

# BookTalk

## REGULATIONS THAT REPRESS

By Clint Bolick

*Only One Place of Redress: African Americans, Labor Regulations, & the Courts From Reconstruction to the New Deal*

By David E. Bernstein

Duke University Press, 191 pages, \$39.95

Jim Crow segregation is widely considered an historical relic, long ago meeting its well-deserved demise. But in the realm of enterprise, there are pervasive laws at every level of government hampering the ability of minorities and the poor to earn a living, almost as if Jim Crow lived on.

Legal scholars and historians have written much about segregation laws and other blatant examples of discriminatory state action against African Americans, notes author David Bernstein, an associate professor at George Mason University School of Law. By contrast, the literature on more subtle discriminatory laws, such as labor legislation that served to restrict African Americans' access to the labor market, is sparse.

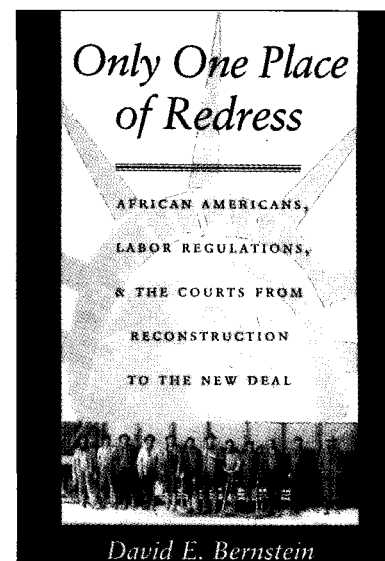
Bernstein sets out to fill the gap in *Only One Place of Redress*, chronicling the blizzard of national, state, and local laws that discouraged enterprise among blacks and immigrants from the Civil War to the New Deal. Many of the laws were not overtly aimed at blacks or other minorities, but their impact was felt most keenly there. Occupational licensing laws, for example, especially hurt blacks and other newcomers. Many such laws remain on the books today. Licensing laws effectively cut off the lower rungs of the economic ladder for people

with little capital or formal education.

The Davis-Bacon Act exemplified the protectionist laws of the first half of the twentieth century. The law originally was proposed in 1927 by Rep. Robert Bacon of Long Island, who was alarmed about low-paid black Southerners coming into his district and taking jobs away from white, unionized construction workers. By 1931, when the Depression intensified competition for scarce jobs, the law was enacted, requiring contractors to pay prevailing wages on all federal construction projects. The law removed the economic incentive to hire unskilled black laborers, and the black unemployment rate in the construction industry has remained far higher than the white rate ever since.

The one place of redress to which Bernstein refers is the courts, which could safeguard against oppressive state laws, including restraints on enterprise. For a while, especially after the post-Civil War passing of the Fourteenth Amendment, they did just that. In the late 1800s, the U.S. Supreme Court nullified a San Francisco law forbidding laundry businesses from being housed in wooden buildings. The law was ostensibly enacted to protect public health and safety, but in was really meant to drive Chinese entrepreneurs out of business. In the landmark 1905 *Lochner v. New York* decision, the Court invalidated a maximum-hours law for bakery workers designed to protect unionized German workers against competition from Jewish and Italian immigrants.

The period of searching legal review was short, however. The *Lochner* era ended with the New Deal, when the Supreme Court relegated economic lib-



erties to unprotected status, where they have essentially remained ever since. Meanwhile, civil rights groups abandoned efforts to protect freedom of enterprise in favor of political empowerment and affirmative action.

Bernstein's book makes a unique and serious contribution to the quest to protect freedom of enterprise. It demonstrates that government is often the oppressor, not the savior, of the oppressed. Bernstein shows how the beneficent facade of many economic regulations actually masks protectionist objectives. This untold history underscores the need to remove oppressive barriers to opportunity that have persisted far too long.

Clint Bolick is litigation director at the Institute for Justice and author of *Transformation: The Promise and Politics of Empowerment*.

## KING OF NEW YORK

By George J. Marlin

*Empire Statesman: The Rise and Redemption of Al Smith*  
By Robert A. Slayton  
Free Press, 480 pages, \$30

Finally, a biography befitting the greatest twentieth-century leader of urban America: New York Governor Alfred Emanuel Smith. Responsible for a dizzying array of public works and social legislation, Smith was a remarkable repre-

sentative of and advocate for the city and state of New York.

Born in the shadow of the Brooklyn Bridge in 1873, 13-year-old Al dropped out of grammar school upon the death of his father, a manual laborer, to take on various menial jobs to support his penniless family. After spending long hours rolling fish barrels at the Fulton Fish Market (in later years he would boast that his alma mater was F.F.M.), Al would spend his leisure time participating in parish plays and oratory contests. It was at these activities that he caught the eye of Tammany Hall district leader Tom Foley. Hired by the clubhouse as a county process server, Smith advanced to municipal court clerk, state representative, speaker of the Assembly, Manhattan sheriff, president of New York City's board of aldermen and, in 1918, election to the first of four terms as governor.

Smith was certainly one of the most colorful politicians of the Roaring '20s, known for his brown derby hat, wide striped suits, ever-present cigar, and a gravelly New York accent that was instantly recognizable on the "raddio." By 1928, he was convinced the time had come for the inner cities to promote one of their own to lead the national government—and who better epitomized the role of urban leader than the governor of New York? Described in Franklin Roosevelt's 1928 nominating speech as the "Happy Warrior," Al Smith went on to be the first Roman Catholic nominated for the presidency by a major party.

Most political analysts agree that America's prosperity made it impossible for any Democrat to be elected president in 1928; still, the campaign was savagely fought. Al Smith had felt the back of the hand of the Knickerbocker crowd, who were repulsed by the waves of immigrants invading New York's shores. But he didn't anticipate the viciousness and hatred unleashed by the dark powers of prejudice. Anti-Catholics and anti-urban bigots portrayed Smith as a captive of the Tammany Hall brothel and the "whore of Babylon"—the Pope.

Slayton devotes several well-researched chapters to the campaign waged against the governor. An *American Standard*

headline proclaimed "Rome Suggests That Pope May Move Here." Another publication held Smith responsible for all of urban society's perceived ills: "card playing, cocktail drinking, poodle dogs, divorces, novels, stuffy rooms, dancing, evolution, Clarence Darrow, overeating, nude art, prize fighting, actors, greyhound racing, and modernism."

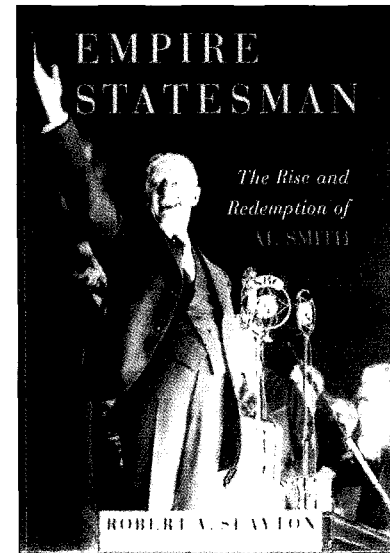
Smith lost badly to Hoover, receiving 40.7 percent of votes cast. However, he won 6 million more votes than any previous Democratic candidate for president, and for the first time, a Democrat carried America's inner cities. Smith's candidacy laid the foundations for FDR's victory four years later.

In January 1929, Smith turned over the keys to New York state's executive mansion to his hand-picked successor, Franklin Delano Roosevelt. After 32 years of public service, Citizen Smith became a member of the private sector, but remained a major voice in politics.

When Roosevelt became the 1932 presidential candidate, many pols tried to prevent Lieutenant Governor Herbert Lehman from moving up to the governor's chair. Brushing aside their thinly veiled anti-Semitism, Smith threatened that if Lehman were not nominated, he would run for mayor of New York City in 1933 and throw the Tammany gang out of City Hall. When one boss demanded to know on what ticket he presumed to run, Smith replied, "On a Chinese laundry ticket I can beat you and your crowd." Lehman went on to serve his state as governor for eight years.

For the last 70 years, however, the Left has held a grudge against Smith. They have never forgiven his political break with FDR and cannot accept that he was to the right of the New Deal. To rationalize Smith's "lapse" in judgment, they portray him in his final years as a bitter drunkard.

Slayton refutes that charge, and restores Smith's legacy by proving that the "piece of the puzzle often overlooked was that Al Smith and Franklin Roosevelt actually did have ideological differences, that Smith really did object to expansion of the federal government." Slayton points out that "Smith himself wrote that the Democratic Party has been 'since the



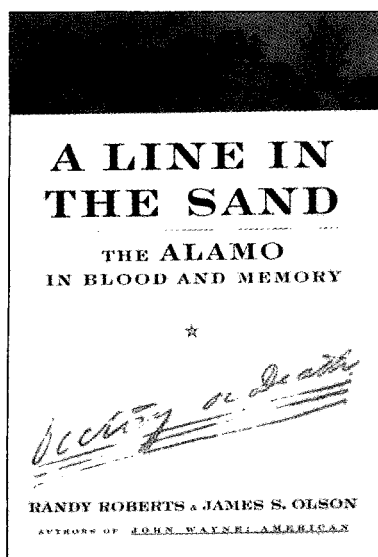
*Back then Democrats opposed  
centralized Federal control,  
and supported  
individual and states rights.*

days of Jefferson, the party opposed to highly centralized Federal control, the party of individual and states rights."

In 1936, Al Smith, disgusted with the excesses of the New Deal, "took a walk" from the national Democratic Party. "The regulars were out on a limb holding the bag, driven out of the party," he declared, "because some new bunch that nobody ever heard of in their life before came and took charge and started planning everything." Al's party of the neighborhoods was becoming the party of the social engineers.

Robert Slayton's *Empire Statesman* restores this legendary figure whose plain talk and actions made government responsible and accessible to his beloved common man.

George Marlin is general editor of *The Collected Works of G.K. Chesterton* and author of the forthcoming *Fighting the Good Fight: A History of the New York State Conservative Party*.



*Respect for valor  
lives on  
amidst life's whirl.*

## REMEMBER THE ALAMO!

By William Murchison

*A Line in the Sand: The Alamo in Blood and Memory*

By Randy Roberts and James S. Olson  
Free Press, 352 pages, \$26

Who doesn't know, or think he knows, the story of the Alamo? The events of the great 13-day siege of 1836 are generally familiar. General Antonio Lopez de Santa Anna's numerically superior army annihilated a small garrison of now-legendary figures—Jim Bowie, William B. Travis, Davy Crockett, to name the best-known—who chose death over surrender. At San Jacinto a month and a half later, the Texans went on to pay back the Mexicans, winning Texas an independence it maintained until joining the United States nine years later.

Yes, but what did it *mean*? Such is the undying question which Randy Roberts and James Olson address in this admirable book. Speaking as a seventh-generation Texan, I judge the authors to have set the standard henceforth for consideration of the topic.

Not that all native Texans will savor their every conclusion. The myth of the Alamo, presently subject to disparagement and depreciation, is bred in our bones. It was a heroic fight for freedom, we learned early. As the theme song in John Wayne's epic movie *The Alamo* insisted, "They died to give us freedom / That is all we need to know / Of the 13 days of glory at the siege of Alamo."

Well, not quite all, apparently. Myths seem to produce counter-myths. Cultural dispositions erode. Heroism once was in vogue; selfless sacrifice was an ideal. Recognition of these deeds and qualities served national purposes, scratched cultural itches. Quite different are the standards of our era. The heroes of the Alamo, according to one prissy revisionist writer, were "pirates," "fanatics," and "hairy, wild-eyed rebels."

Roberts and Olson look coldly on that viewpoint, but what they address is not just the battle of the Alamo, but also the ways in which succeeding generations have appropriated it for their own purposes. The authors provide valuable context to details familiar from folklore, television, and movies. For instance, the cultural outlooks of the warriors: The Texans were adventurous, liberty-loving, and not over-fond of Mexican-Catholic culture. Santa Anna was steeped in some of that culture's then-worst aspects: despotism and bloody reprisal for rebellion. In 1836, little sympathy existed between gringos and Mexicans. The massacre of the defenders fused in the minds of Houston's soldiers the motives of vengeance and patriotism.

Around the Alamo legend the state's sense of identity coalesced. Memories of the glorious revolution kept Texans after the Civil War "from wallowing in 'Lost Causism' like other Southern states." Even before Fess Parker became "King of the Wild Frontier" in Disney's TV lionization of Davy Crockett, the Alamo was "our noblest exemplification of sacrifice, heroic and pure." This was on the authority of Franklin D. Roosevelt, visiting the shrine during the 1936 Texas Centennial.

Disney's TV series transformed the Alamo "from a Texas shrine to an American one," responsive to Cold War ten-

sions and the sense "that America needed heroes who represented liberty and the rights of man." Walt "consciously turned the Alamo into freedom's last stand," and the nation went wild in response.

Shortly afterwards came John Wayne. His 1960 movie, *The Alamo*—"not just a Texas story but an American story, a tale of brutal oppression and the struggle to be free"—did good but not great business. Was the legend about to crest, along with unambiguous American dedication to the frontier virtues of heroism and sacrifice?

By the 1980s, the Alamo had become "one of the most hotly contested symbols in the nation," refracting the views of America then on offer: home of the brave versus racist-imperialist blight. No consensus on the Alamo appears possible until we decide what kind of nation we are, a prospect that looks less and less imminent. Multiculturalism reduces hopes for any unified view of the Alamo's meaning. Will new immigrants find resonance in the story? Texas Mexicans—the state's second largest ethnic group—don't currently appear resentful concerning the Alamo experience, but may remain so only to the extent that Anglo Texans refrain from frantic boast and foolish word.

The glory days of the Alamo legend seem behind us. Yet as Roberts and Olson suggest, the lure of the place should endure. Circumstances and perspectives change with time and human movement. Respect for valor, amid all the whirl, continues.

*William Murchison is a senior columnist for the Dallas Morning News.*

## THE '60S VIEWED RIGHTLY

By Llewellyn H. Rockwell, Jr.

*Before the Storm: Barry Goldwater and the Unmaking of the American Consensus*

By Rick Perlstein  
Hill and Wang, 671 pages, \$30

"America would remember the sixties As a decade of the Left," writes Rick Perlstein, in his fascinating and revisionist