website for more details as the suit unfolds. www.claremont.org/projects/jurisprudence/index.html.



Texas Cave Bug
The Tooth Cave Ground Beetle , one of the endangered "Cave Bugs" that are holding up development on private land.

Photo courtesy of the Texas Parks and Wildlife Department, http://www.tpwd.state.ex.us/, 10/19/04. The use of this picture does not imply an endorsement of the TPWD or the state of Texas for the Claremont Institute or our use of this picture.

John C. Eastman is Director of the Center for Constitutional Jurisprudence of the Claremont Institute. The fifth anniversary of the Center was celebrated this past September 17, Constitution Day, at a dinner honoring California Supreme Court Justice Janice Rogers Brown. A former clerk of Justice Clarence Thomas, Eastman teaches at the Chapman University School of Law. He has a Ph.D. in government from Claremont Graduate University and a J.D. from the University of Chicago Law School.

Read the daily commentary of John Eastman, Ken Masugi, and several other Claremont Institute staff and friends at the weblog of the Claremont Institute: **The Remedy: A Survey of the American Mind**
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