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Groundhog Day Again?: Is the “Liberal Tradition” a Useful Construct for Studying Law, Courts, and American Political Development?¹

Carol Nackenoff

How meaningful is it to talk about the “liberal tradition” as a context within which constitutional deliberation takes place in the United States? How helpful is it in considering the role of law and courts in American political development? Louis Hartz’s *Liberal Tradition in America* has reached the half-century mark, and Hartz’s formulation of the boundary conditions of political discourse and political life has remained highly influential despite the many critiques that have been leveled at his thesis over the years.² In this essay, I suggest that the answer is that it is not especially helpful, and that talk of the “liberal tradition” carries a great deal of baggage constitutional scholars might not want to carry.

To be sure, there appear to be very real constraints on what most of those who don black robes and speak the language of constitutional law are prepared to think. Justice Robert Jackson wrote that “never in its entire history can the Supreme Court be said to have for a single hour been representative of anything except the relatively conservative forces of its day.”³ The Constitution establishes boundary conditions for deliberation that are much tighter, in the view of some legal scholars and jurists, than in the view of others, and arguments abound on how malleable the principles and values expressed in that document are. That legal discourse has been relatively constrained remains clear. It is also reasonably clear that the 2004 election assured that the high Court will move closer to the pole about which Justice Jackson complained than it might have with a different electoral outcome. Movement in one direction seems to eventuate in some course correction, when the appointment process operates under a different regime. But do such observations get us any closer to an assessment of the value of the concept of a “liberal tradition”?

When social scientists and legal scholars refer to “the liberal tradition” in American politics and law, they do not simply mean something the Democrats used to embrace in the Great Society era nor do they mean what conservative commentators call “liberalism,” a label attached to any current Congressional Democratic aspirations. Rather, when scholars talk about “the liberal tradition” they use it to characterize the conditions and

boundaries within which discussions and disagreements over principles, meanings, and values take place. In this essay, I will work with Hartz’s understanding of that “liberal tradition”, since this understanding of our tradition has been so influential.

For Hartz, the liberal tradition was characterized by Lockean, atomistic individualism, wedded to Horatio Alger in the mid-nineteenth century. He argued that the American democrat, a peasant-proletarian hybrid, was hoodwinked by the Whig-Hamiltonian-capitalists in the late antebellum era. Seduced by the materialist dream of equality of opportunity, the American democrat accepted the rules of the game as the Whigs themselves won the economic race. Hartz contended that the Whigs had managed to “throw a set of chains around” the American democrat that became an ideological straightjacket. American political thought became frozen in time and intellectually impoverished.⁴ In Hartz’s America, politics was marked by consensus; truths were self-evident, beyond examination. Conflicts were not battles to the death, and lines of argument that moved beyond the boundaries of a liberal worldview died out fairly quickly (though heirs of liberalism could get rather hysterical about challenges from the left).

What made all this possible was that America lacked a feudal past, and there was no genuine aristocracy against which an emerging bourgeoisie could

react or against which they could constitute a class identity. It necessarily followed for Hartz, since he accepted the notion that ideas were the product of relations among social classes, that the peasant-proletariat never developed a working-class consciousness during the flowering and maturation of the industrial system. There was a moment for socialist appeals, but Americans missed the boat and were hereafter immune to such appeals. In the new world, Locke equaled Burke. That is what Americans conserved, and became “exceptional” in their immunity to class conflict and what that produced in Europe. Americans, classed though they were, thought they were atomistic individuals.

Tocqueville reported that, in antebellum America, “there is hardly a political question in the United States which does not sooner or later turn into a judicial one.”⁵ This tendency is surely

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more pronounced now. Since struggles over principles, values, and constitutional meaning frequently take place in American courts, it is highly appropriate to ask about the place of courts in “the liberal tradition.”

When we turn to law, some of Hartz’s characterization of the liberal tradition is useful if not exceedingly original. To give Hartz his due, perhaps his analysis indeed does help explain why disparate outcomes based in wealth do not trigger strict scrutiny in constitutional law, so that, for instance, access to equal educational resources absent a specific racial bias is not a 14th Amendment equal protection problem. And perhaps fear of state power, a legacy of our quarrel with the British empire for Hartz, helps explain why the American state has few acknowledged affirmative constitutional obligations.

We also certainly see that the law tends to treat people as individuals. Discussion of groups or classes of citizens has much weaker traction. As Antonin Scalia wrote in *Adarand*, “Individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or a debtor race. That concept is alien to the Constitution’s focus upon the individuals . . . In the eyes of government, we are just one race here.”⁶ Moments during which group rights or interests are acknowledged seem fleeting.

Hartz recognized (though hardly uniquely) the centrality of property and possession to the Constitution we framed and the political struggles we experienced. Property is a core value; its protection has been ratcheted up during the Rehnquist Court years in regulatory takings cases. Moreover, the Court’s doctrine of standing privileges injuries that can be expressed as discrete economic losses over injuries that are widely shared, more attenuated, or of a non-economic sort (e.g., some environmental harms). Hartz also understood that political (likewise legal) discourse is patterned and that new ideas had to have strong, indigenous roots if they were going to be able to grow. He concluded that America was extremely unlikely to become more self-aware or grow new ideas.⁷

The “liberal tradition,” then, may help explain where law has not wandered, or where law has kept certain political impulses in check. However, as Sean Wilentz recently pointed out, “[t]he great weakness of Hartz’s approach was that, as a unified field theory of American political thought, it turned politics in a modern liberal polity into fake battles fought with wooden swords.”⁸ But The Civil War and bloody industrial struggles in the Gilded Age have always posed challenges to Hartz’s consensus view. As we will see, developments during the past third of a century are also challenging to Hartz’s construct, and give us reason to reconsider how useful it was beyond its capacity to capture the particular historical moment in which it was crafted.

The fact that Americans are heirs of Locke is certainly apparent. But our political heritage is also of Hume and the Scottish Enlightenment, of Machiavelli, of Hobbes, and the Puritans.⁹

The Constitution is not pure Locke. These other traditions bring striking potential for tensions.

Several scholars have labored to save Hartz from consensus politics by positing two or more poles of normal American political discourse, each reflecting a different perspective on the relationship between liberal principles. J. David Greenstone offered a more dynamic picture of American politics than did Hartz, with special tension between humanist liberal perspectives (basically the Lockean atomistic individualism of Hartz) and reform liberal perspectives (identified with Dewey, Addams, and the progressive impulse to use the state positively, to ensure that all citizens can develop their faculties). American political struggles were, then, quite real; bipolarity best expressed the way in which different thinkers and groups understood tensions between competing values, such as between liberty and union in the 1850s. There were, in Greenstone’s view, nevertheless boundary conditions within which liberal disagreements took place.

Turning his attention to the Court, Greenstone claimed the Constitution was a document expressing a complicated but pervasively liberal American political culture. The constitution specifies rules of the game within which clashes take place, legitimating some modes of conflict and proscribing others, takes some substantive issues off the table and sets up what realistic expectations are, specifies key actors, institutions and procedures, and establishes certain philosophical commitments. There were different but patterned ways in which justices resolved tensions over principles. While humanist, reform liberal, and republican perspectives could be found in law and American political culture, Greenstone contends that if a culture is coherent enough to survive, some of its tenets must be beyond dispute—e.g., liberal theory proscribes certain forms of interpersonal domination as illicit.¹⁰

If a more complex schema for specifying the “liberal tradition” can make reasoning from the bench more coherent and recognizable, then it helps make the case for principled decision-making on the Supreme Court. This is certainly a worthy undertaking since it is one way to counter the attitudinalist claim that justices are reasonably sophisticated maximizers of their own policy preferences. Ronald Kahn, a student of Greenstone, has argued that judicial decision-making is guided by polity and rights principles, “the basic filters through which doctrines of popular sovereignty and fundamental rights confront each other.” Different justices weigh principles of popular sovereignty and individual rights differently, but all are members of an interpretive community in which principle, not instrumentality rules. Kahn contends that principle, precedent, and the legal culture establish rules of discourse and bounds within which that discourse takes place. There are disagreements, but they are liberal (friendly?) ones.¹¹

Alternately, Rogers Smith argues that liberalism is not the only political tradition in town. He makes the case that we have a richer (in his view, not better) and wider set of enduring narratives

to which American political elites appeal, and these include republican and ascriptive (exclusionary) traditions.¹² As another scholar has pointed out, “articulations of citizenship have always depended upon the exclusion of constructed and ascribed others.”¹³ Liberal outcomes may be preferable but they do not predictably win out in political contests, and are therefore problematized rather than given as in the Hartzian framework.

There is something lost by attempting to insist that our legal and political conflicts are preordained liberal. We not only neglect what is not liberal in American politics but lose the contingency in new ideas and circumstances. Hartz’s America was defined by the fact that we don’t experience social revolutions and overthrow the government; all other change paled by comparison. Instead of consensus, current scholars are much more likely to see conflict as the driving force in American political development. This is true for the Court as well. Political outcomes, while still reflecting our past, are viewed as more contingent and dynamic. Hartz’s perspective is not helpful in exploring the dynamism of politics or patterns of institutional development.

There is a good deal that is dated about Hartz’s “liberal tradition.” Hartz’s vision suggests that citizens—who have ostensible interests inherent in their social class—suffer from that disease of his era, “false consciousness.” Today, social scientists and legal scholars seek to examine ways in which citizens and groups participate actively in creating political meanings, frequently contesting or resisting dominant values or rules of the game, even if they turn to ‘weapons of the weak.’ Stated more positively, institutional actors and activists participate in constructing constitutional meanings outside the Court. This is a much more dynamic vision: both values and institutions change.

The notion of a bounded liberal tradition posits that Americans (other than extraneous fringe elements) participate in a universe of shared discourse even if there are different dialects. We understand each other when we speak—and speak about constitutional values—but to revisit Stanley Fish’s question, is there a text in this class?¹⁴ If American law strikes a particular balance between the value of free speech and equal protection, is it the case that those who see matters differently nonetheless abide by the winner’s rules and don’t consider themselves permanent losers?¹⁵ At a minimum, this requires some faith that coalitions are shifting and that openness in the process doesn’t rig the game on behalf of some privileged discourses or perspectives. Absence of revolt hardly demonstrates the case for consensus. Mark Tushnet has argued very persuasively that we cannot assume that people are part of a shared community of understanding just because they are using the same words.¹⁶ Critical legal scholars and critical race scholars point out that law

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only looks neutral, objective, and inclusionary from the perspective of the winners in political and constitutional struggles.

New efforts are afoot to reconceptualize the dynamics of political change in America as institutions have returned to the foreground in the study of politics.¹⁷ Scholars now posit and investigate conflicts over rules, norms, and terms of control among different institutions developing in different measures of political time; instead of an integrated political system, “relations among political institutions are (at least) as likely to be in tension as in fit and the tension generated is an important source of political conflict and change.”¹⁸ This approach allows space for political actors to act creatively by exploiting tensions and contradictions arising from institutional development patterns. Thus, the political universe “is inherently open, dynamic, and contested” and “existing norms and collective projects, of varying degrees of permanence are buffeted against one another as a normal condition.”¹⁹ Institutions and norms pattern American politics and law, but we are not waking up every morning to repeat Groundhog Day.

Hartz was unable to identify the relationship between cultural and religious battles and American liberalism, nor did he offer a good explanation for the deep divisions that can emerge in American politics, including divisions around abortion, immigration, separation of church and state, and gay marriage. The “liberal tradition” is not a very good guide to many current political and legal struggles.

This is the case in part because religion was not very important to Hartz’s secular understanding of American political values.²⁰ Survey data find that religion is much more important to Americans than to those living in other wealthy nations.²¹ As we follow legal battles over relations between church and state ranging from school prayer to the teaching of Intelligent Design, funding faith-based initiatives, and various forms of state aid flowing toward religious education, it is hard to believe that religion can be relegated to a mere footnote in American political development. And when we add in struggles over issues of public decency and morality, the list of issues engaging religious convictions gets very long indeed.

Cultural and religious conflicts frequently seem to dwarf economic issues in American politics. Moral issues loom large when character formation is taken as central to the political project, as I have argued the Horatio Alger story was (not the purely materialist story Hartz took it to be). This Unitarian-inspired formula can be read to show that the young person’s rite of passage was vital to the welfare of the community. If the future of the Republic hinged upon its virtue, then the character of the young and the character of the Republic were inextricably bound.²² Even with its dream of rising through the ranks, the Alger story

was entwined in nineteenth century culture wars and meant something other than Hartz made of it. And this moralistic theme has continuing resonance in American politics.

Jim Morone's *Hellfire Nation* has recently emphasized the role that different arguments about sources of sin (systemic versus personal) have played in American political battles. Contending that "[l]iberal political history underestimates the roaring moral fervor at the soul of American politics," Morone argues that "American politics developed from revival to revival." Moral crusaders played a powerful role in American state-building.²³ Jim Block's *Nation of Agents* offers a very different narrative of American history from Hartz's, emphasizing agency rather than liberty in the formation of the American self. Central struggles in American politics pit those who believe liberty requires that habits of virtue be inculcated through institutions, traditions and authority against those who seek to achieve liberal autonomy without such imposed constraints. Block maintains that "the great theorist of agency civilization," for America was Hobbes, not Locke. Divisions in American politics can, then, best be understood by examining tensions between a sectarian Protestant vision of an exclusive religious community and understandings of agency as natural and not requiring institutional coercion.²⁴

While pronouncement of a culture war that divides the public is much overblown,²⁵ there are other, possibly more remarkable, signs that American politics has been growing increasingly polarized. Surveys documented the deepening political polarization of the American public.²⁶ In November, 2005, to take just one example, 80% of self-identified Republicans approved of President Bush's performance in office while only 7% of self-identified Democrats did.²⁷ Party activists and elected officials are highly polarized. Congressional voting is more polarized than at any time in the past century, and when Congress was last this polarized, American politics was more violent and unstable.²⁸ Follow-up research suggests that a polarized Congress pays less attention to policies that might narrow income disparities and less attention to social welfare policy for all but the elderly than a less polarized Congress.²⁹ Since other evidence suggests that when Americans benefit from governmental social provision policies, they are more likely to be invested in and participate in political and civic life, policy disinvestments in all but the elderly that we have seen since 1980 may also be linked to a decline in civic engagement.³⁰

According to students of Congressional roll-call voting, propensity for legislative gridlock appears to rise with party polarization in Congress, and reduces the output of significant (as opposed to trivial and narrow) legislation. "Perhaps one of the most important

long-term consequences of the decline in legislative capacity caused by polarization is that Congress's power will decline relative to the other branches of government."³¹ It even seems plausible that perceptions of Supreme Court activism may be rising as Congress is doing less and even delegating enforcement power to courts, and that such perceptions may therefore be integrally linked to what is going on elsewhere in the federal government. This is a question that students of courts might well consider.

Periods of increasing Congressional polarization seem to track increases in economic inequality and rises in immigration restriction sentiment for most of the twentieth century.³² Evidence that economic

gains of the last several decades have gone disproportionately to those in the top tier in income distribution is everywhere to be found, including in official government data. A new study indicates that major pillars of economic security for Americans—including job stability and public and private benefits that workers have expected to access (health care, retirement benefits)—are eroding dangerously.³³ Even if there is an increase in overall economic prosperity, there is not a sense that rewards are shared, that we are all of one estate, or

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sense of vindication for the American dream.

Does the Constitution settle or remove from the table the deeply divisive issues in contemporary American politics, or do at least some of these become subject of constitutional controversy? We certainly know that some do. If some do, why these and not others? Is it possible that some of these grievances can find no language—partly because of the way earlier Courts have set precedents—through which the struggle could capture the attention of federal courts? The "liberal tradition" does not seem to offer a good answer to how the Court engages or disengages from deeply divisive issues. Do justices who have different understandings of polity and rights principles and of what to do when principles clash manage to pick their way through the minefields and "settle" or dispose of these questions in a way that keeps conflict within manageable bounds? Is it the Court, then, that serves as border guard, defining the boundaries of some "liberal tradition"? Scholars could, indeed, ask such questions, but they cannot presume the answers by invoking the "liberal tradition".

What do students of law and courts gain by invoking "the liberal tradition", when we also have to realize that it saddles inquiry with a good deal of baggage? Hartz wrote at the end of the McCarthy era and during the Cold War. At the time of *The Liberal Tradition in America*, there were few extreme liberals or conservatives in Congress.

Bipartisan support helped pass race legislation and some social welfare legislation. Parties were perceived as chasing the median voter, offering few substantial choices to the public. There was even a claim that we had witnessed the end of ideology.

John Gerring, who has studied party ideologies in the United States, refers to this period as the “universalist epoch.” Party rhetoric was inclusionary beginning in the 1940s and 50s. By the time of Stevenson’s campaigns, Democrats had stopped attacking their opponents and had stopped distinguishing themselves as “liberals”. In fact, even shortly after Roosevelt’s first election, when “liberalism” was used in Democratic campaigns, it was usually used as part of the trilogy including communism and socialism, thus being invoked as an American, rather than a partisan philosophy.³⁴ Gerring argues that a universalist postwar Democratic party delivered a message with “intertwined concepts of consensus, tolerance, compromise, pragmatism, and mutual understanding.”³⁵ This sounds highly consistent with Hartz’s liberal tradition. And during the Cold War, the meaning of America was defined against the Soviet Union and liberalism was held up as the antidote to the appeal of other “isms”.

Political and legal scholars who are wedded to the “liberal tradition” are, I would suggest, captivated by a description of a political world that best encapsulated a particular historical moment. Even though law and politics are historically informed and patterned discourses, there is not a great deal to be gained—and actually a good deal of understanding to be lost—by latching on to Hartz in 2006.

Political battles in the United States are likely to be expressed in appeals to time-honored traditions and values, and often are expressed in constitutional language. We do tend to constitutionalize our political struggles, perhaps an indication of the extent to which the Court has become part of our strategic calculus in politics. The Constitution becomes a weapon to fight with, and it means different things to different contestants. If we look to American history, we will find plenty of struggles over constitutional meaning.³⁶ The outcomes of these struggles tell us quite a bit about power, mobilization, political opportunities, and institutional change. We often learn about contingency and possibility rather than inevitability. I do not think we learn very much about these struggles—or even see most of them—by positing a bounded “liberal tradition” in American political or legal discourse. And it may be that by thinking in terms of boundaries and constantly repeated tropes, we also miss opportunities to remain open to new possibilities.

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Endnotes

1. An earlier version of this paper was presented at the University of Maryland School of Law/Georgetown Law Center Conference on The Liberal Tradition and the Law, March 3–4, 2006. Thanks to Aaron Strong and Ian Sulam for research assistance.

2. Some critiques important for this paper appear below. Some of my own critiques appear in “Gendered Citizenship: Alternative Narratives of Political Incorporation in the United States, 1875–1925,” in *The Liberal Tradition in American Politics: Reassessing the Legacy of American Liberalism*, ed. David F. Ericson and Louisa Bertch Green (New York: Routledge, 1999), 137–169.

3. Robert H. Jackson, *The Struggle for Judicial Supremacy* (New York: A. A. Knopf, 1941), 187. The remark was made in the context of Roosevelt’s struggle with the Court and what Jackson saw as “the usurpation, the unwarranted interferences with lawful governmental activities, and the tortured construction of the Constitution” by the conservatives (189). The liberal forces he had in mind were the New Dealers.

4. Hartz, *Liberal Tradition*, especially 62–63 and 203–205. See my discussion in *The Fictional Republic: Horatio Alger and American Political Discourse* (New York: Oxford University Press, 1994), 264–266.

5. Alexis de Tocqueville, *Democracy in America*, 270. Ed. J. P. Mayer, trans. George Lawrence (Garden City, NY: Doubleday, 1969)

6. Justice Antonin Scalia, concurring in part and concurring in the judgment in *Adarand Constructors, Inc. v. Peña* 515 U.S. 200 (1995).

7. Hartz asked some extremely important questions for our time about America’s relationship with the rest of the world and the exportability of Americanism. These questions are beyond the scope of my paper though they also have implications for law.

8. Sean Wilentz, “Uses of *The Liberal Tradition*: Comments on ‘Still Louis Hartz after All These Years,’” *Perspectives on Politics* 3 (March, 2005), 118.

9. On Hume and the Scottish Enlightenment, see Garry Wills, *Inventing America* (Garden City, NY: Doubleday, 1978); on Machiavelli, see J.G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975); on Hobbes and the Puritans see James E. Block, *A Nation of Agents: The American Path to a Modern Self and Society* (Cambridge, MA: The Belknap Press of Harvard University Press, 2002).

10. J. David Greenstone, “Political Culture and American Political Development: Liberty, Union and the Liberal Bipolarity,” *Studies in American Political Development* 1 (1986): 1–49. He applies this approach to constitutional law in “Against Simplicity: The Cultural Dimensions of the Constitution,” *University of Chicago Law Review* 55 (1988). He does also acknowledge a republican strain in American political thought, but bipolarity receives most of his attention. See especially “Against Simplicity,” 446–447.

11. Ronald Kahn, *The Supreme Court and Constitutional Theory, 1953–1993* (Lawrence: University Press of Kansas), 18, 20. See also Ronald Kahn, “Liberalism, Political Culture, and the Rights of Subordinated Groups: Constitutional Theory and Practice at a Crossroads,” in David F. Ericson and Louisa Bertch Green, eds., *The Liberal Tradition in American Politics: Reassessing the Legacy of American Liberalism* (New York: Routledge, 1999), 171–197.

12. Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997).
13. Richard Iton, "The Sound of Silence: Comments on 'Still Louis Hartz after All These Years,'" *Perspectives on Politics* 3 (March, 2005), 114.
14. Stanley Fish, *Is There a Text in this Class?: The Authority of Interpretive Communities* (Cambridge: Harvard University Press, 1980).
15. But see Mari J. Matsuda et al., *Words that Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (Boulder, CO: Westview, 1993); Catharine A. MacKinnon, *Only Words* (Cambridge: Harvard University Press, 1993).
16. Mark V. Tushnet, "Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles," *Harvard Law Review* 96 (February, 1983), 826, 785. See also Tushnet, *Red, White, and Blue: A Critical Analysis of Constitutional Law* (Cambridge: Harvard University Press, 1988).
17. See Ronald Kahn and Ken I. Kersch, eds., *The Supreme Court and American Political Development* (Lawrence, Kansas: University Press of Kansas, 2006).
18. Karen Orren and Stephen Skowronek, "In Search of Political Development," 39. In David F. Ericson and Louisa Bertch Green, eds., *The Liberal Tradition in American Politics* (New York and London: Routledge, 1999).
19. Karen Orren and Stephen Skowronek, "Institutional Intercurrence: Theory Building in the Fullness of Time," in *Political Order [Nomos 38]*, ed. Ian Shapiro and Russell Hardin (New York and London: New York University press, 1996), 139, 140.
20. Following the publication of *The Liberal Tradition in America*, scholars repeatedly pointed to the important place of religious meanings and tropes in American politics and political discourse. Some of the important contributions to this literature include Sacvan Bercovitch, *The American Jeremiad* (Madison: University of Wisconsin Press, 1978) and *Puritan Origins of the American Self* (New Haven: Yale University Press, 1975); Garry Wills, *Nixon Agonistes* (New York: New American Library, 1970) and *Under God* (NY: Simon & Schuster, 1990); Michael Kammen, *People of Paradox* (New York: Vintage, 1972); John Patrick Diggins, *The Lost Soul of American Politics* (New York: Basic Books, 1984); Robert N. Bellah, *Broken Covenant: American Civil Religion in a Time of Trial* (2nd ed. Chicago: University of Chicago Press, 1992); Robert Booth Fowler, *Religion and Politics in America* (Metuchen, NJ: Scarecrow, 1985); Wilson C. McWilliams, *The Idea of Fraternity in America* (Berkeley: University of California Press, 1973).
21. Pew Research Center for the People and the Press, "Among Wealthy Nations . . . U.S. Stands Alone in its Embrace of Religion," The Pew Global Attitudes Project. Report released December 19, 2003, introduction and summary. <http://people-press.org/reports/display.php3?ReportID=167> (accessed March 7, 2005).
22. Nackenoff, *The Fictional Republic: Horatio Alger and American Political Discourse* (New York: Oxford, 1994). 8 and Ch. 3, "Republican Rites of Passage."
23. James A. Morone, *Hellfire Nation: The Politics of Sin in American History* (New Haven: Yale University Press, 2003), especially Introduction and Part V; pp. 7, 11, 32.
24. James E. Block, *A Nation of Agents: The American Path to a Modern Self and Society* (Cambridge, MA: The Belknap Press of Harvard University Press, 2002), 3, 5–9, 15–18, 28–30 and Chapter 4.
25. Morris P. Fiorina with Samuel J. Abrams and Jeremy C. Pope, *Culture War? The Myth of a Polarized America*, 2nd ed. (New York: Pearson Longman, 2006).
26. Pew Research Center for the People and the Press, "The 2004 Political Landscape: Evenly Divided and Increasingly Polarized," Report released November 5, 2003. <http://people-press.org/reports/display.php3?ReportID=196> accessed March 7, 2005).
27. CNN/USA Today/Gallup Poll telephone poll conducted November 11–13, 2005 reported at <http://www.cnn.com/2005/POLITICS/11/14/bush.poll/>. This is more striking than the partisan division in approval ratings during the administrations of most incumbent presidents.
28. Keith T. Poole and Howard Rosenthal, *Congress: A Political-Economic History of Roll Call Voting* (New York: Oxford University Press, 2000); Norman Ornstein and Barry McMillon, "One Nation, Divisible," *New York Times* (June 23, 2005) at <http://www.nytimes.com/2005/06/23/opinion/24ornstein.html?ex=1141102800&en=2bee9cc7a7c8562b&ei=5070>. Keith Poole made the point about violence at a Mathematics Department lecture, Swarthmore College, Spring 2003.
29. Nolan McCarty, Keith T. Poole, and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches* (Cambridge: M.I.T. Press, 2006).
30. Suzanne Mettler, *Soldiers to Citizens: The G.I. Bill and the Making of the Greatest Generation* (New York: Oxford University Press, 2005).
31. McCarty, Poole, and Rosenthal, *Polarized America*, 178–183; quote 186. The authors suggest that Congress may even be choosing to delegate more enforcement activity to the courts rather than to administrative agencies, weakening the other branches relative to the judiciary (citing an unpublished 2003 manuscript).
32. McCarty, Poole, and Rosenthal, *Polarized America*, 3, 6.
33. Jacob S. Hacker, *The Great Risk Shift* (New York: Oxford University Press, 2006)
34. John Gerring, *Party Ideologies in America, 1828–1996* (Cambridge: Cambridge University Press, 1998), pp. 248–250. Gerring examines party platforms and candidate speeches.
35. Gerring, *Party Ideologies in America*, 250.
36. Ken I. Kersch's recent book comes immediately to mind. *Constructing Civil Liberties: Discontinuities in the Development of American Constitutional Law* (New York: Cambridge University Press, 2004). See also Anne Norton, *Alternative Americas: A Reading of Antebellum Political Culture* (Chicago: University of Chicago Press, 1986).