far we are from it. The genius of the GOP's strategy in public education reform has been to show the goal, measure the failure, and leave the remedy to the people, especially the local authorities.

Having now made good progress on the first two strategic steps, standards and assessment, the third, and final, step is establishing accountability, which will be achieved when failure to meet standards has real consequences. Here, Governor Wilson proposed AB 1901, shot down by the Legislature this spring, returning as a November initiative. The most interesting part of Wilson's package is creation of an "Inspector General," independent of the DOE, to crack the whip over low achieving districts. Of course, local school boards and parent groups are the preferred accountability agents, and the STAR results should give them the information they need to be effective. Wilson's parent-led "on site" councils, provided they are not dominated by mediocre administrators, could become useful barriers to the multicultural counter-universe's loony tunes agenda.

GOP Senator (and lieutenant governor nominee) Tim Leslie recently excised from his "accountability" legislation (SB 1561) a very bad idea — state use of the existing accreditation agency, a creature of the fuzzy educrats: WASC (Western Association of Schools and Colleges). Unfortunately, when bad ideas need new homes there is always Senator Vasconcellos, whose SB 1963 accommodates it, again calling on WASC to judge the schools. However, this is now a Democrat idea, so the GOP, with the governor's help, may kill it.

Two final points: The centralizing influence of statewide standards and tests should be ameliorated by the innovation and variety more charter schools with greater freedom from statewide regulation would bring, as long as the charters' performances are measured by STAR or a successor test.

Second, the key now is a little patience. It took 40 years of liberal self-esteem schemes and union excesses to get us into this mess. Now, finally, we have an honest test and the rudiments of real standards. Let's trust the locals for a few years; let them work their own way out from the left's errors.

THE LAW

Chief Justice or Chief Scofflaw?

"... nor shall private property be taken for public use without just compensation."
— the Fifth Amendment to the U.S. Constitution: omitted in Ron George's version?

MARK S. PULLIAM

"In his dissent in First English *[a 1987 U.S. Supreme Court decision], Justice Stevens articulated the precise argument on which the majority relies here .... The majority of the high court considered Justice Stevens's argument* and rejected it. *Now, the same argument has found new life in the majority opinion here." (Emphasis in original.)*

WHAT IS the occasion for this scolding being administered by a dissenting judge to his activist colleagues? Who is blowing the whistle on a judicial *coup d'etat?* Is it conservative Ninth Circuit Judge Alex Kozinski admonishing Stephen Reinhardt for ignoring controlling precedents in the latest skirmish of the culture war? No. The words above are those of moderate California Supreme Court Justice Ming Chin in a recent land use case criticizing the majority (including Chief Justice Ron George) for defying a U.S. Supreme Court decision. What is remarkable about this case, *Landgate, Inc. v. California Coastal Commission,* 17 Cal. 4th 1006 (1998), is that Ron George feels comfortable — in an election year — joining the majority in a 4-3 decision that ignores U.S. Supreme Court cases directly on point.

No sooner had Chief Justice Ron George done his obligatory impersonation of a conservative by ruling in favor of the Boy Scouts in *Curran* and *Randall* — al-

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WHAT DO PROPERTY LAW EXPERTS THINK OF *LANDGATE?*

Mark S. Pulliam

CPR's legal issues correspondent queried some of California's leading property law experts about the significance of *Landgate.* This is what they had to say:

Michael M. Berger, Esq., of Berger & Norton in Los Angeles (who argued *First English* in the U.S. Supreme Court): "The majority opinion is a finger in the eye of the U.S. Supreme Court. The California Supreme Court is in direct defiance of the U.S. Supreme Court. *Landgate* gives the Coastal Commission free reign to do whatever it wants to property owners, without fear of liability."

Kenneth B. Bley, Esq., of Cox, Castle & Nicholson in Los Angeles: "The majority opinion is flabbergasting. The California Supreme Court has read the possibility of a regulatory taking out of the California courts. *Landgate* misreads the Constitution."

James S. Burling, Esq., of Pacific Legal Foundation in Sacramento: "The majority opinion shows an appalling disregard for the law of takings. This Court has shown a systematic aversion to finding that governmental entities can be liable to property owners for all manner of regulatory abuses."

Professor Bernard H. Siegan, University of San Diego Law School: "This decision is clearly contrary to the tenor of *First English,* and will encourage government agencies to make errors at the expense of property owners, by insulating them from the consequences of 'temporary takings.'"

beit for evidently unprincipled reasons (see "'Whatever It Takes'?," *CPR* (May/June 1998) — than he reverted to the "centrist" approach that endeared him to O.J. defense counsel Gerald Uelmen. In *Landgate,* decided on April 30, George sided with the Court's liberals (Stanley Mosk, Joyce Kennard, and Kathryn Werdegar) to insulate the California Coastal Commission from liability to land owners who were erroneously deprived of the use of their property for *two years* without justification. The 4-3 majority disregarded the U.S. Supreme Court's holdings that "temporary takings" are compensable under the Fifth Amendment. Because property rights are protected by the U.S. Constitution, and on matters of federal law the decisions of the U.S. Supreme Court are binding on the state courts, the California Supreme Court is obligated to follow high court precedents on a takings issue. The majority's lawless holding in *Landgate* was too much even for Chin, George's companion on the November ballot and normally his ally. Chin dissented because he found the Coastal Commission's actions indistinguishable from those held by the U.S. Supreme Court to be actionable in the 1987 case *First English.* With her typical gusto, Janice Brown wrote a separate dissent accusing the majority of "judicial impudence" for flouting controlling Supreme Court decisions. Marvin Baxter joined in both dissents.

In *Landgate,* the Coastal Commission forbid a Malibu Hills property owner to build a house on a 2.45-acre lot because the Commission had not approved a legally-recorded lot boundary line adjustment previously obtained from Los Angeles County. (The property line between the Malibu Hills lot and an adjoining parcel, both already zoned for single family homes, was adjusted so that a road the County planned to build on part of the property would not bi-sect either lot; the road itself was approved by the Coastal Commission.) The Commission's refusal to permit construction of a house rendered the property valueless. The property owner challenged the Commission's position in court and won on the ground the Commission had no jurisdiction over the lot line adjustment. The property owner then sued for the "taking" of the use of his property during the two years the Commission had erroneously asserted jurisdiction over it. The trial court ultimately awarded the property owner $155,657. The Court of Appeal affirmed, finding that the Commission's treatment of the lot line adjustment issue was not an innocent mistake but a result of "the Commission's ongoing jurisdictional spat with the County of Los Angeles, combined with a desire to prevent Landgate from building on its parcel."

THE CALIFORNIA Supreme Court's majority opinion in *Landgate* reversed the Court of Appeal and ruled in favor of the Coastal Commission on the ground that a legally erroneous decision of a government agency during land

use approval that results in a delay is merely part of the "normal" regulatory process, even if it deprives property owners of all economically viable use of their property. The Supreme Court found that the Commission *had* erred innocently, throwing out the lower Court's contrary finding, and concluded that such "good faith" mistakes by land use regulatory agencies do not violate the Fifth Amendment.

The majority's position directly contradicts the U.S. Supreme Court's 1987 decision in *First English,* which held that *exactly* the kind of government restrictions on use of private property imposed by the Coastal Commission in *Landgate are* takings and, thus, under the Fifth Amendment, are compensable, even if temporary. The U.S. Supreme Court specifically held that a property owner can seek compensation for denial of the use of his property during the period he was challenging an invalid land use restriction. The Court reached this result despite a dissenting opinion from Justice Stevens making the same argument advanced by the majority in *Landgate.* This is what Chin's dissent politely but firmly pointed out.

JUSTICE JANICE Rogers Brown's dissent was more firm and less polite. Brown's tightly-reasoned rejoinder bristles repeatedly over what she clearly sees as the majority opinion's thoroughgoing dishonesty: its tendency to "chatter endlessly," to engage in "judicial legerdemain," and to employ "tortuous logic," its willingness to frame the issue in a "tendentious formulation," to "dodge the otherwise inevitable result by changing the question," to apply a "squishy" multi-factor test in lieu of the applicable "categorical rule," to ask a "trick question," and "joust with its own strawman." Quoting authorities ranging from James Madison in *The Federalist Papers* to P.J. O'Rourke's *Parliament of Whores,* Brown skewered the majority for trivializing property rights — the bedrock of a free society — and for flouting controlling precedents of the U.S. Supreme Court. Brown's hard-hitting opinion, filling nine pages in the official reporter, ends with these words:

> When the answer to every question about what the public needs or wants or should have is always "more," the demand for free public goods is infinite. Against this relentless siphon, the takings clause, and the Courts' ardent defense of it, stands as a last lonely bulwark of property rights. It is, and will continue to be, a difficult rampart to maintain. That difficulty is built right into our constitutional structure. But in one area at least we have arrived at a clear understanding: When the government denies all economically viable use of property, even temporarily, it may not achieve its ends by a shorter cut than the constitutional way of paying for the change. In these limited circumstances, government must turn square corners — except in California. (Citation omitted; internal quotation marks deleted.)

By casting the deciding vote in favor of the Coastal Commission, and disregarding controlling constitutional law principles in the process, Ron George is responsible for this miscarriage of justice. This egregious display of activism cannot be ignored as "abortion politics" or as an aberrational departure from an otherwise sound judicial track record. Neither can the activism of *Landgate* be justified as a interpretation of the California Constitution; unlike some of the George Court's other controversial rulings, this one did not involve "independent state grounds." The *Landgate* ruling is a rogue decision, the work of a majority contemptuous of the rule of law. I hesitate to use the term, but by casting the deciding vote in *Landgate,* Ron George has revealed himself to be a scofflaw. Our Chief Scofflaw. No wonder Dianne Feinstein agreed to co-chair George's campaign.

The justices' voting pattern in *Landgate* perfectly illustrates the current composition of the Court: ranked from left to right, the justices range from arch-liberal Mosk, Kennard, George/Werdegar (indistinguishable in most cases), Chin, Baxter, and the fearless, incisive Brown. She is without question the "star" on the Court. In *Landgate,* Mosk wrote the majority opinion, but George cast the deciding vote. George rarely votes with the minority; he prefers to be aligned with the winners. In a flattering assessment of Ron George's first year as chief justice, former Rose Bird apologist Gerald Uelmen observed in the *California Lawyer* that the Court has seen an unusual number of 4-3 decisions since George succeeded Malcolm Lucas as chief, and that George "is in the majority in every case .... His dissent rate has dropped to zero."

In *Landgate,* however, he stood to "win" either way: by supporting property rights and upholding the rule of law, or by flouting the Bill of Rights and U.S. Supreme Court precedents in support of an oppressive agency trampling property rights. George chose his side. To some observers, this decision is the most telling proof of his true colors. To Pete Wilson, George Deukmejian, and George's other defenders, I ask: how can you defend this? CPR

The Decline of American Civility

Moving from market to political competition exchanges initiative, prudence, and efficiency for favoritism, subsidy and protection. And civility falls among the casualties.

WILLIAM R. ALLEN

HAVE WE become more nasty and brutish over the last generation or two, or have the media just developed a keener eye for beastly behavior and now report it more fully? Steven Knack, while a doctoral candidate in economics at the University of Maryland a few years ago, cited evidence that civility has in fact declined. "... think of voting as just one particular type of socially cooperative behavior," he suggested. But the proportion of eligible voters actually going to the polls has fallen dramatically in recent decades.

There are other signs. Crime rates are higher now than 40 years ago. A smaller fraction of adults read newspapers and magazines or even watch television news, which may mean that today's citizens are less well informed. The proportion of young scholars on college campuses who cheat on exams reportedly has doubled since the 1960s. Charitable contributions, adjusted for income and other factors, have been declining since the late 1940s. Income tax compliance has fallen. All this, along with casual impressions of rudeness on the highway and crudeness in public expression, suggest a dismaying decline in civility.

Why? Mr. Knack suggests a weakening of traditional sanctions on abusive, self-indulgent behavior. Families, neighbors, and community institutions like churches have less influence today. And greater urbanization and mobility make it easier for individuals to escape accountability for the costs they inflict on others. Still, he overlooks another likely, and perhaps even more pervasive cause: a marked increase in political competition.

Competition in various manifestations occurs in all societies, for people want more than available resources can supply. The pie is smaller than combined appetites, so people compete for slices. But while competition is inevitably a fact of life in a world of scarcity, the *method* of competition varies widely among communities and over time. In *market* competition, people compete for a slice of the social output pie by offering something in exchange. But an individual will have more to offer in exchange — and thus be able to acquire more — by first *producing* more that the community values. Market competition induces people to *produce,* contributing to others' wellbeing. By competing for some of the pie, people end up baking a bigger one for the community.

Political competition is basically different. Here, rivals try to persuade government to *give* them slices of the pie produced by *others.* This method of competition brings forth belligerent conflict, for it directs efforts from producing the pie to demanding its political redistribution. The essence of the competitive game shifts from market initiative, calculated prudence, and economic efficiency to seeking selective favoritism, wasteful subsidization, and inhibiting protection by Big (and Little) Brother. Insidiously, political competition subverts respect for other people and their property rights and appreciation of their productivity. Victims, too, are manners and morals, which share with formal property rights the task of controlling and coordinating individuals' behavior for the community's benefit.

Civility pertains to more than personal gentility. At the societal level, civility must be made manifest in institutions, rules of the game, and processes which lead aggressive, grubby people to mesh and meld their self-interested efforts in such manner that community well-being is enhanced.

Political competition has been persistently edging out market competition for much of this century. Perhaps we should pay attention to this lamentable encroachment when trying to comprehend the decline of American civility. CPR

William R. Allen, of UCLA, is about as civil and otherwise cuddlesome as economists ever are.