

## DEMOCRACY AND LAISSEZ FAIRE: THE NEW YORK STATE CONSTITUTION OF 1846

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New York's current financial woes have a precedent, and perhaps a solution, in the pages of the distant past. Well back in its history, in the late 1830s, New York State was spending and lending money lavishly. By the early 1840s, the rapidly mounting debt had occasioned a severe financial crisis. To avert the imminent possibility of bankruptcy and default, the state legislature in 1842 passed what was known as "the stop and tax law", a levy of one mill on each dollar of taxable property. The new revenue helped the state meet its most pressing obligations. But, even more importantly in terms of the future, New York decided to take steps to prevent another such fiscal disaster. Ambitious projects for internal improvements — mostly canal construction and loans for railroad building — were cut back or abandoned unless there was a reasonable expectation that they could be funded from tolls or taxation. And the legislature also issued a call for a constitutional convention. The new Constitution adopted in 1846 placed strict limits on the state's ability to borrow money. Thus the people of New York, facing problems similar to the state's later predicament, found the answer in an old-fashioned program of reduced spending and new taxes. What is surprising, however, is that such policies had the popular support of the most democratic and liberal elements in the state.

To understand the unusual sequence of events which culminated in the New York State Constitution of 1846, one must go back in history to the Jacksonian era and the political struggles between the Democrats and the Whigs. In New York the Jacksonian Democrats included a wide-ranging constituency of radical workingmen, Irish immigrants, farmers, intellectuals, and representatives of the new rising

business or small capitalist class. The preponderance of the older landed aristocracy and wealthier classes, together with the most English or Anglo-Saxon elements in the population, gravitated toward the Whig Party. The Whigs, united nationally by their opposition to Andrew Jackson's Presidency, were the ideological heirs in New York State of DeWitt Clinton, five times governor and father of the Erie Canal. Like Clinton, the Whigs supported the generous use of state funds for internal improvements as well as for various cultural, humanitarian, and educational endeavors. The Whigs' belief in positive government and social reform reflected their paternalistic conception of politics and economics.<sup>11</sup>

Quite different were the ideas of the Democrats who, in contrast to their Whig opponents, stood for a strict construction of the United States Constitution, limiting the governing power to its least essentials. Both nationally and in New York State, the Jacksonian Democrats adhered to the Jeffersonian agrarian maxim that the least government is the best government. In New York the leader of the Democratic Party was Martin Van Buren, head of the famed Albany Regency which controlled the state governmental machinery through most of the 1830s and '40s. The most radical Democrats, known as Locofocos, were somewhat to the left of Van Buren and the Regency. They included an interesting collection of intellectuals and politicians who espoused a negative, anti-statist democracy. As against the paternalistic philosophy of the Whigs, the Locofoco Democrats stressed complete laissez faire in government-business relations. For example, the introduction in 1837 to the first issue of the *United States Magazine and Democratic Review*, organ of the more radical Democrats, defined the

party's belief in democratic republicanism and majority rule. But the editors added:

The best government is that which governs least. No human depositories can, with safety, be trusted with the power of legislation upon the general interests of society so as to operate directly or indirectly on the industry and property of the community. Such power must be perpetually liable to the most pernicious abuse, from the natural imperfection, both in wisdom of judgment and purity of purpose, of all human legislation, exposed constantly to the pressure of partial interests; interests which, at the same time that they are essentially selfish and tyrannical, are ever vigilant, persevering, and subtle in all the arts of deception and corruption.<sup>121</sup>

Most forthright of the radical Democrats was William Leggett, a Locofoco colleague in the 1830s of such New York Democratic writers as James Fenimore Cooper, William Cullen Bryant, Theodore Sedgwick, and Parke Godwin. Leggett coupled adherence to the Jeffersonian natural rights philosophy with demands for the equal right to property, not its abolition. Governments had no warrant to interfere with individual pursuits by offering financial advantages to any particular class or industry. Specially chartered banks, including the Bank of the United States, were a favorite target of Leggett's scorn. "Let the banks perish," he wrote. "Now is the time for the complete emancipation of trade from legislative thralldom."<sup>131</sup>

As a part of their general laissez-faire philosophy and opposition to Whig paternalism, the Democrats were also dubious of those social and humanitarian reform movements which infringed upon individual liberty and private property. Thus they were hostile to the abolitionists even though this meant ignoring the question of freedom for the black slave. Imprisonment for debt attracted little attention from either Democrats or workingmen until public interest in the matter became too strong to be ignored. The workingmen's parties were, however, in a peculiar position because wage earners wanted preferential creditor status through a mechanics' lien law. Even public schools had difficulty winning Democratic support because their expense involved heavier taxation. Charity schools and use of the Lancastrian system of pupil tutors instead won Democratic favor. A system of statewide public education would also interfere with parents'

control over their children and might undermine religious freedom.<sup>141</sup>

In Washington, Andrew Jackson, the Democrats' hero, enjoyed an uneasy and controversial Presidency. His years in office from 1829 to 1837 formed an era in which easy credit, cheap land, and internal improvements all contributed to an inflationary prosperity. At the same time, Jackson's own inclinations tended toward the limitations on federal spending favored by his friend and political adviser Van Buren. As governor of New York in 1828, Van Buren had secured passage of the Safety Fund System to safeguard the banks and assure the state of a source of credit and wealth to go along with the Erie Canal. The state-chartered New York banks cast doubt on the need for the federal United States Bank, while the state-constructed Erie Canal rebuked the western states' clamor for federal aid for their own internal improvements. Moreover, the Jeffersonian principle of states' rights and opposition to federal centralized power, espoused by Van Buren and the New York Locofoco Democrats, was also able to gain national success by Jackson's Bank of the United States and Maysville Road vetoes.<sup>151</sup>

In 1836 the United States for the only time in its history was without a national debt; a year later the federal government was briefly in a position to distribute its surplus revenues to the states. But the Jacksonians, despite the President's efforts to moderate or level out the economic boom, were unable to ward off its financial aftermath in the Panic of 1837. Van Buren, Jackson's successor in the White House, fell a political victim to the Panic, and in New York in 1838 the Democrats were overturned by the Whigs who elected William H. Seward as governor.

Governor Seward, it should be noted, was an admirer of DeWitt Clinton who had earlier helped inaugurate the transportation revolution in New York. Upon completion of the Erie Canal in 1825, he had urged further state expenditures for new canals, turnpikes, and eventually railroads, as well as a generous policy of chartering banks and insurance companies. Now, in 1840, the Whigs under Governor Seward called for the appropriation of four million dollars for ten years to build additional

canals and railroads. Henceforth dubbed "the forty million dollar party", the Whigs to their misfortune had ignored the adverse effects of the Panic of 1837 on the state's declining credit. Alarmed critics warned that the cost of public works would soon increase the state debt to as much as 75 million dollars with annual interest charges of 4.5 million. Already by 1842, when the Democrats regained control of the legislature and passed the stop and tax law, the state debt which five years earlier amounted to 7 million dollars had grown to 27 million dollars, and state bonds were unmarketable even at a discount of 20%. Instead of continuing to spend money for internal improvements, the Democrats, at a cost of 40 million dollars in principal and interest, proposed to extinguish the state debt in twenty years. As a result of such conservative fiscal policies, within two months of the stop and tax law the state's 7% bonds sold at par, while 5% bonds reached that level in 15 months.<sup>161</sup>

By the 1840s national opinion in regard to state aid for internal improvements was undergoing a change. The former public enthusiasm for heavy state expenditures had run its course. Some of the new states in the West were in default on their bonds. State initiative and responsibility had been necessary earlier for such ambitious undertakings as the Erie Canal, but after the return of prosperity in the 1840s private capital, just beginning to be accumulated by American manufacturing and industry, was available for investment. Railroads were now becoming the most important means of transportation, but railroads with their special rolling stock could not be considered public in the same sense as a canal, a river, or a turnpike. Although railroad builders frequently turned to the states to help raise the large amounts of capital they required, most of their funds in New York came from individual savings and from credit extended by American banks. Accordingly, while there was little foreign investment in, or municipal aid for, New York State railroads until after the Civil War, the New York Central by 1853 had 2331 stockholders.<sup>171</sup>

The decline of public aid and intervention in economic enterprise was most marked in some of the eastern states where the old colonial

concept of the commonwealth fell victim to a surge of anti-government feeling. Although various economic and social groups continued to desire political intervention in behalf of their own self-interests, the fear of more state taxes and increasing state indebtedness blocked heavy public expenditures throughout the 1840s. Instead of continuing to take a positive, direct role in the economy, the state granted its economic powers to private banks and stock companies. For example, the Free Banking Act passed by New York in 1838 abolished the old system requiring special legislation for each bank charter and in effect introduced competition into banking. Under general incorporation laws, state charters were now granted to all manner of enterprises which, in pursuing their own private ends, were largely freed of the public responsibility associated with governmental agencies and the earlier semiprivate corporation. Democratic reluctance to continue the specially chartered corporation for a favored few had dispersed the privilege of incorporation among many stockholders and had separated it from responsibility to the state.<sup>181</sup>

Legislation for free banking and general incorporation laws accordingly had the support not only of the business community but also of those opposed to all governmental aid and protection for selected enterprises. Locofoco Democrats and workingmen united in the crusade against economic monopoly and special privilege, although labor sometimes identified its own true interest with that of the whole community. In any case, the state was usually too weak in an administrative sense to enforce either its own definition of the public interest, or to give its full support to various private or special interest groups. Thus laissez faire and the cry of equal rights for all and special privileges for none was a more appealing political philosophy in the 1830s and '40s than any Whiggish notions of a paternalistic and expensive government.<sup>191</sup>

It was in response to these views that the Democrats pushed ahead with their plans for drafting a new state constitution. William C. Bouck, the conservative or Hunker Democratic successor to Seward as governor in 1843 and 1844, favored a moderate course on internal

improvements despite the Democrats' stop and tax law of 1842. But when Silas Wright, a close friend of Van Buren and the staunchest disciple of Jeffersonian agrarian democracy in New York State, was put forward for the nomination of governor, Bouck and the conservative Hunker faction had to retreat. Wright in his first annual governor's message in January 1845 praised the stop and tax law for restoring the state's credit. Three fifths of the state's debt charged to the General Fund, he pointed out, had been incurred by unwise loans to railroads that had proved unable to pay their obligations. Wright also announced that he favored calling a constitutional convention.<sup>110</sup>

In a series of articles analyzing the progress of constitutional reform, which appeared at this time in the *Democratic Review*, John Bigelow, one of the party's intellectuals, listed some of the changes which he believed New York and other states should adopt. These included a provision that "The state should have no power to contract debts, or loan its credit, except in case of war, invasion, or insurrection." In the matter of a general incorporation law, Bigelow urged: "The members of such Corporations, (not excepting those established for education or charity) should be individually liable for the debts, liabilities, and acts of such Corporation, and for the consequences resulting therefrom." Furthermore: "All laws or regulations interfering with the liberty of trade or industry (such as license and inspection laws) should be abolished, and their enactment for the future prohibited." Bigelow added as miscellaneous proposals the abolishment of the death penalty and permission for women to control their own property after marriage.<sup>111</sup>

The New York Constitutional Convention, which met in the summer of 1846, completed its labors in time for the voters to approve its handiwork that same year. Although the anti-statist views of such Jeffersonian Democrats as Bigelow and Wright were subject to some modification and compromise, the New York Constitution of 1846 embodied the *laissez-faire* position better than any document in the state's history. Only after all debts were paid through a sinking fund could the state appropriate any surplus for canal improvements and extensions

not already mandated by law. Corporations including banks were to be chartered under general laws rather than by special act. Stockholders were made liable to the amount of their shares for all debts and liabilities contracted by their banks. As an epitaph to the anti-rent wars which had reached a climax in 1846, the Constitution abolished all feudal tenures and perpetual leases. Male suffrage was made universal except for Negroes who had to possess an estate of the value of \$250, unless the people in a referendum on the question voted otherwise<sup>112</sup>. This curious and illiberal provision, which was approved by the voters, retained the clause in the 1821 Constitution in which the property qualification was removed for whites but not for blacks. The Negro vote, traditionally cast in favor of the old Federalist slaveowning class, had continued to be exercised in behalf of Clinton and then the Whigs. Though never a large vote, it was opposed by the Democrats chiefly because of labor's influence.<sup>113</sup>

In a retrospective article on constitutional government in the *Democratic Review*, Bigelow reiterated his libertarian views with the warning that "A great source of inequality in the conditions of men in respect of wealth and comfort arises from the action of law. Too much government has a direct tendency to aid one man or one set of men in the 'pursuit of happiness', and in the 'acquiring, possessing, and protecting property', if not at the expense of the rest, at least without rendering them the like assistance."<sup>114</sup> Unfortunately the Jacksonians, despite their defeat of the Bank of the United States, had not been able to slow the growth of wealth and inequality in New York and some of the larger cities in the East in the era before the Civil War. But their more radical *laissez-faire* views, as embodied in the stop and tax law and 1846 Constitution, disenchanting the wealthier business class which moved more than ever into the Whig Party. Work on the Erie Canal, which the Democrats had stopped in 1842, was resumed in 1847. Moreover, until 1850 railroads had to pay canal tolls to protect the state's vested interest in "Clinton's ditch". After that, canal tolls were reduced to provide competition to the growing volume of traffic

carried by the railroads.<sup>1151</sup>

Historians of a later generation have grown accustomed to interpreting democracy and liberalism in terms of the modern welfare state. The negative democracy of the New York Democrats of the 1840s accordingly wins little contemporary approval. Democracy in the eyes of its later adherents has become synonymous with power, preferably such power as may be exercised by a strong executive in the name of people. Some historians even question whether the negative state can be democratic and reason that laissez faire must automatically favor an aristocracy of wealth.<sup>1161</sup> But what passes for the welfare state today rewards most of all its largest investors in the military-industrial complex. Beneficiaries of the welfare-warfare state's largesse would be horrified by a return to the spirit of the 1840s or to any consistent across-the-board application of laissez faire. Meanwhile New York's Constitution of 1846 remains an interesting, though passing, example of the enactment of Jeffersonian anti-statism into the fundamental law.

#### NOTES

- Useful general interpretations include: Dixon Ryan Fox, *The Decline of Aristocracy in the Politics of New York, 1801-1840*, ed. Robert V. Remini (1st pub. 1919; New York: Harper Torchbooks, 1965); Edward Pessen, *Jacksonian America: Society, Personality, and Politics* (Homewood, Ill.: Dorsey Press, 1968); Glyndon G. Van Deusen, "Aspects of Whig Thought in the Jacksonian Period," *American Historical Review*, Vol. 63 (January, 1958), pp. 305-322.
- "Introduction," *United States Magazine and Democratic Review*, Vol. I (October, 1837), p. 6.
- On Leggett, see his *A Collection of the Political Writings*, ed. Theodore Sedgwick, Jr. (2 vols.; New York: Taylor & Dodd, 1840); and the studies by Richard Hofstadter, "William Leggett: Spokesman of Jacksonian Democracy," *Political Science Quarterly*, Vol. 58 (December, 1943), pp. 581-594; Marvin Meyers, *The Jacksonian Persuasion: Politics and Belief* (Stanford, Calif.: Stanford University Press, 1957), chap. 9; Edward K. Spann, *Ideals & Politics: New York Intellectuals and Liberal Democracy, 1820-1880* (Albany: State University of New York Press, 1972).
- Herbert Ershkowitz and William G. Shade, "Consensus or Conflict? Political Behavior in the State Legislatures during the Jacksonian Era," *Journal of American History*, Vol. 58 (December, 1971), pp. 591-621, reinforces the view of the age of Jackson as essentially one of laissez faire. See also Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900* (Madison: State Historical Society of Wisconsin, 1974).
- New York and Van Buren's influence on Washington and Jackson is discussed in Bray Hammond, *Banks and Politics in America from the Revolution to the Civil War* (Princeton, N. J.: Princeton University Press, 1957), p. 352.
- Charles Z. Lincoln, *The Constitutional History of New York* (5 vols.; Rochester, N.Y.: Lawyers Co-Operative, 1906), Vol. 2, pp. 76, 81-84, 91ff., 165; Stewart Mitchell, *Horatio Seymour of New York* (Cambridge, Mass.; Harvard University Press, 1938), p. 53.
- Fox, *Decline of Aristocracy*, pp. 405-408; Carter Goodrich, "The Revulsion Against Internal Improvements," *Journal of Economic History*, Vol. 10 (November, 1950), pp. 145-169; Harry H. Pierce, *Railroads of New York: A Study of Government Aid, 1826-1875* (Cambridge, Mass.; Harvard University Press, 1953), pp. 8, 16.
- Oscar and Mary Flug Handlin, *Commonwealth: A Study of the Role of Government in the American Economy* (1st pub. 1947; rev. ed. Cambridge, Mass.: Belknap-Harvard University Press, 1969), pp. 106ff., 160-161, 191.
- Compare Walter Hugins, *Jacksonian Democracy and the Working Class: A Study of the New York Workingmen's Movement, 1829-1837* (Stanford, Calif.: Stanford University Press, 1960) and Douglas T. Miller, *Jacksonian Aristocracy: Class and Democracy in New York* (New York: Oxford University Press, 1967).
- John A. Garraty, *Silas Wright* (New York: Columbia University Press, 1949), pp. 292, 335.
- "The Progress of Constitutional Reform in the United States," *United States Magazine and Democratic Review*, Vol. 18 (June, 1846), pp. 408-412, 420.
- New York State Constitution of 1846, Article I, Section 12; II, 1; VII, 1, 2, 3; VIII, 1, 4, 7.
- Fox, *Decline of Aristocracy*, p. 269.
- "Constitutional Governments," *United States Magazine and Democratic Review*, Vol. 20 (March, 1847), p. 202.
- Edward Pessen, *Riches, Class, and Power before the Civil War* (Lexington, Mass.: D. C. Heath, 1973); Frank Otto Gatell, "Money and Party in Jacksonian America: A Quantitative Look at New York City's Men of Quality," *Political Science Quarterly*, Vol. 82 (January, 1967), pp. 235-252; Don. C. Sowers, *The Financial History of New York State from 1789 to 1912* (New York: Columbia University Studies, 1914), pp. 75, 85, 87.
- See, for example, Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little-Brown, 1945), pp. 512-514, 519-521; Lee Benson, *The Concept of Jacksonian Democracy: New York as a Test Case* (Princeton, M. J.: Princeton University Press, 1961), pp. 220ff.