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THE MEANING OF THE MARKET
THEORY AND HISTORY

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**"The Market Economy of
the United States, 1800-1860"**

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The Market Economy of the United States, 1800-1860:

Reality and Theory

James A. Henretta

Markets are "in" these days, **both** in the worlds created by contemporary economic policy-makers and in those re-created by **academic** historians. The two phenomena are not unrelated, to be sure, but perhaps not of particular concern. The exigencies of present affairs are often the key to new approaches and new understandings of the past. So it is with the market, which, Sean Wilentz tells us in a recent article on "Society, Politics, and the Market Revolution," has provided a central

theme [that] does seem to unite Jacksonian historians of various persuasions and suggest a way of once again viewing the period as a whole: the central importance of the market revolution, which, in one way or another, touched the lives of all Americans.¹

As if to demonstrate the point, Harry L. Watson, in Liberty and Power: The Politics of Jacksonian America (1990) maintains that the Market Revolution (which he always capitalizes) was central to the development of the American political system, while Charles Sellers does him one better in The Market Revolution: Jacksonian America, 1815-1846 (1991), using the concept to inform his treatment of the first half of the nineteenth century.² "The Age of Jackson," "The Era of the Common Man," even "Antebellum America" have been consigned to the scrap heap of historiography. The "market" has triumphed.

But what IS a market? And, more to the present point, what was specific character of the "market economy" that attained such a position of dominance in American life in the early nineteenth century? How did it operate? What particular rules, or even peculiarities, did it have?

Beyond this descriptive reality lies the realm of rationalist theory. Having probed various aspects of the market economy of the United States between 1800 and 1860, can we posit a set of abstract propositions that define its identity and place it within a spectrum of market-systems?

I. Land

"The greatest want of civilized society is a market" declared Henry Clay in 1824, during a major Senate speech that laid out the principles of his American System. With a market in place, God himself would "conduct us into that path which leads to riches, to greatness, to glory."³ But as Clay discovered much to his distress, his colleagues--and the political nation as a whole--held markedly different conceptions of the emergent market economy. Certainly then, and perhaps even now, the market was not an fixed economic abstraction but the malleable product of political will.

Whose political will was the crucial question. In "The Anti-Capitalist Origins of the United States," Michael Merrill suggests that Americans in the post-revolutionary period divided over two rival systems of political economy.⁴ One set of policies, favored by Alexander Hamilton and the Federalist Party, would use the power of the state to assist "monied men," merchants and financiers, to pursue a "capitalist" path of domestic commercial development through, for example, the chartering of banks. Its advocates took a broad view and had great expectations. "Our monied capital has so much increased from the Introduction of Banks, & the Circulation of the Funds," Philadelphia merchant William Bingham noted in 1791, "that the Necessity of Soliciting Credits [from England] will no longer exist, & the Means will be provided for putting in Motion every Specie of Industry."⁵

Other governments pursued the public good by spreading political favors more broadly. These policies, advocated by Thomas Jefferson, James Madison, and the Democratic-Republican Party, favored three groups of "producers," export-oriented planters, yeoman farmers, and artisans, embodying what Merrill calls an "agrarian" model of commercial society. This system placed productive resources in the hands of ordinary farmers, even as it implied that they should adopt agricultural improvements in order produce a substantial surplus for sale in urban or foreign markets. In fact, the expectations of many aspiring yeomen were more modest; many would have been happy with a "subsistence-plus" farmstead, whatever the impact on the broader economy. The "true Policy of a Republic," argued ninety Virginians who wanted land "in moderate Quantities, by Way of Head Rights," consisted in laws that assisted "the Poor and Needy to raise their Families to be reputable and useful Members of Society."⁶

Each set of policies had crucial implications for the "market"--in land, commercial exchange, and money; indeed, we might say that they prescribed the rules under which that market, or portions of it, operated. Consider the land situation in four strife-torn regions of early nineteenth century America: Maine, northwest Pennsylvania, the Hudson River Valley of New York, and Kentucky. In each of these states pioneer farmers--labelled by their supporters or detractors as "Liberty-Men," "Wild Yankees," "Anti-Renters," or, simply, "Squatters"--claimed a God-given right to settle upon and improve wilderness land, regardless of the "legal" property rights of proprietors, grantees, manorial lords, or speculators.⁷ As Henry Knox warned George Washington in 1786, some people believed "the property of the United States, has been protected from confiscation of Britain by the joint exertions of all and therefore ought to be the common property of all."⁸

Such men--or, more accurately, such aspiring yeoman farm households--contested the market-based system of allocating lands through the mechanism of prices. They wanted free distribution of land by the state or, failing that, a system of low "administered" prices set through the political process, a process in which they had a vote if not a distinct voice. And they usually got at least part of what they wanted. Virginia's revolutionary government rejected the claims of North Carolina speculators, organized in the Transylvania Company, to much of the land of Kentucky, only to parcel much of it out to twenty-one individuals and partnerships in Virginia in grants in excess of 100,000 acres. Nonetheless, in response to agitation by settlers, who met in an extra-legal assembly near Harrodsburg to claim title "by Preoccupancy, agreeable to the Entry Laws of Virginia," the state in 1779 enacted a complicated statute offering "actual settlers" the right to purchase 400 acres at a below-market price and, to those who had made "improvements" (in the form of a regulation-sized cabin) the right to "preempt" an additional 1,000 acres at a roughly similar price. The result was a system of land distribution that contained elements of both the "capitalist" and the "agrarian" systems of political economy, to say nothing of the "subsistence-plus" mode favored by many yeomen. Thus, when Kentucky achieved independence from Virginia, the title to much of the new state's land rested in the hands of non-resident speculators, but half of the adult male residents owned some land, mostly in parcels of less than 500 acres.⁹

Similar compromise outcomes between the various systems of political economy prevailed in Pennsylvania and Massachusetts. In 1801, Pennsylvania's Jeffersonian legislature appointed commissioners to settle a violent conflict between Pennsylvania proprietors with land claims in the northeast region of the state and "Wild Yankees," rival claimants who held titles from the

Susquehanna Company of Connecticut. Liberally interpreting a "Compromise Act" of 1799, the commissioners allowed Susquehanna settlers to purchase up to 300 acres at the below-market price of thirty-two cents an acre, and then used state funds to provide additional compensation to the Pennsylvania-based proprietors. In Massachusetts, a Betterment Act of 1808 also established a political mechanism, this time of a legal sort, for resolving conflicts between absentee proprietors holding titles to lands in Maine and resident Liberty-Men. The Act allowed local juries in ejectment cases to set the prices that settler defendants paid to proprietary plaintiffs, with the result that most settlers paid the below-market price of \$2 to \$3 per acre for their improved farmsteads.¹⁰

Thus, using various forms of "administered" prices, Jeffersonian legislatures resolved many of the existing conflicts over the ownership and the price of land. The only conspicuous failure came in New York, where the manor lords of the Hudson River valley refused to sell their lands to Anti-Renters, with the result that, for another generation, the region was beset by rent strikes, "white Indian" violence, and political strife. Ultimately, even this conflict found a solution that was determined as much by political power as by market mechanisms. Responding to a new Anti-Rent War during the early 1840s (and influenced by emergent classical-liberal principles of political economy), the delegates who wrote the New York Constitution of 1846 consciously undermined the pillars of the landlord system, explicitly restricting agricultural leases to twelve years and voiding "all fines, quarter sales or other like restraints upon alienation reserved in any grant of land."¹¹

Because so much American land was controlled by the federal and state governments, political factors intruded constantly into the workings of the land market. The national

government continually changed the minimum prices at which its land could be purchased at auction, as well as varying the minimum amount that could be purchased and the terms of credit. These decisions influenced not only the pace of settlement in the west but also the prices of privately-owned unimproved lands and established farmsteads in the east.

In times of economic crisis, the impact of governmental decisions were even more striking. The tremendous boom in land sales after 1815, especially in Alabama and other parts of the southwest, brought an equally spectacular increase in the size of the landed debt due to the national government: no less than \$23 million dollars by 1819. In response to political pressure, Congress delayed forfeiture for delinquent purchasers, passing postponement laws in 1818, 1819, and again in 1820, when President Monroe suggested that the national legislature might grant "a reasonable indulgence" to overextended settlers and speculators. The result was a Relief Act that imposed a political settlement on the debts stemming both from government-sales to the initial purchasers and, significantly, from their market-sales to subsequent purchasers who bought public land and assumed its outstanding indebtedness. These owners--whether resident farmers or absentee speculators--had the option of taking clear title to the already-paid portion of their property (and relinquishing title to the rest, without paying interest on the arrears) or keeping their entire claim, in which case they could pay it off in eight annual installments, again without interest. Finally, as a special incentive, those claimants paying immediately in cash received a discount of no less than 37.5 percent.

The Relief Act commanded overwhelming support in Congress, which approved it substantial margins (36 to 5 in the Senate; 97 to 40 in the House). Defending the Act's lenient provisions, Senator Jesse B. Thomas of Illinois, Chair of Public Lands Committee, argued that

at the time most of the debt was contracted the "price of produce of every description was more than 100% higher than at present."¹² This line of reasoning made little impression on Representative Robert Allen of Tennessee, who rejected the principle of legislative interference with debt contracts, arguing both that the Relief Act set a bad precedent for government fiscal policy and constituted a special privilege for public land debtors. Taken together, this political intervention and the high cultural value placed on yeoman agriculture affected the basic structure of the land system in the United States, making it significantly different from the one that would have existed had market forces held sway. According to Jeremy Atack and Fred Bateman, their cliometric analysis of northern agriculture (based on the 1860 Federal Census) suggests that

public land policy, [by] discriminating in favor of larger farms by specifying minimum but not maximum purchases, resulted in a smaller agricultural surplus and less food available for export. . . .Overall, replacing one 121-160 acre farm with four 31-40 acre ones would have increased the marketable surplus by 42 percent in the West if all else remained the same.

More broadly, Atack and Batemen conclude that "from the national economic perspective . . . resources should have been reallocated from agriculture to alternative pursuits, more individuals should have selected other occupations, and more should have invested their capital elsewhere . . . but as of 1860 [these market signals] seem to have been partially disregarded."¹³

II. Exchange

It was not simply political imperatives that determined this outcome. Atack and Bateman acknowledge role of cultural factors, "the lure of the land and the traditional dream of agrarian

paradise," in diluting the power of economic considerations to shape people's "market" choices. Beyond that, the character of the pre-existing economic world inhibited the play of market forces and delayed the triumph of a price-run system based on a free-flow of cash or negotiable credit instruments. To grasp the importance of "history," conceived of as existing economic and social entanglements that impede change, consider the real-life experiences of two New England businesses.

In the late 1820s Dexter Whittemore, a storekeeper in Fitzwilliam, New Hampshire, organized an outwork network to produce palm leaf hats. Importing palm leaf from West Indies, Whittemore had it split in his shop and distributed to hundreds of workers, mostly women and teenage girls from poorer farm families. About 250 braiders worked for Whittemore in the late 20s, annually producing around 23,000 hats; by the 1850s, his ledgers listed some 800 braiders, who made about 80,000 hats each year. An archetypical aspiring merchant capitalist, Whittemore brought the outwork system and the market economy into the homes and lives of thousands of farm families.

Yet this market penetration of the rural economy of New England was--indeed, had to be--very gradual because the lives of most of these families were imbedded in the existing subsistence-plus system. The world of these farmers was very different from that (for example) of the export-oriented planters in Fairfax County, Virginia; there, as early as 1760, a store run by John Glassford and Company, a Glasgow mercantile house, had 387 customers, all of them "cash" or staple-goods customers: 20 percent paid for goods with specie or currency while 80 percent purchased on credit, paid for within the year with tobacco ready for export.¹⁴ Conversely, in Fitzwilliam even in the 1820s, most families operated within the confines of a

subsistence-plus barter system, providing a variety of farm goods (mostly butter, cheese, eggs) to Whittemore and receiving in return various imported foods, yarn and cloth, clothing, household goods, and farm tools. They also used Whittemore as a local "banker," asking him to credit their farm goods to the accounts of other of his customers to whom they were in debt. Whittemore thus played a dual role (in this dual economy), serving simultaneously as the local representative of a trans-Atlantic capitalist market system and as the nexus of the towns' barter-exchange economy.

The hat-outwork system added a significant "cash" component to Whittemore's business but did not completely undermine the pre-existing exchange system. In 1830, credit for hat work appeared in 83 percent of all of Whittemore's accounts, amounting to 48 percent of the total credits. However, one-half of his accounts still listed third-party payments, which accounted for about 8 percent of the total credits, while another 25 percent of the credits came from barter transactions of farm goods or labor services. Thus, one-third of the "gross income" of this merchant capitalist in 1830 continued to flow from one part or another of the traditional exchange economy.

Twenty years later, Whittemore and his neighbors were more fully integrated into a market economy. By the 1850s the outwork system was far more pervasive, with Whittemore alone employing 800 braiders. Equally significant, the character of his accounts had changed. As before, hat credits appeared in 83 percent of his accounts and comprised about 48 percent of the credits; however, third-party payments had diminished markedly in number (appearing in only 25 percent of the accounts) and in size (totaling 4.5 percent of the credits), as had the value of bartered farm goods and labor services. Whereas one-third of all credits came from the

subsistence-plus exchange economy in 1830, that system now accounted for only 15 percent of Whittemore's receipts. Conversely, cash payments and IOUs now totalled 37 percent of his credits, raising the proportion of his "gross income" from the market economy to 82 percent. The slow and halting transition from a barter-economy to a price-driven market system was nearly complete.¹⁵

The story--and its chronology--was much the same in the book manufacturing business of Ebenezer and Dan Merriam in Brookfield, Massachusetts. Three-fourths of the books printed and bound in the Merriams' shop in Brookfield were carried by freight wagons to publishing houses in various eastern cities: New York, Philadelphia, Albany and, closer to home, Boston and Worcester. In return, the Merriams received neither cash nor credit but other BOOKS, which they had to sell or barter in order to acquire goods and services for themselves and their employees. Every year between 1818 and 1831, the Merriam brothers traded with 25 to 30 storekeepers in small settlements throughout southern New England (over the years, a total of 91 rural merchants in 26 towns), exchanging their own imprints and those of city publishers for store goods. They used some of these store goods to feed and clothe their families and apprentices; the remainder were "recycled" into the local exchange economy, balancing out accounts with local suppliers and dependent households.

Like the aspiring merchant capitalist Dexter Whittemore, the book manufacturing Merriams found themselves at the center of a complex barter-exchange economy. They paid their journeyman primarily in kind--the rent of a small house, credits to his accounts at local stores, and no less than one-third of his "wages" in books, which he apparently had to peddle for himself if he wished for more than a literary "profit" from his labors. The Merriams also "sold" books

at their office and took almost anything in return: rye, corn, veal, cheese, butter, pumpkins, onions, firewood, and lumber in goods; mercantile credits from shoemakers; and even a little cash, primarily from book purchases made by the members of the professions: ministers, doctors, and lawyers.

The first major challenge to the Merriams' barter-economy came in 1824. Papermaking firms, whose bills accounted for 33-45 percent of the total cost of a book-run, demanded payment either in bank notes or in specie or in the notes of few large New York and Philadelphia publishers--in short, in the negotiable instruments of a cash economy. Previously, the Merriams had never handled \$200 in cash over the course of a year; now they had to come up annually with huge sums: \$800 to \$1,500.

To meet the demands of the market, the Merriams engaged it more fully, adding a new line of business. They began to print law books for large city publishers--Carey and Lea of Philadelphia and Collins and Hannay of New York--and used most of the resulting cash or credit income to pay their bills for paper supplies. Beyond that, whenever they were confronted by a cash-flow crisis, the Merriams relied on the emergent market-in-money, tapping the funds of wealthy merchant landowners in rural Massachusetts; no fewer than 15 times between 1804 and 1837, they mortgaged their office, houses, and lands in return for infusions of cash and credit.

With their "market" needs covered by printing contracts and mortgage loans, the Merriams continued as before to participate in the regional "barter" system, exchanging books for goods and services. Only twenty years later, in 1845, did this book manufacturing firm forsake participation in this dual economy, not because the Merriams wished to change their mode of doing business but, as in 1824, because they had no choice. City-based publishing firms would

no longer barter books-for-books with the Brookfield enterprise, but instead (as one of the Merriams put it) "accumulated cash balances against us," an urban-driven financial policy that quickly undermined the entire rural barter system so carefully devised by the Merriam brothers.¹⁶ In Brookfield, as in Fitzwilliam, markets and money had become the measure of all things.

III. Money

"Money is so very scarce and we must have some." The words of Roxanna Bowker Stowell, a poor southern New England hatbraider, might well be those of the two generations of Americans who experienced the transition to a market economy.¹⁷ Money in the form of specie was always "very scarce" during these decades, while money in the form of paper--whether currency, bank paper, or mercantile notes--was usually of suspect value. "Money," the very sinews of a market economy, was perhaps the most problematic of all commodities produced in the antebellum American economy.

Actually, most American money was not "commodity" money in its usual form of gold or silver, but "token" or artificial money, to use the nomenclature of Karl Polanyi. In early America, as in most early modern economies, commodity money was used in foreign trade, token money in domestic commerce. The paper currency used successfully in colonial Pennsylvania, as one scholar explains, was "simply a means to a particular end:" it "increased the productivity of [the] colony and thereby enhanced its capacity to export produce for specie."¹⁸

Token money was also inflationary money, and therein lay the rub. The enormous inflation during the Revolutionary War convinced some Americans, and especially many creditors, that state-issued token money was dangerous, an impression that seemed to be

confirmed by the pro-debtor policies of some state legislatures during the postwar recession. In 1786 George Washington warned Henry Knox that the legislatures were apparently "determined to annihilate all debts public and private and have Agrarian Laws, which are easily effected by . . . paper Money."¹⁹ Consequently, the creditor interest at the Philadelphia Convention won approval of a clause in the new federal Constitution prohibiting state-issued token money; states could not "coin money, emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any . . . law impairing the obligation of contracts. . . ."²⁰

Did this creditor-inspired measure significantly retard the American transition to a market economy, especially in the domestic sector? Initially, most of the banks chartered by the states primarily served export-oriented merchants, lending them specie or credit on specie so that they could purchase bills of exchange for foreign trade. These state-chartered banks also accepted deposits and printed their own paper for loans at interest, thus providing a quasi-public substitute for state-issued paper money. However, there were continual demands for more banks--and more token money--for the next two generations, which suggests that, whatever its benefits to creditors, the ban on state-issued currency created a significant financial problem and may have had a negative effect on American economic growth.

Certainly it did not end political struggles over monetary policy. If Federalists feared "agrarian" laws enacted by legislative majorities, early Jeffersonians feared the concentrated economic power represented by banks in general and Hamilton's Bank of the United States in particular, warning it would produce "a consolidated, energetic government supported by public creditors, speculators, and other insidious men lacking in public spirit of any kind."²¹ To dilute the Bank's influence and to make credit available in the domestic economy, especially to farmers

and artisans, New York Jeffersonians issued state charters to institutions such as the Troy and Lansburg Farmers Bank (1801) and the Mechanics' and Farmers' Bank of Albany (1811). These banks quickly expanded the supply of token money because, as the New York comptroller Azariah Flagg noted a few decades later, "a bank . . . with a nominal capital of \$100,000 might commence receiving deposits and discounting notes on the payment of \$12,000" in specie into its vaults. Indeed, many new banks did not require the deposit of actual specie but issued stock in their enterprise in return for notes of other banks, so that their own notes were hardly backed by specie at all, creating what Flagg called "the era of banking on STOCK NOTES." As the economist Matthew Carey observed, the result of this pyramid scheme was a "mercantile world . . . like the piles of bricks erected by playful children.--The fall of one produces the fall of others--either immediately or remotely."²²

The magnitude of the problem became clear during the Panic of 1819. The number of state banks had increased continually: from a few dozen in the 1790s, to 88 in 1811, to 246 by the end of 1815--when the face value of bank notes in circulation amounted to approximately \$68 million, a huge sum and much of it of dubious soundness. To impose some order on this chaotic banking system (and to profit in the process), enterprising money brokers in the large cities bought the notes of distant banks at a discount, and then dispatched agents--the first "carpet-baggers"--to those small-town banks with packets of notes to redeem them at par and in specie.²³ Even as this rudimentary clearing system sought to discipline private banks through market incentives, Congress in 1816 chartered the Second Bank of the United States, directing it to contain the expansion of credit through the imposition of specie requirements. Initially, however, the Second Bank's policies merely contributed to the boom; by 1818, it had issued \$23

million (in notes and demand deposits) on a specie reserve of \$2.5 million. When the Second Bank did implement a deflationary policy in the summer of 1818, calling on state banks to pay their debts to it in specie, its action set off a chain of bank failures and an abrupt contraction of the supply of credit. By 1821, those state banks that were still solvent had only \$45 million in circulation and the court dockets of every state were crowded with thousands of cases, as creditors tried to save their own businesses by taking possession of the devalued property of their debtors.²⁴ The financial system--indeed, the market economy itself--was in crisis. Since profits depended on prices, a sustained monetary-induced decline in the price level threatened firms with bankruptcy and a massive destruction of capital.²⁵

The failure of the Constitution-makers of 1787 verged on the profound. Their prohibition of state-issued currency had yielded neither a stable standard of value nor an effective barrier to political manipulation of the emergent market system. Indeed, they may have exacerbated both problems. Whatever the inflationary risks posed by state-issued currency, a single body in each state (the legislature) controlled the amount of paper money and could be held responsible for its value. A token money system controlled by independent, privately-controlled banks was inherently less stable and less predictable. "To create money," a New York critic of speculative banking practices warned in pamphlet of 1815, "is to control commodityTo augment it unduly is to unhinge the solemnities and obligations of contracts; to place the price of all property at the caprice and judgment of those [bankers] who wield power."²⁶

Moreover, the chartering system did not insulate the market economy from political control. Entrepreneurs and would-be bankers infiltrated the nascent party system, mobilizing community support and dispensing bribes to legislators (often in the form of bank stock) to win

bank charters. To mollify public concerns about the award of these banking privileges, state governments imposed a wide variety of "social" burdens on banking corporations. Some imposed direct taxes or fees: a New Jersey law required banks in three cities to pay an annual fee equal to one-half of one percent of its capital stock, while in 1836 Pennsylvania demanded (and got) \$2.5 million from Nicholas Biddle for issuing a state charter to the (former) Second Bank of the United States, plus the promise of an additional \$100,000 per annum for 19 years, the monies to support the common schools. Other states required banks to purchase stock in manufacturing and transportation companies or carry a percentage of their loans as low-interest farm mortgages or offer generous terms of credit for contractors on canal and railroad projects.²⁷ Whatever the means, the result was the same: higher costs for banks and therefore higher costs (in interest charges or risks of default) for borrowers and for the financial infrastructure of the emergent market economy.

In these circumstances, some economic visionaries proposed a system of National Money, issued through loan offices in every states, its value backed by stock representing the productive wealth of the country. But these ambitious plans lacked political clout, which, in the event, was the prerequisite for the successful creation of a reliable banking system that had the potential to create a trustworthy yet flexible token-money supply. In 1829, Martin Van Buren, Governor of New York and political magician extraordinaire, drafted a plan for a Safety Fund. As enacted by the New York legislature, the act imposed a series of rules and regulations on state-chartered banks: creating a Comptroller to inspect their books; establishing open procedures for advertising and selling the stock of new banks; creating a pooled fund to pay the debts of failed banks; and, most important of all for our purpose, an expectation that they would invest their resources "in

safe public stock" (of transportation or manufacturing companies) so as to enhance the wealth and the credit of the state. "The amount of that credit, which can be kept in use without creating a redundant circulation," explained Joshua Foreman, the financial architect of Van Buren's plan, "is exactly the amount necessary for the transaction of business and is regulated by the balance of the commodities in the market at the time."²⁸ This intellectual insight--linking the size of the money-market to that of the commodity-market--and its effective political implementation through the Safety Fund represented a giant step forward in the theory of a market economy. For it gave confidence that the market value of an item reflected its intrinsic worth, and was not dependent on the vagaries of a token money system that was the either the product of the caprice of public legislatures or the caprice of private bankers. An effective market-in-money, was slowly coming into existence.

IV. Law

Even as state governments imposed various "structural" distortions on the money-market, they intervened directly in the credit economy during times of financial crisis. Their main goal was to protect local entrepreneurs and local producers and they did so by political means. For example, beginning in 1818, Massachusetts and New York carried on a financial "border war," each state using its laws to protect resident debtors at the expense of out-of-state businesses. Similarly, in Georgia in 1820, the legislature passed a law that excused state banks who owed money to the Second Bank of the United States from a 25 percent interest penalty for nonpayment in specie, an action that was contested by the Bank and overturned on appeal by the United States Supreme Court in 1824.²⁹

Following the Panic of 1819, governments in states to the west of the Appalachian

Mountains were particularly solicitous of the interests of debtor-farmers. In 1819 the Indiana legislature increased the amount of property a debtor could "exempt" from seizure in forced sales and, beyond that, stayed all executions for debt for one year, unless the creditor agreed to accept at par the paper currency issued by a new state bank. Missouri, emulating the example of Ohio and Pennsylvania, enacted a minimum appraisal law that required creditors to accept property (whatever its "market" value) at two thirds of its "official" value, as determined by three appraisers appointed by the local county court, a requirement that effectively increased the value of most debtors' assets. The legislation contained a "stay" requirement as well, stipulating that the creditor had to accept at par the certificates issued by a new loan office or wait thirty months before initiating a court suit.³⁰

However, similar pro-debtor measures were defeated in many state legislatures. New Jersey, New York, and Virginia rejected minimum appraisal bills by substantial margins; in Virginia two stay bills were also defeated, a bare majority persuaded by the dictum of Representative William Selden: "Leave men alone to make their own contracts, and leave contracts alone when they are made." In those states where such relief measures passed, creditors promptly challenged them in the courts, usually with success. State courts in Missouri, Kentucky, Tennessee, and Vermont overturned as unconstitutional both stay and minimum appraisal laws. The United States Supreme Court likewise declared in favor of creditors, striking down in Sturges v. Crowninshield (1819) a New York bankruptcy law that granted relief to debtors for previously contracted debts (while declaring that the relief legislation did govern the legal status of newly-made contracts). Whatever the economic impact of the Federal Constitution's bar on state-issued currency, it seems clear that its protection for "contract rights"

encouraged the transition to a market economy by providing creditors with legal remedies, as time-consuming and unwieldy as they might be, for delinquent mortgage and commercial debts.³¹

However, these rulings did not resolve the legal status of many financial transactions, such as those between merchants in different states or those involving the negotiability of private financial notes. As early as 1801, the Massachusetts politician and legal theorist James Sullivan argued that "there ought to be one uniform rule throughout the nation on bills of exchange, promissory notes, insurance policies, and all personal contracts." "These all arise from commerce," and Sullivan astutely noted, "the regulation of them is the regulation of commerce itself."³² The medium was the message, in that the status of the note or contract in law would determine the very value of the transaction.

The difficulty lay in the multitude of legal systems. "In a country like ours, composed of a federal government and some 29 distinct and interdependent sovereignties," Hunt's Merchants' Magazine lamented in 1846, "it is a source of no little regret that there should be discordance in the fundamental laws of the several states. . . ."³³ The negotiability of mercantile bills of exchange constituted the central problem. As inter-state trade through a market-credit economy expanded, merchants and manufacturers had to find ways to transmit funds to pay for goods and services. Their efforts set in motion a parallel trade in mercantile bills and notes, payable in 60- or 90-days but which in the meantime passed from hand to hand; the bills of credit issued by New York publishers to the Merriams of Brookfield in return of their printing services were immediately endorsed over to papermaking firms in western Massachusetts and eventually, after several more endorsements, found their way back to New York for redemption.

The value of such notes was always uncertain, and so they were always discounted, sometimes quite heavily. In the event, some mercantile notes were worthless, the original issuer having gone bankrupt, and others were tainted with fraud. In such cases the respective legal rights of debtors and creditors varied from state to state, inhibiting the free flow of credit and goods.

The problem was not easily resolved. Recourse to the federal court system brought little relief, since Section 34 of the Judiciary Act of 1789 required federal judges to follow the laws of the state in which the legal action arose. During the first decades of the nineteenth century most federal judges conformed to this directive, especially in cases involving real estate. However, some jurists sought to break free of state law in commercial cases, invoking the concept of a general mercantile law that was independent of state sovereignty and jurisdictional authority.³⁴

In a political world obsessed with the issue of federal authority versus states' rights, any such legal innovation raised the prospect of a major constitutional struggle. As Chief Justice, John Marshall did all in his power to encourage a national market economy; for example, Brown v. Maryland (1827), he persuaded his colleagues to concur in a decision that limited the ability of a state to tax goods imported from other states. Devising an "original package" doctrine, Marshall declared that the commerce clause prohibited the taxation of goods bought at wholesale; they could be taxed only when they were broken up and distributed to retailers within the state. But even Marshall shied away from establishing a federal commercial law. Aware of the controversy produced by pre-1815 decisions that had announced a federal common law of crimes (and which ended with the Court's explicit repudiation of those initiatives, he treated inter-state commercial cases with great circumspection. His Court supported lower court jurists who

followed mercantile rules (rather than state laws) in cases involving the negotiability of commercial notes but, even when he might have done so, Marshall refused to establish a general theory that challenged the strictures of Section 34 of the Judiciary Act.³⁵

Thus, it was only in 1842 that the principle of a federal commercial law was firmly articulated in the precedent-setting case of Tysen v. Swift. Writing for the court, Marshall's old Federalist ally, Justice Joseph Story, upheld Lord Mansfield's dictum that negotiable instruments were governed by a "general" commercial law, a ruling that gave a creditor an absolute right of recovery against a debtor even when the debt consisted of a fraudulent note. Mindful perhaps of the need for a common national set of rules on commercial transactions, the Jacksonian judges endorsed Story's decision, making it unanimous. At the same time, Roger B. Taney and his Jacksonian colleagues (in the important case of Watson v. Tarpley [1856]) insisted on the primacy of local law (and state courts) in cases involving citizens of a single state.³⁶ The duality of this decision reflected many facets of American history: the federal constitutional and legal structure, the growing tensions over slavery, and the continued importance of local customs and local power in the economic life of the United States. As Story had noted in 1815 (in an unsuccessful attempt to persuade the Court to declare a federal commercial law):

the primacy of local law sets the citizens of the different states in array against each other, and enable a fraudulent debtor to retreat into another state, and there by a formal surrender of his property and a settled residence, to set at defiance the claims of all his absent and honest creditors.³⁷

In so far as a market economy depended on legal rules, there was not one but many "markets" in antebellum America.

* * * * *

Anthropologists have devoted considerable scholarly effort to describing and defining the economic systems found in very diverse societies. They agree, in general, that economies fall into three broad categories: those based on impersonal markets and a sovereign system of prices; those based on barter and social exchange; and those based on redistribution, enforced either through cultural rules or political means. Some of these conceptual categories, that of redistribution for example, clearly reflect the cultural practices among many tribal peoples; the "potlatch" is not a defining characteristic of more highly specialized, state-based societies. Still, such economically advanced societies do have "political economies," which is to say that economic outcomes reflect political (redistributive) decisions as well as the calculus of price-based market choices. So also with the category of barter and social exchange which, while characteristic only of subsistence agricultural societies, appears in a variety of ways in transitional and highly developed market economies: "reciprocity" and other social obligations sometimes choices that, from a market perspective, are "irrational."

In attempting to apply this three-fold schema to the economy of the United States during the era of the Market Revolution, we might begin with the term itself: What was the "revolutionary" aspect of this era? Some commentators tend to take the Market itself for granted, focusing on the changes--social, economic, cultural, and political--allegedly caused by this change in productive relations. As I have suggested above, equal attention needs to be paid to process by which a "market" was created, a process that in real life was enormously complicated, as well as highly conflict-ridden and problematic; and, needless to say, any theory that attempts to comprehend it must reflect that historical complexity.

ENDNOTES

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4. Michael Merrill, "The Anti-Capitalist Origins of the United States," Review 13 (December, 1990).
5. Quoted in Thomas M. Doerflinger, A Vigorous Spirit of Enterprise: Merchants and Economic Development in Revolutionary Philadelphia (Chapel Hill, 1986), p. 333.
6. Quoted in Ruth Bogin, "Petitioning and the New Moral Economy of Post Revolutionary America," William and Mary Quarterly, ed ser., 45 (1988), p. 405. In "The American Revolution, Capitalism, and the Formation of the Yeoman Classes" (in Alfred F. Young, ed., Beyond the American Revolution [Chapel Hill, 1993], p. 105) Allan Kulikoff differentiates those whom he calls "agrarian realists," such as Jefferson and Madison, who advocated small-scale farming directed for market sale, from "yeomen" producers, many of whom envisioned a world of subsistence-plus farmers.
7. See Alan Taylor, "Agrarian Independence: Northern Land Rioters after the Revolution," in Alfred F. Young, ed., Beyond the American Revolution (Dekalb, IL, 1993), pp. 221-246.
8. Janet Reisman, "Money, Credit, and Federalist Political Economy," in Richard Beeman, Stephen Botein, and Edward C. Carter II, Beyond Confederation: Origins of the Constitution and American National Identity (Chapel Hill, 1987), p. 151

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12. Murray N. Rothbard, The Panic of 1819: Reactions and Policies (New York, 1962), p. 26 and pp. 24-30.
13. Jeremy Atack and Fred Bateman, To Their Own Soil: Agriculture in the Antebellum North (Ames, Iowa, 1987), pp. 217, 266.
14. Carole Shammas, The Pre-industrial Consumer in England and America (Oxford, 1990), p. 268.
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16. Jack Larkin, "The Merriams of Brookfield: Printing in the Economy and Culture of Rural Massachusetts in the Early Nineteenth Century," Proceedings of the American Antiquarian Society, 96 (1986), p. 65 and pp. 47-65.
17. Quoted in Dublin, "Women and Outwork," p. 64.
18. Karl Polanyi, The Great Transformation (Boston, 1944, 1957), p.193ff; Janet Reisman, "Republican Revisions: Political Economy in New York after the Panic of 1819," in William Pencak and Conrad Edick Wright, eds., New York and the Rise of American Capitalism (New York, 1989), p. 2.
19. Quoted in Reisman, "Federalist Political Economy," p. 151.
20. U.S. Constitution, Article I, Section 10.
21. Quoted in Reisman, "Republican Revisions," p. 13.
22. Quoted in Reisman, "Republican Revisions," p. 16-17.
23. Rothbard, Panic of 1819, p. 110.
24. Rothbard, Panic of 1819, pp. 7-8 and Chapter 1.

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26. Quoted in Reisman, "Republican Revisions," p. 24.
27. Tony Freyer, Producers versus Capitalists: Constitutional Conflict in Antebellum America (Charlottesville, VA, 1994), pp. 98-102.
28. Quoted in Reisman, "Republican Revisions," p. 32.
29. Freyer, Producers versus Capitalists, p. 21; Rothbard, Panic of 1819, p. 61.
30. For a detailed survey of state legislative response, see Rothbard, Panic of 1819, Chapter 1.
31. Selden quotation from Rothbard, Panic of 1819, p. 37, and chapter 1 for the resolution of these debtor-creditor struggles. Despite various court rulings, state legislatures continued to pass stay and other debtor-relief laws; see Freyer, Producers versus Capitalists, p. 89.
32. Quoted in Tony Freyer, Harmony & Dissonance: The Swift & Erie Cases in American Federalism (New York, 1981), p. 20.
33. Quoted in Freyer, Producers versus Capitalists, p. 33.
34. Tony Freyer, Harmony & Dissonance, chapter 1.
35. Freyer, Producers versus Capitalist, p. 98; Freyer, Harmony & Dissonance, pp. 30-33.
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