

# The First Contract with America

by James A. Henretta

*Budget cuts. Debt reduction. Smaller government. One hundred and fifty years ago, the state of New York fired the first shots in a nationwide political revolution strikingly similar to today's.*

Does history have anything to tell us about the potentially momentous political changes now being wrought by Newt Gingrich and his allies in Washington? It pays to be wary of “lessons of history,” but there is a compelling antecedent to Mr. Gingrich’s revolution, though it is not well known, probably not even to Gingrich himself. It is the constitutional revolution that swept the American states during the 1840s and ’50s.

During those two decades, a political order that had developed in most state governments since the 1790s was completely overturned. In nearly every state, popularly elected conventions were called to write new constitutions. Triumphant reformers clamped restrictions on the size of state government, required budgetary discipline, imposed severe limits on public debt, and brought fundamental changes in the judiciary, voting rights, and legislative apportionment. Gingrich’s predecessors created a new populist and democratic constitutional order on the state level, an order that forms a central part of our political heritage.

The spark for this 19th-century revolution was the Panic of 1837, which pitched many of the nation’s 26 state governments into bankruptcy or perilously close to it. Yet it was the democratic political ferment bred by Andrew Jackson’s presidency (1829–37) that lent the fiscal crisis its special volatility.

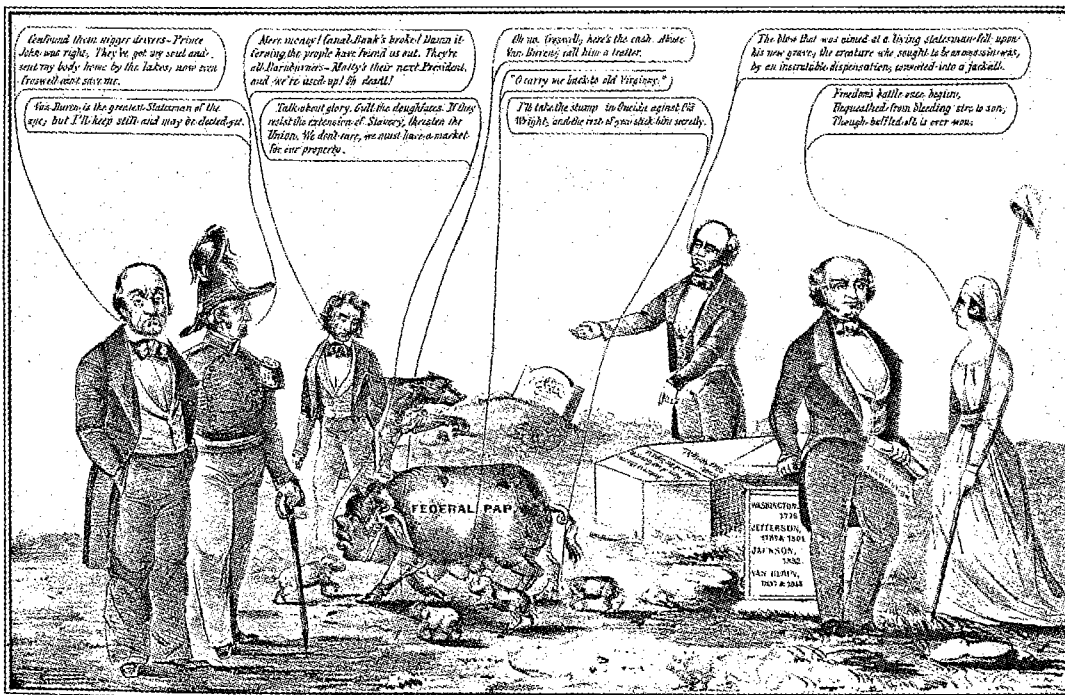
New York was the first state to travel through the cycle of crisis and reform, and its experience became the model for change in other states. Its leading reformer was Michael Hoffman, an acerbic, strong-minded upstater of deeply held Jeffersonian convictions, a career politician who held a variety of elected and appointive positions.

Hoffman’s ideologically charged program of imposing strict constitutional limits on the powers of state government and encouraging judicial activism to enforce them was quickly incorporated into the fundamental law of dozens of other states. “It is in the Constitution of Louisiana,” a fellow New Yorker noted in 1846, “where it amounts to almost a positive pro-

hibition to borrow any money. It is in the Constitution of Texas, of Iowa, of Missouri, of Michigan, and in every [recent] Constitution that has been adopted.” By the time of the Civil War, Hoffman’s conception of political economy had created a new type of state—known to historians and political scientists as the classical liberal laissez-faire state.

**H**offman was born in Saratoga County, New York, in 1787, the same year the federal constitution was drafted, and he spent his political life embroiled in the issues it raised, particularly those concerning the proper distribution of authority between the state and national governments. The son of an immigrant German father and a native-born Protestant Irish mother, he became a lawyer in Herkimer, a small town in east-central New York, where he was appointed district attorney in 1823. One of the new breed of lawyer-politicians who have since come to dominate American public life, Hoffman linked his fortunes to those of New York’s leading Democratic politician, Martin Van Buren, and his Albany Regency. He served four terms in the U.S. House of Representatives during the 1820s and early ’30s and sat in the New York State Assembly for three years in the 1840s. When out of elective office, Hoffman took his share of political patronage, accepting appointments as a judge of Herkimer County, New York State canal commissioner, register of a federal land office in Michigan, and, in the last years of his life, naval officer of New York City.

Yet Hoffman joined Van Buren for principle, not preferment. “Little Van” and his political allies were staunch Jeffersonians, and that, in the 1820s, meant commitment to Hoffman’s values: the primacy of state rather than federal authority and an emphasis on fiscal restraint at all levels of government. This fiscal caution won votes not only from conservative men

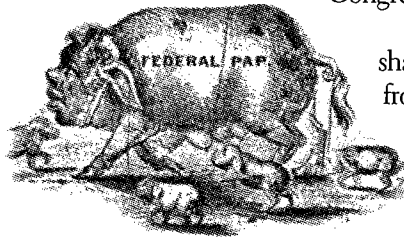


Many who opposed the use of public funds for canals and other dubious purposes rallied around Martin Van Buren. In this 1848 cartoon, he stands with Liberty as the Free Soil candidate for president; rivals Lewis Cass and Zachary Taylor stand near “Federal Pap.”

of property but from ordinary farmers and mechanics, who feared speculation and taxation. In national politics, Van Buren and his allies opposed what Hoffman called “ultrafederalism,” the system of nationally managed economic development advocated by President John Quincy Adams during the late 1820s. “I have ever denied the power of the U.S. to make roads and canals,” declared Representative Hoffman.

Serving in Congress, though, Hoffman soon found himself enmeshed in the making of just the sort of national economic policy he opposed. Tariffs were not only the national government’s leading source of revenue but a powerful device for protecting jobs and profits in favored sectors of the economy. Hoffman was appalled by the pork-barrel politics that surrounded tariff legislation, but he was also a political realist, looking out for the interests of his New York constituents by maneuvering “to protect our Wool and Coarse grain by . . . duties on wool, spirits and Molasses.” In 1828, however, tariff politics spun out of control, producing rates so high that the legislation was condemned as the Tariff of Abominations. In the ensuing uproar, the state government of South Carolina threatened to “nullify” the legislation, and President Andrew Jackson was forced to threaten to use military force to uphold the law.

The experience left Hoffman thoroughly disillusioned, and the jaundiced view of politics that had always lurked in his correspondence now came to dominate his thinking. Most political leaders, he concluded, lacked “the wisdom or virtue” to govern wisely and would yield “to the murderous counsel of the passions.” In 1832, he decided to give up his seat in Congress and return to Herkimer.



Other Van Buren Democrats were no less shaken by these events. As a member of Congress from upstate New York, Silas Wright had played a central role in writing the tariff of 1828. To win the high tariff barriers against cheap foreign raw wool sought by New York’s sheep farmers, Wright supported the duties on

imported cloth and agricultural products demanded by New England textile manufacturers and western farmers. Southern planters objected that the South would bear the high costs of protection without receiving any of its benefits. To no avail. By the 1840s, however, Wright—who served in the U.S. Senate and as governor of New York, and who probably would have been the Democratic presidential nominee in 1848 (instead of Lewis Cass) had he lived—had come around to the southern position. High tariffs, he added, reflecting the arguments advanced by New York City workers, oppressed classes as well as regions. They increased the price of necessities without much improving the living standards of workers. Wright called upon his own state’s producers to accept low farm subsidies. As candidate for governor in 1844, he told an audience of farmers that prohibitive duties on wool would give them “a perfect monopoly of the market,” whereas he and the Democratic Party now stood for “fair and healthful competition in every trade and every thing.”

In the convergence of the views of Hoffman and Wright we see the merger of two ideological currents into a new political force. Hoffman represented the

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old Jeffersonian Republican philosophy of limited government, while Wright moved toward the same small-government position by espousing a new ideology, the classical liberal principles of political economy: equality of opportunity; no special privileges for individuals, groups, or corporations; and free trade in labor and goods in a market-driven economy. Hoffman, more than anyone, was responsible for melding these two sets of ideas into a reigning ideology.

**T**he resemblance of the 1840s to our present situation is more than superficial. Between 1790 and 1840, the national government had used the tariff and other subsidies to encourage economic development and thereby increase the “common-wealth” of the society. State governments had developed an even more comprehensive system of state mercantilism, awarding hundreds of charters, contracts, and subsidies to private enterprises. Turnpike companies were granted monopoly routes; bonds issued by canal companies were backed by the “full faith and credit” of the state; private railroads were awarded subsidies from the public treasury and granted the power of eminent domain so that they could acquire their rights-of-way at low cost. The list could easily be extended.

It was not accidental that the historians who first drew our attention to this early 19th-century “commonwealth” philosophy—Oscar and Mary Handlin, Louis Hartz, Carter Goodrich—wrote their books in the late 1940s, in the shadow of Franklin Roosevelt’s New Deal, and, in some respects, as apologists for its philosophy of positive government. To say this is not to denigrate their scholarship, which has stood the test of time, but simply to note that it established a historical antecedent for the New Deal and lent it greater legitimacy. The activist welfare state of the 1930s could be seen not as a radical break in the history of American government but as the renewal of the commonwealth tradition. The undoing of that tradition may have lessons as well. And that brings us back to Michael Hoffman.

**W**hen he returned to New York and took his seat on the Canal Commission in 1833, Hoffman turned his critical eye on state finances. He began with the public sector: canals and taxes. Since 1827, the Albany legislature had pursued a low-tax policy while borrowing large sums to build an elaborate and uneconomical (but politically rewarding) system of “feeder” waterways to connect distant areas with the Erie Canal. Hoffman saw that the inevitable results were deficits, growing public debt, and, eventually “merciless taxation.”

If unsustainable debt was the main danger in the public sector, “banks and the rate of interest” seemed to be the looming problem in the private sector. “Bank dividends are higher than the fair profits in other business,” Hoffman declared. The cause of this imbalance was clear: “the banking power is granted as a monopoly to the *few*,” allowing them to charge exorbitant rates of interest. The policy choices were obvious: either “we must have a Usury law [as] . . . a restraint on Bank interest,” Hoffman said, or the legislature ought to remove “*all* restraints against Banking,” thus destroying the monopolists’ power. Today, we would say that it was a choice between bureaucratic regulation and a free market. One way or another, Hoffman wanted the state to eliminate the privileges it had bestowed on some at the expense of others. In the event, the state legislature split the difference, establishing “free banking” and mandatory bank contributions to finance insurance against bank failures—which served as

the model for the Federal Deposit Insurance Corporation of the 1930s.

When it came to the public sector, however, the two political parties did not share Hoffman's zeal for reform. Democrats and Whigs alike continued building canals and pledging future canal tolls to pay for them, a strategy that would work only if revenues continued to increase. After the Panic of 1837 produced a recession, Governor William H. Seward and his pro-business Whig compatriots in the state legislature built even more canals, hoping to maintain employment and thereby capture political power from the Jacksonian Democrats. The generous application of favors and bribes even persuaded the legislators to vote a \$3 million subsidy to the New York and Erie Railroad. The state's finances slid into disarray. The value of a \$100 state canal bond dropped to \$75. "The folly of man," Hoffman wrote sorrowfully to Wright at the close of 1841, "has created *Impossibilities* and *Deficit*."

Over the next five years, these "impossibilities" split the Democratic Party. On one side stood the "Hunkers," status quo politicians who supported canal construction, albeit on a modest scale. Their critics charged that they "hunkered" after the spoils of office. Arrayed on the opposite side were Hoffman, now a state assemblyman, Wright, and their "Barnburner" friends, radical men whose policies, their opponents claimed, would destroy the state in the cause of reform (just as Dutch farmers, in an ethnically charged joke, were said to burn down their barns to kill the rats).

The Radicals' assault on the policies of the Whigs and the Hunkers played on several themes. From the Jeffersonian past came the admonition that each generation must be free to control its own destiny. A leading Barnburner reminded a Young Men's Association that American state governments had run up hundreds of millions in debts, appropriating "the toil of subsequent generations to glut the hungry cravings of this [one]; to eat the bread of unborn children." A residual puritanism also echoed in the Radicals' rhetoric. General John A. Dix of Albany condemned "the too great love of money" which had prompted the speculative binge of the 1830s (and, we might add, the 1980s) and which, "in all times and ages was . . . the certain forerunner of social and political degradation."

"What can save the State?" Hoffman asked. The first step, and to a Jeffersonian Republican the most obvious, was to "reform all useless offices—reduce salaries . . . cease expenditures." But paying off the state's debts would also require new income. Where would it come from? Congress was considering a scheme to distribute the proceeds of public lands to the states, but the Old Jeffersonian would have nothing to do with this egregious expansion of federal authority, which he considered "the worst assault ever made on the Constitution."

New York, insisted Hoffman, had to address the root cause of the problem: the misuse of power by political parties and legislators, men of a "poor cowardly pusillanimous spirit" who created debts without levying taxes to pay for them. As former governor William Marcy put it, the legislature had lost "a proper sense of dependency" on the will of the people. To Hoffman and his allies in what was called the Stop and Tax Movement, the course was clear: stop the building program and enact a "bearable" state tax to pay off the debt.

Hoffman recognized that taxes are not socially neutral. New York's excise and auction taxes on salt and other goods fell on the "necessities of

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life” consumed by the masses, he noted, and the direct property tax was levied on “land and personal effects,” thus bearing especially hard on “the poor, the Mechanics, small farmers and small dealers.” Totally exempt were the stocks, bonds, and other financial instruments owned by the wealthy. What was required to pay off the debt, Hoffman concluded, was “a suitable tax on the Luxuries of the rich.”

**Y**et the Barnburners’ social radicalism was limited. They viewed the world from the small-property-owner perspective of their farmer and artisan neighbors and constituents, and were willing to redress class inequities only to the extent that they stemmed from political abuses. However radical the Barnburners were on issues of debt and slavery (most of them joined the Free-Soil Party in 1848 and the new Republican Party in the 1850s), they opposed the redistribution of wealth—either to the rich or to the poor—by political means.

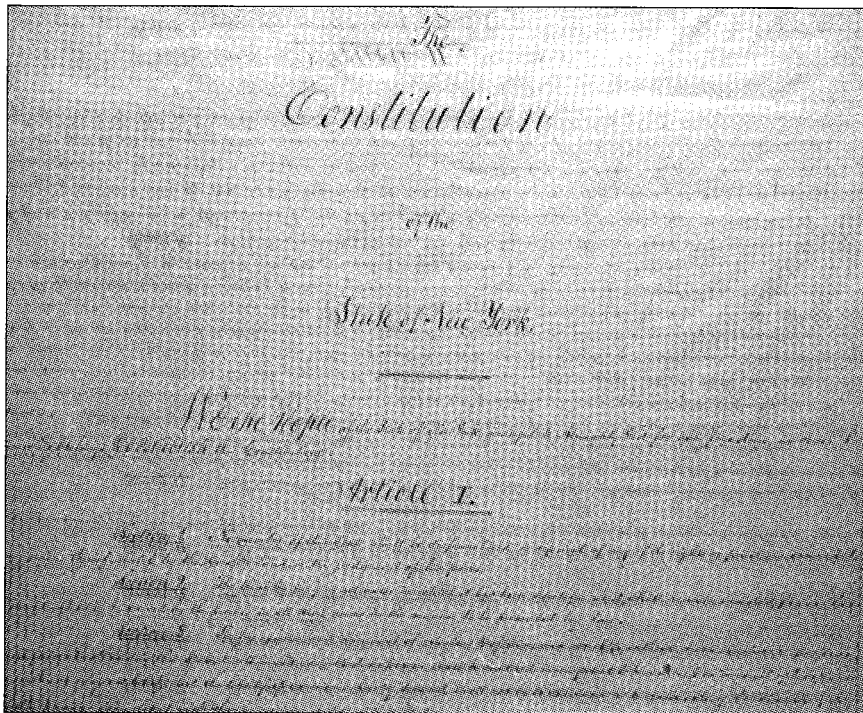
Prizing limited government and fiscal integrity more than social justice, the Barnburners did not insist on a tax policy directed against the rich, and in 1842 the legislature enacted a regressive tax on real estate and personal effects, earmarking the revenue for the general and canal funds. The result, however, was quick and dramatic: within six months, the state’s bonds no longer sold at a discount.

The Whigs and Hunkers were not through, however. In the assembly, they rejected by a narrow margin a Hoffman-backed measure to require referendums on all new state borrowing. The rejection propelled the determined Hoffman into a three-year campaign to persuade the legislature to hold a referendum on “a [constitutional] convention of the people . . . to sit in judgment on the past and command the future.”

**T**o judge the past and command the future! Hoffman and his colleagues went to the Albany convention in 1846 determined to write Radical principles into constitutional law. At the core of their agenda was the reduction of the state’s debt. Hoffman rejected out of hand what he called the “British system” of funding the debt, paying only the interest each year. Such a system would “fasten on the limbs of your children the withering, blasting effects of . . . British eternal debt and taxation.”

More serious, because they commanded more support, were Whig and Hunker schemes to divert a higher proportion of the new tax revenues to canal improvements, thereby delaying liquidation of the debt to 1883—well into the next generation. “Payment, prompt payment . . . is your only course,” Hoffman lectured the convention, laying out a plan that would liquidate the debt by 1865.

The issue of future debts was yet more bitterly contested, for it raised questions of constitutional principle as well as fiscal responsibility. Hoffman’s plan prohibited the state from extending its financial credit to private individuals or corporations and limited its debts to \$1 million, except as funded by specific taxes approved by referendum. Whigs strongly opposed these restrictions, both on practical and constitutional grounds. “If we adopt such a section,” Alvah Worden, a leading Whig politician, told the convention (sounding very much like today’s critics of the federal balanced budget amendment), “it would only be saying to the world . . . that the experiment of a republican, representative, responsible form of government, after a trial of more than 70 years, had proved a failure.”



*New York State's Constitution of 1846 became a model for other states. But reforms such as the popular election of judges led to corruption and other abuses, and the reaction against them contributed to the rise of the progressive movement later in the century.*

The Radicals' reply to these questions articulated a new constitutional theory for the American states. At the time, the fundamental law of New York and other states gave unlimited authority to the legislature. It would be far better, Hoffman argued, no doubt with one eye on the U.S. Constitution, to grant limited powers to the legislature, keeping the rest as "the residuary, reserved powers of the people." In particular, Hoffman wanted to limit the legislature's taxing powers, for he knew from bitter experience "what the power of corrupt lobby black-legs could do. . . . We will not trust the legislature with the power of creating indefinite mortgages on the people's property."

In the end, Hoffman got virtually everything he asked for. The new constitution was overwhelmingly approved in a statewide referendum in November 1846. The Barnburners' revolution was complete.

**T**oday, most states have strict constitutional limitations of various kinds on public debt. They have worked in part because of another Radical innovation: a popularly elected state judiciary with a mandate to uphold the new constitution. The New York Constitution of 1846—and, by 1860, the constitutions of 21 of the 33 states—repudiated the old system, under which judges were appointed by the legislature. Popular election enhanced the authority of the judiciary by making it coequal with the legislature and the executive, "all of them springing directly from the people," said Churchill Chamberling, a Barnburner and former U.S. congressman.

Influential jurists such as John B. Gibson of Pennsylvania, who had once eschewed judicial review as an antirepublican intrusion on the powers of the people, now endorsed judicial activism. Lawyers increasingly tried cases in state courts on constitutional grounds, and judges responded



by enforcing debt limits and other provisions. By 1861, state judges had voided at least 150 laws as contrary to their state's fundamental law. The era of modern judicial activism had begun.

No revolution solves all problems, and the constitutional revolution of the 1840s was no exception. The vision of Hoffman and the Barnburners assumed a world dominated by small property owners who paid taxes, but that world was already vanishing, especially in New York City. By the 1850s, two-thirds of the city's labor force were wage earners, and only between one-third and one-half of the electorate paid property taxes. Class tensions ran high. During an economic downturn in 1857, Mayor Fernando Wood put jobless laborers to work in Central Park. "Those who produce everything get nothing," he declared, "and those who produce nothing get everything." John Van Buren, son of the former president and a prominent Barnburner, denounced Wood's statement as "a demagogical attempt to array the poor against the rich." It was a year of unrest in New York, already the nation's biggest city, requiring the dispatch of federal troops to protect the customhouse and armory.

To prevent outright class warfare, Democratic politicians had already resorted to fiscal shell games, issuing revenue-anticipation bonds to ease the tax burden imposed by an expanding municipal budget. (Such bonds allowed the city to borrow funds "in anticipation" of future tax revenues.) By 1856, these bonds covered no less than 47 percent of New York City's annual expenditures, taxes a mere 32 percent. Once an instrument for economic development and regional logrolling, deficit financing had become a device for muting class conflict—and so it has remained in the current century, as seen most recently in the District of Columbia's plight.

Michael Hoffman would have been only a little surprised by this turn of events. Before his death in 1848 he saw many portents. In the last years of his life, the federal government borrowed so much money to wage the Mexican War of 1846–48 without raising taxes that Treasury bonds fell dramatically in value. The battle for fiscal responsibility, largely won in the state capitals, would now have to be joined at the municipal and federal levels.

**W**hich, of course, is just about where we stand now, a century and a half later. At this juncture in our national life, we have something to learn from the solutions proposed by Hoffman and his Barnburner colleagues. Spokesmen for the middle-class families of their time, they advocated limited government in order to strip special privileges from powerful corporations and rich individuals—then as now the main beneficiaries of an activist state in a capitalist society. As advocates of a liberal bourgeois ideology of equality of opportunity and individual achievement, they also opposed "class legislation," the politically driven redistribution of wealth or entitlements to the poor. And, with political courage all too rare in our own time, they wrote a constitution that limited expenditures and increased taxation to balance the budget and pay off the debt. No smoke and mirrors here. No manipulation of dedicated funds to disguise deficits. No pandering for votes with tax cuts, in the fashion of Newt Gingrich, or by maintaining existing Medicare and Medicaid subsidies, as proposed by President Bill Clinton. Instead, real cuts, shared sacrifice, a Contract with America that responsibly faced the problems of the day. Where is our Michael Hoffman?