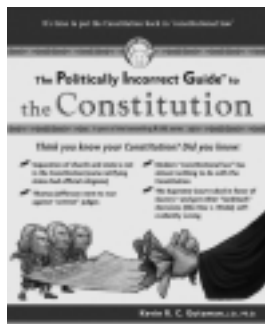

Book Reviews

The Politically Incorrect Guide to the Constitution

by Kevin R. C. Gutzman

Regnery • 2007 • 258 pages • \$19.95 paperback

Reviewed by J. H. Huebert



Conservative commentators often tell us that if only we would get back to the Constitution as it was understood, say, 100 years ago, all would be well with our Republic again.

The reality, however, is not so simple. It's true that government was smaller before the New Deal, when presidents, Congress, and judges sometimes considered themselves more constrained by the Constitution than they do now.

The problem is that, apart from a few amendments, we had the same Constitution then as now. Our supposedly sacrosanct Constitution created a government that became *our* government. Whatever nominal restraints the Constitution contains weren't enough to stop this from happening, as Lysander Spooner noted in "The Constitution of No Authority."

Kevin Gutzman tries to show where things really went wrong in his new book, *The Politically Incorrect Guide to the Constitution*—and to his credit, he at least goes back further than the New Deal.

Gutzman shows how the Constitutional Convention had three factions, rather than the usual two that are taught in civics classes: the monarchists (who were extreme nationalists), the nationalists (a.k.a. the Federalists), and the true federalists (a.k.a. the Anti-federalists). In Gutzman's unorthodox account, the Anti-federalists actually won at the time of ratification. Despite remaining skepticism among many Anti-federalists, the states signed on to the Constitution only because they had been assured that it would respect federalism. Since that interpretation was an implicit condition of their ratification, Gutzman says that is the correct interpretation; the Constitution cannot be read to

give the federal government any more power than the states agreed to.

Whatever the states may have understood, and however "correct" their interpretation may have been, the key people in all three branches of the national government soon showed that they did not consider themselves so constrained.

An early offender against federalism was not an FDR appointee, but Chief Justice John Marshall, who among other things defined the Constitution's "Necessary and Proper" clause as allowing Congress to use any means "convenient" to exercising its power; he began the abuse of the Commerce Clause that today allows Congress to do almost anything it likes.


Whatever the states may have declared or understood in ratifying the Constitution, its language was highly susceptible to a nationalist interpretation like Marshall's, as the Anti-federalists pointed out. Over the years, federal courts have gone much further in that direction, putting ever more power in the hands of the federal government and the courts in particular, as Gutzman documents well. Of course that's what the Constitution's authors—monarchists like Hamilton and nationalists like Madison—wanted in the first place.

How could things have ended otherwise?

Gutzman doesn't say so, but these problems will be inherent in *any* constitution. A legal document will always be open to multiple interpretations (some more strained than others), and when the government gets to interpret its own rules, it will of course choose an interpretation that gives itself more power in the long run. Without the people's eternal vigilance, the nationalists will prevail.

Gutzman thinks strong legislatures, especially at the state level, are preferable to our powerful federal judiciary because voters can at least hold legislators accountable to some extent. But the Congress's actions, with and without judges' help, and its high reelection rate show that this option is hardly more appealing than the status quo.

Gutzman admits in his final chapter that federal courts will not soon adopt his judicial philosophy, so the whole issue is rather academic. Nonetheless, he offers much more than the usual conservative clichés and provides a history of the Constitution's creation

and ratification that is worth knowing, if only to see how the Constitution's creators pulled the wool over so many people's eyes—and continue to do so today. 

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The Pearl Harbor Myth: Rethinking the Unthinkable

by George Victor

Potomac Books • 2007 • 365 pages • \$27.50 hardcover;
\$18.95 paperback

Reviewed by Robert Higgs



Almost from the moment the Japanese bombs began falling on the U.S. fleet at Pearl Harbor, the prime question has been, “What did President Franklin D. Roosevelt and his subordinates know about the impending attack, and when did they know it?” A series of official investigations during and immediately after the war failed to silence the president’s critics or to satisfy those who were skeptical about the official explanations. Even now, the debate continues. George Victor’s *Pearl Harbor Myth* is the latest substantial contribution to this controversy.

Although Victor, a retired psychologist, might seem an unlikely candidate to make an important contribution, and presents no new evidence, he adeptly exploits the relevant official reports and historical literature. He expresses his account in clear, fact-filled prose, highlighting the inconsistencies in various testimonies.

He finds that the Roosevelt administration deliberately provoked the attack, knew it was coming, and did not attempt to stop it. Yet Victor describes himself as an admirer of Roosevelt and declares that “moral and legal judgments are outside the purpose here.” If the president and his lieutenants conspired to bring the United States into the war in Europe through the Pacific “back door,” he concludes, they did only what all governments sometimes do—conspire, blame scapegoats, and then cover up their conspiracies by destroying evi-

dence, coercing witnesses, and lying—and they did it for an excellent reason, to save the world from conquest by Hitler.

The government conducted this Machiavellian maneuvering because the great majority of the populace opposed entry into the war unless the United States were attacked. Hence Roosevelt, who ardently desired (and worked relentlessly) to take the country into the war, needed to incite such an attack to unify the people in support of U.S. entry. “Establishing a record in which the enemy fired the first shot was a theme that ran through Roosevelt’s tactics.” Despite hostile but clandestine U.S. naval actions against German ships and submarines in the North Atlantic in 1941, the Germans refused to take the bait.

On the other side of the world, more than two years of U.S. economic warfare against Japan had placed the Japanese economy in a tightening stranglehold. War was almost inevitable, yet for Roosevelt’s political purposes it remained imperative “that Japan commit the first overt [military] act,” as a dispatch from Washington cautioned General Walter Short, the Army commander in Hawaii. Short and the Navy commander, Admiral Husband Kimmel, were set up as the fall guys to be blamed for lack of preparation when the U.S. forces at Pearl Harbor were caught “by surprise” in a “sneak attack”—such surprise and sneakiness being key elements of the enduring myth that Victor aims to explode.


As Secretary of War Henry L. Stimson wrote two weeks before the Japanese attack, “the question was how we should maneuver them into the position of firing the first shot without allowing too much danger to ourselves.” The attack “was expected to get Congress to declare war on Japan. The crucial needs were to save the Soviet Union [from a Japanese invasion] and have Japan attack in circumstances that would move Congress to declare war on Germany.”

Why didn’t the President instead make a frank, straightforward request that Congress declare war, explaining why he considered U.S. entry into the war to be desirable? Because he thought that approach would fail.

On December 2, 1941, Roosevelt “told a subordinate that he expected to be at war with Japan within a

few days. On December 4 [Secretary of the Navy Frank] Knox told a subordinate the same [thing].” Yet Short and Kimmel were not alerted to the attack that high officials in Washington expected to occur shortly. Mid-level army and navy officers had urgently recommended that the commanders in Hawaii be warned, but their superiors had rejected those pleas.

After news of the attack reached Washington, Roosevelt convened his War Council. According to Harry Hopkins, “[T]he conference met in not too tense an atmosphere because . . . all of us believed that . . . the enemy was Hitler and that he could never be defeated without force of arms; that sooner or later we were bound to be in the war and that Japan had given us an opportunity.”

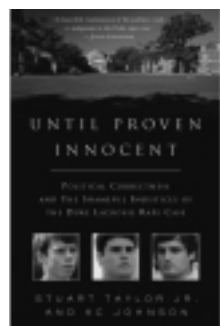
Although Victor’s apology for the Roosevelt administration’s aggressive, devious actions during the years preceding the attack on Pearl Harbor strikes me as highly problematical, I recommend *The Pearl Harbor Myth* as a thorough, clearly written, and generally even-handed account of the events that led to U.S. engagement in World War II. For the typical American, still clinging to the myth, the book will be a revelation. 

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Until Proven Innocent: Political Correctness and the Shameful Injustices of the Duke Lacrosse Rape Case

by Stuart Taylor Jr. and KC Johnson
Thomas Dunne Books • 2007 • 405 pages • \$26.95

Reviewed by George C. Leef



In an infamous 1931 case, several black youths were arrested in Alabama and charged with raping two white women. Those young men—eventually called the Scottsboro Boys—could have been executed for the crime. Newspapers throughout the south wrote about the case as if the defendants’ innocence was inconceivable. It perfectly fit the reigning

stereotypes—white women were virtuous and black men were vicious sexual predators.

As it turned out, the accusers had lied. The women were sure they could play on the prejudices of law-enforcement officials to cover up their own indiscretions, so they made up a story. Good work by dedicated defense attorneys ripped apart the prosecution’s case and the defendants were freed.

The Duke lacrosse case of 2006–07 mirrored the Scottsboro incident. A black woman, Crystal Mangum, hired as a stripper (almost always referred to in the media as an “exotic dancer”) at a party thrown by the captains of the Duke University lacrosse team, showed up so drunk that she passed out after just a few minutes. Later, to avoid possible legal consequences from her drunkenness—she had two young children—she told a nurse that she had been raped at the party. The nurse, eager to credit the story, said that some of Crystal’s injuries were consistent with rape.

After that, the case grew like a wildly malignant cancer. A police official with an animosity toward Duke students got his hooks into the case and drove it relentlessly, but never with any interest in finding out what actually occurred. Then the district attorney, Mike Nifong, a white man who desperately wanted to win favor with the predominantly black electorate in Durham, seized on the case as his salvation. He never bothered to investigate the accuser’s veracity—she told several different and inconsistent versions of the alleged crime—but instead took to calling her “my victim.” Flagrantly violating prosecutorial rules, he rushed to indict three Duke lacrosse players.

The media had a field day with the case. Story after story in papers ranging from the *New York Times* to the *Durham Herald-Sun* excoriated the accused players with ideologically tendentious pieces that presumed not just guilt but racism. Yet that was nothing compared to the academic left on campus—Duke’s and many others. To leftist professors, the case seemed to be the perfect validation of their worldview that America’s evils stem from oppression on the basis of race, gender, and class. Their speeches and articles seethed with righteous indignation over the alleged crime.


Until Proven Innocent is a thorough recounting of the case by veteran political columnist Stuart Taylor and

Brooklyn College history professor KC (Robert) Johnson. In exasperating detail we learn about the shoddy police work and abuses of prosecutorial power by DA Nifong. By the time Taylor and Johnson reach the climax of the story—Nifong’s disbarment and removal from office—readers will yearn for condign justice to be meted out to the many villains of the piece.

Alas, there was no justice for the Duke officials who went along with the lynch mob, nor for the professors who eagerly pronounced guilt and demanded punishment of students who had committed no crime at all. The authors make it clear that in the minds of many of those academics, the concept of guilt has little to do with individual conduct. White male students from well-to-do families are necessarily complicit in the whole oppressive, exploitative class structure of America, so punishing some of them is good, whether or not they actually committed any crime.

One big lesson from the book is how poorly our justice system works. Police and prosecutors often have their own agendas and will obliterate the truth if it suits them. Perhaps the fact that the vicious Nifong has been disbarred and branded as a criminal himself for lying in court will cause prosecutors to think twice before trying to railroad defendants into prison just to make themselves look good. But maybe they’ll think it was just a fluke that he got caught.

The other big lesson is that many university professors who incessantly proclaim their dedication to “social justice” don’t care a whit about true justice. Even after the case unraveled as a hoax, many of them continued to defend their previous statements, claiming that “the narrative” about how dominant classes oppress the subservient classes must remain vital.

What the case demonstrates, however, is that injustice doesn’t fall along the lines of race, class, and gender. It falls along different lines—those who wield coercive power and those who don’t. Thus the book not only tells a crucial story, but also supports the libertarian critique of modern society. 

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Dry Manhattan: Prohibition in New York City

by Michael A. Lerner

Harvard University Press • 2007 • 351 pages • \$28.95

Reviewed by Robert Batemarco



Give the Prohibitionists this much credit: they didn’t just preach to the choir. They brought their battle to its most formidable opponent—New York City. Unfortunately, their cause was misguided, providing a textbook’s worth of examples of the law of unintended consequences. In his book *Dry Manhattan*, Michael Lerner (associate dean at Bard High School Early College in New York City) not only portrays the impact of Prohibition on the Big Apple in fascinating detail, but also offers key insights into the political process that both made Prohibition possible and led to its demise.

While people with some knowledge of history are aware that Prohibition created opportunities for corruption, filled the coffers of organized crime, undermined respect for the law, and made drinking more dangerous but no less common, Lerner offers specifics that lend greater immediacy to those things than mere statistics can. He writes, for instance, “[M]ore new pharmacies opened in New York between 1920 and 1923 than in the ten previous years combined, undoubtedly because pharmacies, which could legally dispense prescription whiskey, offered a perfect front for bootleggers.”

The part of the book I found most enlightening was the confluence of political factors that enabled Prohibition to pass. Lerner highlights the role of the Anti-Saloon League in assembling the coalition that obtained ratification of the Eighteenth Amendment. In doing so, he makes clear that much more was at stake than simply eradicating the social consequences of alcohol abuse. The Prohibitionist movement was driven by a nativist desire to remake urban and ethnic America in the image of the Anglo-Saxon heartland, combined with a Progressive penchant for social engineering. Saloons made an obvious target. The connection between saloons and corrupt politics had given them a


bad name. For instance, in New York City, saloons played a central role in Tammany Hall's graft and vote-buying and helped launch many political careers. However, in urban immigrant communities the saloon was much more, serving a multiplicity of social functions, including providing a bridge "between the old world and the new, places where newly arrived immigrants could learn from their predecessors and begin the often painful process of adapting to a new homeland." (Many of those functions were soon to be usurped by the welfare state.)

But the factor that served as a tipping point ensuring ratification was America's entry into World War I. In the shadow of wartime hysteria, Prohibitionists demonized brewers and distillers for their predominantly German ancestry, then played the patriotism card to muzzle dissent. As passage of alcohol prohibition started to assume an air of inevitability, owners of motion-picture theaters and producers of such putative liquor substitutes as tea, soft drinks, and ice cream opportunistically jumped on the bandwagon, hoping to get their share of dollars that had been spent on alcohol. A bit of deceit also helped put Prohibition over the top. It was never made clear that beer and wine were to be prohibited as well as hard liquor. Once Prohibition took effect, its selective enforcement against Jews, Catholics, and ethnic minorities furnished strong evidence that "the main objective of the dry lobby was to police the habits of the poor, the foreign-born, and the working class."

Prohibition had its economic impact, too, and the author displays a better grasp of economics than most

historians. He does not take at face value the allegations of either "wets" or "drys" that every increase or decrease in employment and inflation was the result of the Volstead Act, which implemented the Eighteenth Amendment. Rather, he sees through their fallacious reasoning and understands that other events, such as the Federal Reserve's credit creation, had a much stronger impact on macroeconomic variables.

The book concludes with the repeal of Prohibition. The heroine of Lerner's account in bringing about repeal is Pauline Sabin, a one-time Prohibition supporter who reached beyond her own upper-crust background to assemble a winning coalition for repeal. Lerner paints Franklin Roosevelt less heroically, showing how he waffled on this issue until the eve of his nomination.

In all, this is a well-written narrative of a disturbing episode in our history, filled with local color that makes it especially interesting to New Yorkers. Despite being clearly in the anti-Prohibition camp, Lerner covers both sides in a fair-minded way. Yet there is something bittersweet in his conclusion that "New Yorkers who opposed Prohibition rejected the idea that the state had a right to dictate the private conduct of its citizens." These same New Yorkers would embrace the state's "right" to control rents for apartments and prevent citizens from owning guns. 

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