Louis Hartz and The Myth of Laissez Faire

William G. Shade
Lehigh University

Although the voices of classical economics had never been still, their volume rose as a chorus of Valkyries riding the tide of the Reagan Revolution committed to freeing American enterprise from the bonds of a bloated federal establishment. A sub-text in the sermons of the New Right denouncing liberalism prophesied the rebirth of a lost "federalism." The former focused on federal de regulation; the latter constituted a strategic step in an anti-government campaign to privatize everything from the Post Office to the public schools. As Ronald Reagan said in his inaugural, "Government is not the solution; it is the problem." Republicans exalted the moral primacy of the market place in the name of individual economic rights.

Reagan's successor, George Bush has appealed consistently to traditional rhetoric locating the "will of the people" in the local community. At the same time, in the current conflict over extending public funds to parochial schools, the "education " President has attacked the public schools as inefficient monopolies--"bad for the kids"--portraying the question as one of the individual's freedom of choice. Ironically, by the 1980s America had bred a generation of 17-year-olds who did not know that "laissez faire" referred to "minimal government regulation of the economy" although they had lived most of their lives under presidents dedicated to getting the government off the backs of businessmen and out of the pockets of the super-rich.[1]

Earlier in this century the debate over positive government occurred in the quite different political environment of the Great Depression and the threat of totalitarianism. Part of the conservative critique of the "New Deal" that had been cobbled together by Franklin D. Roosevelt and the Democratic congresses of the 1930s involved the charge that the federal government's economic policy represented a dangerous departure from the tradition of laissez faire that had made America great. The influential polemics of the Austrian emigre economist, Friedrich A. von Hayek, argued that social planning, even F.D.R.'s "Four Freedoms," marked the "Road to Serfdom."[2] Social Security, the Wagner Act, TVA and other evidences of "creeping communism" illustrated the appearance of an alien ideology, threatening the nation's moral and political health. These economic and political elements were combined in an interpretation of the American past that conjoined American democracy and rugged individualism.[3]

Certainly, the federal government had been involved in the American economy from its inception. One can reasonably argue that the main reason for the new government's creation was to secure the power to tax and, in particular, lay tariffs that had been twice denied the Congress under the Articles of Confederation by the vote of a single state. The payment of the huge Revolutionary debt and the disposition of the new government's vast landed empire determined its important economic role. Nearly everyone acknowledged that Alexander Hamilton's neo-mercantilist economic program put forth in his reports on public credit and manufactures embodied adherence to an active federal role, but the reputation of the first Secretary of the Treasury, tied as it unfortunately was in the 1920s to his successor Andrew Mellon, had fallen with the stock market and the GNP. During the 1930s and 1940s, both critics and defenders of the New Deal associated their positions with the patron saint of American democracy, Thomas Jefferson. Yet, there were nearly as many interpretations of the political economy of Jeffersonian Democracy as there were Jeffersonians and everyone claimed to be a Jeffersonian. The Sage of Monticello had strongly opposed "consolidation" and observed in a variety of venues that "the world was too much governed." Thus, conservatives could rather easily draw upon his words to bolster their equation between laissez faire and democracy while the defenders of the New Deal had to appeal wistfully to Jefferson's spirit. Few went as far as Charles E. Merriam, the famous political scientist, and his student, Frank P. Bourgin, who described Jefferson as a "national planner."[4]

By the early 1940s American historians, however, were countering conservative claims with studies of the American past designed to reclaim for modern liberalism the Jeffersonian and Jacksonian traditions. Certainly, the best known of these works was Arthur Schlesinger, Jr.'s *The Age of Jackson,* that voted for Roosevelt on every page and portrayed the American liberal tradition as the middle road between the totalitarian tendencies of both the Right(Nazism) and the Left(Communism). Schlesinger depicted Jackson as a dynamic executive willing to interfere in the economy to protect the people from the power of private interests. The Old Hero and the Democratic party emerged as the defenders of the working man against corporate might represented by the Bank of the United States.[5]

Schlesinger's Harvard classmate, Louis Hartz, led a somewhat different assault on "the laissez faire cliché," focusing upon activities of the state government before the Civil War. The Committee on Research in Economic History of the Social Science Research Council commissioned a series of studies to examine the role of government in American economic development. According to the committee's chairman, Herbert Heaton, "It was felt desirable to destroy (if that be possible) the popular notion that until the fourth of March, 1933, the United States was a land of laissez faire, and the alternative notion that governments, when they have acted, have done so only in a regulatory capacity."[6]

While Heaton could confidently assert that the common belief in the golden age of laissez faire was "fantastically untrue," in fact, little had been written on the states' activity in this area since the seminal article of Guy S. Callender published at the turn of the century.[7] Thus, it is hard to exaggerate the impact of these studies of state intervention in the antebellum economy. For liberal defenders of the New Deal, they served as an empirical counter-weight to conservative claims as well as the underpinning for new theoretical speculation on the meaning of American economic history.[8] Hartz's study of Pennsylvania, *Economic Policy and Democratic Thought*, in many ways the best of these works, provides a detailed and subtle analysis of the commonwealth's antebellum government.[9]

In place of the "myth of laissez faire," Hartz found a consistent "theory of state action" that emerged from the commonwealth's colonial and revolutionary experience to dictate that the state government should play the roles of promoter and entrepeneur as well as regulator. The corporation that had begun as a quasi-public institution used primarily for towns and non-profit institutions evolved into the primary device for the accumulation of capital necessary for economic development. The state legislature not only granted companies special privileges to serve the public good, but also, through the mixed corporation, blended public and private capital to create the infrastructure and credit system necessary for a dynamic capitalist economy.

According to Hartz, "Far from being limited, the objectives of the state in the economic field were usually so broad that they were beyond its administrative power to achieve."[10] In the area of transportation, Pennsylvania even mounted a huge public works program to compete with the state funded Erie Canal. In the areas of social control, the state extended its power during these years over slavery and indenture, hours and working conditions, education, licensing and prohibition, the handling of insolvency and landlord-tenant relationships. At the end of the period, when Pennsylvania moved toward general incorporation laws, with-drew from its involvement in mixed enterprises, and liquidated the public works, the Commonwealth did so for practical reasons of economy and expediency rather than in the name of Adam Smith or out of misplaced confidence in classical economic dogma.

Hartz's argument that laissez faire was a fiction involved two elements: a clear demonstration of the multifaceted ways in which the legislature's exercise of public power affected the economy of antebellum Pennsylvania; and an analysis of the legislative debates and the court decisions designed to demonstrate that no coherent idealogical defense of laissez faire appeared in the Keystone state at least until the end of the period. Antebellum Pennsylvanians evinced little fear of using government to gain their public and private economic ends. Although Hartz anachronistically applied the New Deal term "pump priming" to describe spending on the Pennsylvania public works, he insisted in his conclusion that "nothing is to be gained from identifying this crude ideology of spending with modern Keynesian theories of public investment."[11]

Although Hartz can hardly be faulted for framing his history in terms of his political commitments, he clearly exaggerated Pennsylvania policy-makers' desire to create "a permanent public stake in enterprise." He contrasted individualism and interventionism much as the model of free trade brooked no exceptions to open access to markets. Consequently, his work has been criticized or dismissed as being too narrowly conceived to sustain some of his most sweeping implications. An early critic, Robert Lively, complained that Hartz tended to analyze Pennsylvanians' statements about government rather than detail governmental activities while other historians "found that achievements, as distinct from vague desires, were the products of somewhat more orthodox capitalist purpose."[12] The phases of public involvement were determined by the need for capital and the ability of entrepreneurs to raise it in other ways. Hartz tended to treat interference at any level as inherently liberal while these critics saw a situation in which businessmen manipulated the government for their own ends. According to Lively, the story of the relationship between government and the economy revealed "the incorrigible willingness of American public officials to seek public good through private negotiations."[13] Lively's "American system" involved a symbiotic relationship between politicians and entrepreneurs that business historians of the 1950s praised as primarily positive.

In the post war era, when economists deepened their role as consultants to policy makers, they sought to measure more clearly the effect of governmental intervention in terms of cost benefit analysis. The "new" economic historians in the 1960s applied neo-classical models to determine if government's contribution accounted for "a significant share of the growth" of the nineteenth century economy. They accepted Hartz's basic claims and then thoroughly shifted the question to more theoretical turf.[14] For example, Douglass C. North, who noted that government accounted for a "very small percentage" of "total reproducible wealth . . . not more than 5 percent," argued that the "important" question was: Did "private and social rates of return " differ? He answered that it "is possible " that returns to the society as a whole were greater than they would have been to a private investor. North concluded, however, that the "overall" the impact "of government investment in the nineteenth century (was) a modest one."[15]

Essentially the "new" economic historians looked at the profitability of these ventures in relatively straightforward terms and showed that sometimes the state invested "wisely" (the Erie Canal) and sometimes it did not (the Main Line). For Pennsylvania, one study concluded "yes" for the relatively cheap, Delaware Division, but "no" for the costly Main Line and its five lateral canals. Pennsylvania's record as a "wise" investor, however, was only slightly worse than that of the other states. In the country as a whole, only one fifth of the canals dug proved profitable.[16]

Yet, while these quantitative studies questioned the effect of the activities chronicled in *Economic Policy and Democratic Thought,* they were often obsessively narrow in their emphasis on income accounting. Other quantitative analyses showed that social overhead capital made up a large portion of state expenditures and that most of that was spent on transportation. States raised immense sums that were clearly beyond the means of private investors. Pennsylvania put $100 million into its public works and had $6 million invested in over 150 mixed corporations in 1844. According to Stuart Bruchey, "Public assistance, by lessening risks of loss, helped attract private funds, foreign as well as domestic, to ventures they might otherwise not have supported."[17]

Money and credit in antebellum America were provided predominantly by quasi-public banks. Most were mixed corporations. Bray Hammond described the state banking policies of the antebellum era as ranging from prohibition to laissez faire.[18] The general chronology he sketched closely resembled that put forth by Hartz for Pennsylvania and emphasized the importance of the panic of 1837 and the subsequent depression. Hammond failed to distinguish between the truly laissez faire proposals advocated by hard money Democrats and the policies sponsored by the Whigs, in which public debt provided the basis for the credit system. The only "new" economic historian to try to relate free banking to the "take off" of antebellum economic growth concluded that it was a much more positive force than Hammond and the "soundness school" had assumed.[19]

The "new" economic historians acknowledged the importance of literacy and education in promoting economic growth, but have generally ignored antebellum America. Historians' recent debates over education underscore Hartz's basic argument that antebellum Pennsylvanians accepted a role for the state in fostering education. If anything, the current education historians, including those who are concerned with the economic impact of literacy and common schools, have criticized the promoters of common schools for creating an education system with a private agenda that served the needs of capitalist development and consequently were its primary beneficiaries.[20]

A similar argument has emerged from the discussion of Hartz's work launched by "new" legal historians interested in the ways in which the legal environment determined the nature of American economic growth.[21] Aside from their direct investment of capital, the state and federal governments structured the economic development of nineteenth century America through the legal system. Traditional constitutional scholars had emphasized the economic impact of major cases heard by the Marshall and Taney Courts concerning corporate charters, the commerce clause of the Constitution and the importance of substantive due process in the post Civil War era, but the "new" legal historians have been far more skeptical of an apolitical or "scientific" conception of the law.

State legislatures were involved in nearly every aspect of the economy and they created an environment that encouraged economic growth by rewarding potentially productive private enterprises with all manner of special privileges. The private business corporation served as one of the most powerful stimuli to American economic expansion. As Hartz emphasized, the corporate form of organization endowed with limited liability and the power of eminent domain gave distinct form to the development of American capitalism. This trend was reinforced as the corporation shifted from a quasi-public to a private institution with the enactment of general incorporation laws in banking, transportation and manufacturing.[22]

To a greater extent than previous historians, Hartz had probed the opinions of the Pennsylvania and United States courts for evidence of the ideology of laissez faire. He referred at length to the state courts' interpretation of the Dartmouth College Case and two other Pennsylvania cases dealing with mixed enterprise

(*Sharpless et. al.* v. *The Mayor of Philadelphia*) and public ownership (*Mott* v. *Pennsylvania Railroad Company*), but his primary focus was upon the debates over legislative action and constitutional restrictions.[23] Consequently, the interest of the more recent legal historians, while overlapping his work, has been concentrated primarily on judicial interpretation and its effects on the distribution of rights.

J. Willard Hurst emphasized the way in which the legal system allowed the "release of energy" that infused the "take off" of the nineteenth century American economy. While hardly denying in any such activities there were winners and losers, he placed his confidence in the pluralistic nature of the American political system to provide a certain rough justice and serve the public interest, much as Hartz had implied.[24] In his prize-winning book, *The Transformation of American Law*, Morton J. Horwitz challenged Hurst's view and chose to make whipping boys of the "New Deal Historians" such as Hartz whom he claimed "were much more concerned with finding evidence of governmental intervention than they were in asking in whose interest these regulations were forged."[25] Like the Critical Legal Studies movement of which he is a part, Horwitz was more concerned than Hurst with pricking the balloon of legal self-righteousness. In the spirit of the Progressives, he focused upon the losers in the capitalist transformation of the first half of the nineteenth century, emphasizing that both history and the law are deeply political.

These legal scholars have extended greatly the work of Hartz while reinforcing the essential idea that the development of American capitalism was deeply embedded in the legal system. There would have been no private development without the American conception of the corporation or the judge-made-law in the common law areas of contracts, property rights and torts that amounted to the "subsidization of economic growth through the legal system."[26] The law even changed the definition of questions concerning the morality of business activity in its handling of debt. The area of bankruptcy, insolvency and stay laws was marked by movement from an era of the creditor to one of the debtor, entailing protections for high-risk investors. Hurst captured the change with his usual clarity: "Bankruptcy law began mainly as a protection to creditors against the dishonesty of debtors. But by the mid-nineteenth century, both in national bankruptcy laws and in state insolvency legislation, the trend of policy was as much to provide the means by which debtors might be saved from irretrievable ruin and salvaged as venturers who might yet again contribute productively to the market."[27]

While traditonally in the common law the judge was looked upon as a "law finder," the rise of an instrumentalist conception of the law that came to dominate in the United States in the mid-nineteenth century gave judges a much more positive role in making policy. "What dramatically distinguished nineteenth century law from its eighteenth century counterpart," according to Horwitz, "was the extent to which common law judges came to play a central role in directing the course of social change."[28]

Just as the state legislatures channeled the spirit of enterprise by structuring the market, antebellum judges, through their application of the common law, set the rules of the economic game to encourage interests advocating economic development. That usually meant that decisions favored bigger enterprises over smaller ones, and business over agricultural use. This impact was heightened not only by the constitutional constraints increasingly placed upon state legislatures, but also by the contemporary shift in the relationship between judges and juries that inflated judicial prerogative and limited the latter's role to the review of factual evidence.

Traditionally, contracts required a "meeting of the minds" and a fair exchange of one thing of value in "consideration" of another. In the dynamic economy of the nineteenth century, fairness increasingly involved an element of risk that led to the substitution of *caveat emptor* for the static conception of a "just price." In the common law of torts a wrongful act could result in full accountability for the person causing the damage. By the mid-nineteenth century there was a growing tendency to look for fault— "no liability without culpability"—and the reliance upon the ideas of "reasonable use" and "reasonable care" in negligence cases that gave judges great latitude determining the claims of contending parties. In fact, antebellum judges tended to award small sums and support innovators and entrepreneurs.

In the economically important realm of industrial accidents, judges undermined the rights of the next-of-kin—often the dependents—to sue employers and, through the application of the "fellow servant" doctrine, they limited an employer's liability in cases of on-the-job injuries. Nuisance, trespass and damage actions were denied to property owners in numerous cases while powers of eminent domain were "transferred wholesale to the private sector" for companies that judges vested with some public purpose.[29] Clearly the courts spread the burdens of the costs of development beyond those who immediately profited. These changes in the common law spread out the costs and risks of economic development, concentrating the profits often in private hands.

New definitions of property greatly weakened absolute domain and vested rights that suited a stagnant economic environment dominated by a class of large landholders who lived off rents. Nineteenth century judges encouraged economic progress by treating "property as a dynamic commodity" to be employed for productive public use. "By the 1840s," according to Kermit Hall, "a reasonableness and balancing test had displaced the older doctrine of absolute domain. Vested property rights and quiet enjoyment suffered as a result."[30]

The right to exploit one's property for business uses was privileged in the interest of the public good. In a similar fashion the increasing use of eminent domain for "public purposes" with "just compensation" was stretched to serve private purposes and take into account off-setting economic effects in compensation awards that excluded "consequential damages."[31] The Pennsylvania courts confirmed the scope of protection, ruling that previous compensation had been proffered from a sense of justice and not constitutional obligation, or that some instances were not actually "takings" at all. Compensation for losses often involved that calculation of presumed benefits to the litigant from the construction of the enterprise in question. The state governments generally rejected taxation in favor of granting charters and permitting privileges thereby spreading the costs of development. The ways the state governments chose to channel the people's energy were responsive to the usual pressures of political forces. According to Jamil Zainaldin, "the official policies of government reflected this political fact of life: They favored those persons, groups and interests who were best able to mobilize support for laws they favored. In every political clash there are losers."[32]

Horwitz was certainly correct in faulting Hartz for not attempting to show who benefited from the development and who had to pay, but the main problem for the political historian with his own work is that beyond indicating that the legal system was class biased in favor of the developmentally-minded. Horwitz never really answered the question himself. The courts rushed into the vacuum created by the retreating legislatures, but which groups were responsible for undermining legislative power and who staffed the judicial branch? Since both the revision of state constitutions and appointments to the bench reflected the highly partisan political environment, the relationship of the major parties to them remains crucial.

Parties did not exist in Horwitz's nineteenth century world. "Democrats," "Whigs," and "Republicans" (of either the Jeffersonian or Lincolnian stripe) are not among the entries in his book's index, although the bench was pervasively staffed by partisans at the time. It is doubtful that the appointment of any Chief Justice was more political than that of the wealthy, ex-Federalist, border-state slaveholder, with Baltimore banking connections, Roger Brooke Taney. Taney in fact served as the lynch-pin of the entrepreneurial interpretation of Jacksonian Democracy. It was the antebellum Democrats who were most distrustful of state (as well as the federal) government and who moved at mid-century to construct constitutions that severely limited legislative power most particularly in the areas of borrowing money and granting corporate rights, especially to banks. At the same time, because the Democrats' hold on the presidency, four-fifths of the federal judges from 1828 to 1860 were Democrats. Since during the same period in Pennsylvania five of the eight governors were Democrats, the proportion of Jacksonian judges must have been comparable or only slightly lower. If the 1840s and 1850s brought judge-made-law, these decades witnessed Democrats making that law.[33] The pattern fits rather neatly with the entrepreneurial or consensus interpretation associated significantly with Hartz's major work, The *Liberal Tradition in America,* but is open to all of the subsequent criticisms of that discredited view.

Actually, in the area of party politics, Hartz's general propositions expressed in *Economic Policy and Democratic Thought* require re-examination on other grounds as well. In general, Hartz believed that the Whigs were conservative and the Democrats liberal, but he found few partisan differences over the issue of governmental activity. "The truth is that the party formula has only the most limited value as an explanation of conflict over charter policy" or any other he examined.[34] In defense of this view, he strung together several less than convincing arguments. One followed Philip S. Klein, who had depicted Pennsylvania politics as a "game without rules" dominated by the "sheer force of passion" that put "an end to rational thinking." A second argument was that while Democrats in the 1840s may have sounded as though they opposed government, earlier in the century the party of Jefferson clearly embraced the "theory of state action." In his discussion of the "anti-charter doctrine," Hartz was at pains to insist that the Democratic voices he cited did not mean what they said. Only by thoroughly "combing the doctrine" could one turn up "a few highly quotable phrases" that "represent a wholesale criticism of state economic action." In other words, the quotations he copied into the text were to be viewed as atypical; "appearances tend to be misleading." Finally, Hartz emphasized that few dissenting voices were heard when mixed corporations were repudiated and the public works liquidated.

In *Economic Policy and Democratic Thought,* Hartz's Pennsylvania Whigs were weakened by their "vague aristocratic reputation" rather than the specific points of their economic program, while the Jacksonians championed nascent capitalists as well as the working class.[35] When he referred to them in *The Liberal Tradition,* Hartz treated the American Whigs as a generic brand closely related to the British Whigs and consequently out of touch with American reality. Bernard Sternsher summarized his position on party conflict: "Hartz's account of Jacksonian era politics conveys the impression of conflict of limited intensity and significance, . . . because he insists that the opponents were grossly mismatched — given the Whigs' stupidity they could not win."[36]

Schlesinger was able to appropriate Hartz's analysis to his own claims that the advocates of equal rights "defended unionism," "the Locofocos called for general incorporation laws," and the Jacksonians generally showed "a penchant for economic regulation." Of course, Schlesinger's Democrats opposed laissez faire and favored government intervention in the interest of restraining the cupidity of the business class. "In Pennsylvania," he wrote in 1987, "Louis Hartz found anticharter and state-ownership doctrines fused in 'a single politico-economic position — pro-state, anti-corporate . . . The anti-charter theory was contending for state entrepreneurship on a scale greater than any dared in the subsequent history of the state."[37]

Unfortunately, Hartz's argument was weakest on this very point. His vestigial Progressivism conceded that portion of the argument that portrayed a continuous party battle between conservative and progressive forces within the liberal paradigm at a time when students of antebellum politics were emphasizing discontinuity. Although neither incompatible with nor directed toward Hartz's arguments, the emerging "realignment model" drawn from V. O. Key proposed a new understanding of American political development that altered historians' views of the Jacksonian period. In 1966, Richard P. McCormick introduced this concept to historians in his book, *The Second American Party System.*[38]

In Pennsylvania, the Democrats of the 1840s were not closely connected to the democrats of Jeffersonian's day. While a few scholars tried to draw lines from the party system of the Federalists and Republicans to that of the Jacksonians and the Whigs, the size and distribution of the vote and the organizational structures of the late 1830s were essentially new. In fact, the Federalists had hardly mattered at all in the Keystone state after 1800 and Pennsylvania typified "deferential-participant politics" that was distinctly pre-party in its development. It involved a series of contests between elitist factions and was disrupted by the blessed spirit of Antimasonic populism. Even when Jackson came upon the scene, his lopsided electoral victories bore no relation to the nearest gubernatorial campaigns. By 1840 the two party structure within the state had coalesced and penetrated state politics. New organizational efforts by both Democrats and Whigs produced a 46 percent increase in turnout between 1836 and 1840 and made presidential elections more popular than those for state offices for the first time in the commonwealth's history. The Second party system that emerged after Jackson's campaigns lasted until the realignment of the 1850s.[39]

This would indicate that the emphasis on the "commonwealth" ideal in relation to government activity was most salient in the pre-party period, especially the inchoate decade of the 1820s that was dominated by intrastate factionalism and sectionalism. It was in the period of the Panic of 1837 and its aftermath that a new partisan loyalty structured state politics and the anticharter fight took center stage. Critics of the consensus view noted: when the " 'flush times' of the 1830s . . . gave way to the chaos and disorder of the early 1840s questions concerning economic policy dominated legislative sessions and gave rise to popular excitement and partisan conflict. Because state legislatures granted corporate charters, discussions relating to this power not only occupied the greatest part of legislative sessions but also led to some of the bitterest controversies of the period."[40] In contrast to Hartz's claim that party differences were unimportant, studies of state legislatures, including Pennsylvania's, have shown sharp differences on matters concerning banks and corporations and smaller but significant differences on social policy, education and race-related issues. Far from being anomalies as Hartz implies, governors David R. Porter and Francis R. Shunk and Congressman Charles Jared Ingersoll typified not only the Pennsylvania Democracy, but also that of the nation. Ingersoll, a well-known Philadelphia lawyer, argued the *Bank of Augusta v. Earle* case before the Supreme Court.[41]

The old categories drawn from the debate over the New Deal proved misleading. A new conceptualization, ironically embodying Hartz's primary insight in *The Liberal Tradition in America,* was suggested by Lee Benson, who has been an early student of the triumph of laissez faire in the mid-nineteenth century. In *The Concept of Jacksonian Democracy,* he introduced the ideas of "positive" and "negative" liberalism to describe the contrasting party attitudes toward political economy. Partisan differences over economic policy during the Second party system represented different strains within the dominant liberal paradigm depicted by Hartz. Unlike Hartz, however, he was willing to see the Democrats of the 1840s as unbridled advocates of laissez faire and opponents of government action while crediting the Whigs with a modest toleration of the intrusive state, particularly in matters of cultural hegemony.[42]

It is entirely possible that future scholarship will go off in quite different directions. Since their re-discovery of republicanism in the 1960s, historians have exhibited a great deal of interest in the tension between Lockean liberalism and civic humanism in post-Revolutionary American thought. In this the Hartz of *Economic Policy and Democratic Thought* might be used to criticize the Hartz of *The Liberal Tradition*. This may well lead to a new attempt to conceptualize the whole era in terms of the nature of the American state in the first century after the Revolution.[43]

The old debate over the laissez faire cliché holds little interest for most American historians. Perhaps this is because they have accepted more than half of Hartz's argument. Government in the nineteenth century did intervene in the economy and structure its growth in fundamental ways and at least until the second half of the century the widespread anti-governmentalism drew upon sources other than classical economics in the advocacy of "retrenchment and reform." The traditional emphasis on states' rights and strict construction was primarily political and moral and only secondarily, even residually, economic. No one justified the Bank veto or the resistance to Clay's American system on the grounds that the free market would provide for a superior allocation of scarce resources or an alternative path to economic growth. Americans who basically valued liberty and equal rights over authority and privilege constantly feared the illiberal potential of even democratically controlled governments.

Laissez faire is congenial to this pre-modern, apolitical vision. Even today, it is the ancient belief that government is both dangerous and immoral from which anti-political politics draws its appeal.

Much of the debate sparked by Hartz and the other historians who have examined the myth of laissez faire in nineteenth century America echoes a similar debate in England. In surveying that controversy, Arthur J. Taylor made several points that need to be kept in mind. Perhaps most important: "Few of those who have used the term laissez-faire in the present century have troubled to define it."[44] Obviously it means something more than "anarchy and the constable," although surely that seems to be what some commentators and advocates of "law and order" have in mind. It is impossible for government to remove itself from involvement in the economy. Even free trade is a policy that requires bureaucratic enforcement. Few matters are more politically volatile than setting the rules of the race or defining fair practices. Conflicts between economic and social goals have made "explicit the limitations to the application of the laissez-faire principle outside the purely economic field."[45] Public health and education posed quite different questions than did free trade and railroad regulation.

Laissez faire raises different concerns for the intellectual historian and the economic historian, the student of administration and that of legislative behavior. In each realm of investigation, historians are faced with political questions involving interests that are favored or harmed by government decisions. The enduring importance of *Economic Policy and Democratic Thought* is that Hartz broadened the debate by not only showing the importance of state government in antebellum America, but also revealing the many ways governmental decisions touched citizens' lives. He also highlighted the difficulties of the simple translation of abstract ideological constructs into effective policy. Hartz reinforced the belief of the Progressive historians that politicians often patched together inconsistent ideas to justify their economic interest. Unfortunately, in emphasizing the broad consensus upon the well of ideas from which legitimate slogans and arguments could be drawn, he avoided analyzing concrete conflicts over the effects of governmental action. Although the realm of antebellum democracy was circumscribed to include only white men as active players, it was an arena of dissension that requires historians to pay close attention to those who won and lost and to how they played the game.

Notes

1. Diane Ravitch and Chester E. Finn, Jr., *What Do Our 17-Year-Olds Know: A Report on the First National Assessment of History and Literature* (New York: Harper and Row, 1987); Kevin P. Phillips, *The Politics of the Rich and Poor* (New York: Random House, 1990); Donald L. Barlett and James B. Steele, *America: What Went Wrong?* (Kansas City: Andrews and McMeel, 1992).

2. Actually Hayek's book, *The Road To Serfdom* (Chicago: University of Chicago Press, 1944), written for an English audience, did not mention Roosevelt or the New Deal. The cover of the paperback edition, Twelfth Impression, 1958, however, had prominently displayed just above the book's title as part of a symbolic chain of slogans leading to socialism and slavery, "Freedom From Want."

3. For recent versions of the debate see: Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962); and C. B. Macpherson, *Democratic Theory: Essays in Retrieval* (Oxford: Oxford University Press, 1973), 143-56.

4. Merrill D. Peterson, *The Jefferson Image in the American Mind* (New York: Oxford University Press, 1960), 330-76; Charles M. Wiltse, *The Jeffersonian Tradition in American Democracy* (Chapel Hill: University of North Carolina Press, 1935); A. Whitney Griswold, *Farming and Democracy* (New York: Harcourt, Brace and Company, 1948); Joseph Dorfman, "The Economic Philosophy of Thomas Jefferson," *Political Science Quarterly,* 55 (March, 1940), 98-121; William D. Grampp, "A Reexamination of Jeffersonian Economics," *Southern Economic Journal,* 12 (January, 1946), 363-82; Joseph J. Spengler, " The Political Economy of Jefferson, Madison and Adams," in David K. Jackson, ed., *American Studies in Honor of William Kenneth Boyd* (Durham: Duke University Press, 1940), 3-59; Carter Goodrich, "National Planning of Internal Improvements," *Political Science Quarterly,* 63 (March, 1948), 16-44; and Charles E. Merriam and E.P. Bourgin, "Jefferson as a Planner of Natural Resources," *Ethics,* 3 (July, 1940). For the unusual saga of the mis-handling of Bourgin's dissertation that was rejected by Leonard White in 1945, see the "Foreword" by Arthur Schlesinger, Jr., to Frank Bourgin, *The Great Challenge: The Myth of Laissez-Faire in the Early Republic* (New York: George Braziller, 1989), which constituted a portion of the 617 page original. Bourgin was finally awarded his Ph.D. by the University of Chicago in 1988.

5. Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little, Brown and Company, 1945). Those wishing to rehash the historiographical debate over this book can follow it in the bibliographical essay in Edward Pessen, *Jacksonian America: Society, Personality, and Politics* (2nd ed., Homewood, Ill.: Dorsey Press, 1978); and, with special reference to Pennsylvania, William G. Shade, "Politics and Parties in Jacksonian America," *Pennsylvania Magazine of History and Biography,* 109 (October 1986), 483-507. Schlesinger's current views can be seen in his introduction to the 1989 edition of *The Age Of Jackson,* and in *The Cycles of American History* (Boston: Houghton Mifflin, 1989). The latter includes an essay (pp. 219-55) on the relationship between government and the economy that praises Hartz.

6. Heaton's letter is reprinted as an appendix in Oscar and Mary Handlin, *Commonwealth: A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861* (2nd ed., Cambridge: Harvard University Press, 1969), 290.

7. Guy Stevens Callender, "The Early Transportation and Banking Enterprises of the States in Relation to the Growth of corporations," *Quarterly Journal of Economics,* 17 (1902-1903), 111-162.

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10. Hartz, *Economic Policy and Democratic Thought,* 292.

11. Hartz, *Economic Policy and Democratic Thought,* 142-48, 301.

12. Lively, "The American System," 84. The other studies to which he referred are summarized in Carter Goodrich, *Government Promotion of American Canals and Railroads, 1800-1890* (New York: Columbia University press, 1960).

13. Lively, "American System," 93.

14. Henry W. Broude, "The Role of the State in American Economic Development, 1820-1890," in

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15. Douglass C. North, *Growth and Welfare in the American Past: A New Economic History* (Englewood Cliffs: Prentice Hall, Inc., 1966), 98-104.

16. Roger L. Ransom, "Canals and Development: A Discussion," *American Economic Review,* 54 (May 1964), 365-89; and Louis M. Hacker, *The Course of American Economic Growth and Development* (New York: John Wiley & Sons, Inc., 1970), 44-156.

17. Stuart Bruchey, *Enterprise: The Economy of a Free People* (Cambridge: Harvard University Press, 1990), 220; and Charles F. Holt, *The Role of State Government In The Nineteenth-Century American Economy, 1820-1902: A Quantitative Study* (New York: Arno Press, 1977).

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20. See the essays in William Fogel and Stanley Engerman, eds., *The Reinterpretation of American History* (New York: Harper and Row, 1971), 240-81; Bruchey, *Roots of American Economic Growth,* 178-207; Michael Katz, *The Irony of Early School Reform* (Cambridge: Harvard university Press, 1968); idem., *Class, Bureaucracy and the Schools: The Illusion of Educational Change in America* (New York: Praeger Publishers, 1971); Stanley Schultz, *The Culture Factory: Boston Public Schools, 1789-1860* (New York: Oxford University Press, 1973); and Lee Soltow and Edward Steams, *The Rise of Literacy and the Common School in the United States: A Socioeconomic Analysis to 1870* (Chicago: University of Chicago Press, 1981).

21. See for example, Jamil Zainaldin, *Law in Antebellum Society: Legal Change and Economic Expansion* (New York: Alfred A. Knopf, Inc., 1983); and Donald J. Pisani, "Promotion and Regulation: Constitutionalism and the American Economy," *Journal of American History,* 74 (December 1987), 740-68.

22. Ronald E. Seavoy, *The Origins of the American Business Corporation, 1984-1855: Broadening the Concept of Public Service During Industrialization* (Westport: Greenwood Press, 1982); J. Willard Hurst, *The Legitimacy of the Business Corporation in the Law of the United States, 1780-1970* (Charlottesville, Va.: University of Virginia Press, 1970); Oscar and Mary F. Handlin, *The Wealth of the American People: A History of American Affluence* (New York: McGraw-Hill Book Company, 1975), 57-81; Stuart Bruchey, *Roots of American Economic Growth, 1607-1861: An Essay in Social*

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23. Hartz, *Economic Policy and Democratic Thought*, 113-22, 175-80. The bibliography lists 70 cases that he consulted and listed in footnotes.

24. James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1956).

25. Horwitz, *Transformations of American Law*, xiv.

26. This is the title of chapter three in Horwitz, *Transformation of American Law*, 63-118.

27. Hurst, *Law and the Conditions of Freedom*, 26. On these issues see also: William E. Nelson, *The Americanization of the Common Law: The Impact Of Legal Change in Massachusetts Society, 1760-1830* (Cambridge: Harvard University Press, 1975); Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt and Bankruptcy, 1607-1900* (Madison: University of Wisconsin Press, 1974); and Charles Warren, *Bankruptcy in United States History* (Cambridge: Harvard University Press, 1935).

28. Horwitz, *Transformation of American Law*, 1. See also Harry N. Scheiber, "Instrumentalism and Property Rights: A Review of 'Styles of Judicial Reasoning' in the Nineteenth Century," *Wisconsin Law Review*, 1 (1975) and Kermit Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989). Increasingly economic historians have incorporated these findings into their work. See: Bruchey, *Enterprise*, chap. 7; and recent textbook by a critic of the "governmental habit," Jonathan Hughes, *American Economic HIstory* (Glenview, Illinois: Scott, Foresman and Company, 1987), chap 7.

29. Harry N. Scheiber: "Federalism and the American Economic Order, 1789-1910," *Law and Society Review*, 10 (Fall 1975), 57-118; idem., "Property Law, Expropriation, and Resource Allocation by Government: the United States, 1789-1910," *Journal of Economic History*, 33 (March 1973), 232-51; and idem., "Government and the American Economy: Three Stages of Historical Change, 1790-1941." in Robert Weible, Oliver Ford, and Paul Marion, eds., *Essays from the Lowell Conference on Industrial History 1980 and 1981* (Lowell: Lowell Conference on Industrial History, 1981), 128-44.

30. Hall, *Magic Mirror*, 119.

31. Harry N. Scheiber, "The Road to Munn: Eminent Domain and the Concept of Public Purpose in the State Courts," *Perspectives in American History*, 5 (1971), 327-402; and idem., "Regulation, Property Rights, and Definition of 'The Market': Law and the American Economy," *Journal of Economic History*, 41 (March 1981), 103-11.

32. Zainaldin, *Law and Antebellum Society*, 50.

33. Rush Welter, *The Mind of America, 1820-1860* (New York: Columbia University Press, 1975), 165-249; and Kermit Hall, *The Politics of Justice: Lower Federal Judicial Selection and the Second Party System, 1829-1861* (Lincoln: University of Nebraska Press, 1979).

34. Hartz, *Economic Policy and Democratic Thought*, 63, 77-78, 105-06, 189-91.

35. Hartz, *Economic Policy and Democratic Thought, 24.*

36. Bernard Sternsher, *Consensus, Conflict, and American Historians* (Bloomington: Indiana University Press, 1975), 182; and Frank O. Gatell "Beyond Jacksonian Consensus," in Herbert J. Bass, ed., *The State of American History* (Chicago: Quadrangle Books, 1970), 350-61.

37. Schlesinger, *Cycles of American History*, 226-28; Hartz, *Economic Policy and Democratic Thought*, 175.

38. Richard P. McCormick, *The Second American Party System: Party Formation in the Jacksonian Era* (Chapel Hill: University of North Carolina Press, 1966); and William Nesbit Chambers and

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39. Ronald P. Formisano, "Deferential-Participant Politics: The Early Republic's Political Culture," *American Political Science Review,* 68 (June 1974), 473-87; W. Dean Burnham, *Critical Elections and the Mainstream of American Politics* (New York: W. W. Norton, 1970); and Paul Kleppner, et al., *The Evolution of American Electoral Systems* (Westport: Greenwood Press, 1981), 33-111; Charles M. Snyder, *Jacksonian Heritage: Pennsylvania Politics, 1833-1848* (Harrisburg: Pennsylvania Historical and Museum Commission, 1958); John F. Coleman, *The Disruption of the Pennsylvania Democracy, 1848-1860* (Harrisburg: Pennsylvania Historical and Museum Commission, 1975); Michael F. Holt, *Forging A Majority: The Formation of the Republican Party in Pittsburgh, 1848-1860* (New Haven: Yale University Press, 1968); idem., "The Election of 1840, Voter Mobilization, and the Emergence of the Second American Party System: A Reappraisal of Jacksonian Voting Behavior," in William J. Cooper, Jr., Michael F. Holt, and John McCardell, eds., *A Master's Due: Essays in Honor of David Herbert Donald* (Baton Rouge: Louisiana State University Press, 1985), 16-58.

40. Herbert Ershkowitz and William G. Shade, "Consensus or Conflict? Political Behavior of the State Legislative Parties during the Jacksonian Era," *Journal of American History,* 58 (December 1971), 593. Of many recent studies of legislative behavior in the antebellum period, Ann Marie Dykstra, *Region, Economy and Party: The Roots of Policy Formation in Pennsylvania, 1829-1860* (New York: Garland Publishing, Inc., 1989), and Douglas E. Bowers, "The Pennsylvania Legislature, 1815-1860: A study of Democracy at Work," (Ph.D. dissertation, University of Chicago, 1974), focus on Pennsylvania.

41. Charles Warren, *The Supreme Court in United States History* (Boston: Little, Brown and Company, 1922), II, 324-36. Hartz confused David Rittenhouse Porter, the governor, with his brother James Madison Porter, who was a "Conservative Democrat" nominated by John Tyler to be Secretary of War.

42. Lee Benson, *The Concept of Jacksonian Democracy: New York, A Test Case* (Princeton: Princeton University Press, 1961), 86-109. See also Lawrence Frederick Kohl, *The Politics of Individualism: Parties and the American Character in the Jacksonian Era* (New York: Oxford University Press, 1989).

43. L. Ray Gunn, *The Decline of Authority: Public Economic Policy and Political Development in New York, 1800-1860* (Ithaca: Cornell University Press, 1988); Joel H. Silbey, *The American Political Nation, 1838-1893* (Stanford: Stanford University Press 1992); Steven Skowronek, *Building A New American State: The Expansion of National Administrative Capacities, 1877-1920* (New York: Cambridge University Press, 1982); and James A. Henretta, "The Slow Triumph of Liberal Individualism: Law and Politics in New York, 1780-1860," in Richard O. Curry and Lawrence B. Goodheart, eds., *American Chameleon: Individualism in Trans-National Context* (Kent, Ohio: Kent State University Press, 1991).

44. Arthur J. Taylor, *Laissez-faire and State Intervention in Nineteenth-Century Britain* (London: McMillan, 1972), 11.

45. Ibid., 44. See also Sidney Fine, *Laissez Faire and the General-Welfare State: A Study of Conflict in American Thought, 1865-1901* (Ann Arbor: University of Michigan Press, 1956).