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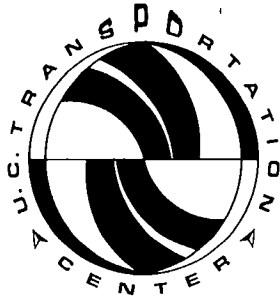
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**Economy, Community and Law:  
The Turnpike Movement in New York,  
1797-1845**

Daniel Klein  
John Majewski

June 1991  
Working Paper, No. 76

**The University of California  
Transportation Center**

University of California  
Berkeley, CA 94720

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**Economy, Community and Law:  
The Turnpike Movement in New York,  
1797-1845**

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Economy, Community, and Law:  
The Turnpike Movement of New York, 1797-1845

Abstract

Turnpike companies were the exemplary type of early American business corporation: they were the most prevalent, they were the most community laden, and they were unprofitable. The turnpike experience enhances our understanding of the evolution of the law of private and public corporations.

We explain that the state turned to the private sector for highway management because of intense commercial and regional rivalries and the failure of public alternatives.

Private management and toll-taking were startling innovations to some members of the community, however, and they protested the introduction of turnpikes. The *bete noires* of "private corporation" and "aristocracy" were often used to denounce turnpikes. The legislature both expressed and responded to these suspicions by writing laws favorable to local users and damaging to the financial viability of the companies.

Partly in consequence of the unfavorable laws turnpikes were unprofitable. Merchants, farmers, and landowners struggled to finance turnpikes, not in hopes of company dividends, but in hopes of improved transportation, stimulated commerce, and higher land values. Many turnpike projects were stillborn while those that were constructed hobbled along in a precarious financial state.

**Economy, Community and Law:**

**The Turnpike Movement in New York, 1797-1845**

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## Economy, Community, and Law:

### The Turnpike Movement in New York, 1797-1845

#### I. INTRODUCTION

The animal known as "the business corporation" underwent great change during the nineteenth century. By the end of the century business incorporation was understood as a freely available device by which private individuals could pursue their private interests. At the beginning of the century the corporate form was neither freely available nor was the desire for profit adequate cause, or even the primary cause, for granting a corporate charter. What's more, "the purposes of the individual investors," as Carter Goodrich observes, "were by no means always confined to the expectation of direct return on their investment," and to modern eyes a disproportionate share of the aggregate stock in the early corporations was unprofitable. At its origin, say Oscar and Mary Handlin,<sup>1</sup>

the corporation was conceived as an agency of government, endowed with public attributes, exclusive privileges, and political power, and designed to serve a social function for the state. Turnpikes, not trade, banks, not land speculation, were its province because the community, not the enterprising capitalists, marked out its sphere of activity.

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<sup>1</sup>Goodrich, *Public Spirit and American Improvements*, 92 *Proc. Am. Phil. Soc.* 305, 306 (1948); O. & M.F. Handlin, *Origins of the American Business Corporation*, 5 *J. Econ. Hist.* 1, 22 (1945).



But how did the community mark out the corporation's sphere of activity? What restrained the enterprising capitalists from using the corporate form toward more rapacious ends? What, to use Econspeak, were the *microfoundations* of the peculiar nature of the early business corporation?

Turnpikes are indeed a good place to look for answers. In New York, between 1800 and 1830, one third of all "business incorporations" were for turnpikes (the share goes up to 43 percent if you exclude companies organized under the general manufacturing law of 1811). Throughout the Northeast, turnpikes were the leading type of business incorporation (see Table 1).

[Table 1 here.]

In character, as well, the turnpikes are an important place to look, because no other type of business corporation was more community laden. Compared to a canal or railroad the turnpike had easy access -- too much so, in the eyes of gate keepers -- and use of the route could be made with any sort of private vehicle. All manners of business would bring people on the turnpike, which may have been laid over a former highway or even the traveller's land. If laid over a former public highway, the turnpike may not even be seen as providing a service discretely new and different from what had been enjoyed prior to its formation.

Furthermore, by 1810 or so turnpike stock had become notorious as an unremunerative asset. No type of franchise corporation in this era, according to a court opinion, was "less gainful to the corporators" than turnpikes.<sup>2</sup> Hence, when

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<sup>2</sup>People v. Kingston & Middlefield Turnpike, 23 Wend. 345 (1840).

**Table 1**

Turnpikes as a Percentage of All Business Incorporations,  
by Special and General Acts, 1800-1830

<u>State</u>	<u>Total Incorporations</u>	<u>Turnpike Incorporations</u>	<u>Percentage Turnpikes</u>
New York	993	339	34
Pennsylvania	428	199	46
New Jersey	190	47	25
Maryland	194	54	28
Connecticut	234	77	33
Rhode Island	127	34	27
Massachusetts & Maine	880	104	12
New Hampshire	304	51	17
Vermont	177	41	23
<u>Total</u>	<u>3,527</u>	<u>946</u>	<u>27</u>

*Sources:* For all states through 1800, J. S. Davis, *Essays in the Earlier History of American Corporations* (1948), II, 22-27, 216; for NH, VT, MA, and RI, P. E. Taylor, *The Turnpike Era in New England*, Ph.D. thesis, Yale University (1934), 339-344, 346; for CT, Taylor, 338-339 and N. Reed, *The Role of the Connecticut State Government in the Development and Operation of Inland Transportation Facilities from 1784 to 1821*, Ph.D. thesis, Yale University (1964), 75; for NY, NJ, and MD, G. H. Evans, Jr., *Business Incorporations in the United States, 1800-1943* (1948), 12-17; for PA, William Miller, *A Note on the History of Business Incorporations in Pennsylvania, 1800-1860*, 55 *Quarterly Journal of Economics* (1940), 158-59.

subscriptions had to be filled to bring improved roadway to the community, more than plain investment incentives had to be brought to bear on potential contributors. The stick of the community would try to shore up for the puny carrot of the business enterprise.

In our story turnpike opposition plays a significant role. The story certainly does not accord with a consensus portrayal of the early corporation, where a wise legislature placidly hands down laws to serve a neatly defined public interest. Thus the paper further revises the Commonwealth School's of the early corporation.<sup>3</sup> The role of legislation in releasing productive energy and facilitating economic development, as emphasized by J. Willard Hurst and Morton Horwitz,<sup>4</sup> is prominent in our story. As for Horwitz's suggestion that the noncommercial classes tended to be forsaken by the laws facilitating economic growth,<sup>5</sup> we document the potency of turnpike remonstrators in restraining the powers of turnpike corporations. Although turnpikes came forth in large numbers, they did so on highly compromised terms.

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<sup>3</sup>Oscar and Mary Flug Handlin, *Commonwealth; A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861* (1947); Louis Hartz, *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860* (1948); Milton S. Heath, *Constructive Liberalism: The Role of the State in Economic Development in Georgia to 1860* (1954); George R. Taylor, *The Transportation Revolution, 1815-1860* (1951).

<sup>4</sup>James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* 3-32 (1956); Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (1977). Horwitz argues the pro-development tendencies of the judiciary, whereas our focus is the legislature.

<sup>5</sup>Horwitz at 253-54.

The passage from the Handlins raises another matter: Did the ways in which "the community, not the enterprising capitalists," came to mark out the corporation's sphere of activity in fact best serve the community? In the tug-of-war between the community and enterprising capitalists, as it were, would the material benefits have been greater for all classes if the legislature had awarded more ground to the enterprising capitalists? We consider some of the factors involved in answering this question.

For the early history of the corporation, New York's experience with turnpikes rises in importance since it was the state with the most turnpikes. For research, however, New York is among the most frustrating. The variety and nature of the sources on turnpikes in New York are described in Appendix 1.<sup>6</sup>

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<sup>6</sup>The secondary literature on the toll roads of the nineteenth century is rather sparse. J.A. Durrenberger, *Turnpikes, A Study of the Toll Road Movement in the Middle Atlantic States and Maryland* (1931) remains the most cited work. The work is pleasant and fruitful reading, but brief and somewhat nostalgic in style. The New England turnpikes were catalogued by F.J. Wood, *The Turnpikes of New England* (1919) and given an excellent general treatment in P. Taylor, *The Turnpike Era in New England* (1934) (Ph.D. Thesis, Yale University). Also there are G.R. Taylor, *supra note 3*; R. Parks, *The Roads of New England* (1966) (Ph.D. Thesis, Michigan State University) and N. Reed, *The Role of the Connecticut State Government in the Development and Operation of Inland Transportation Facilities from 1784 to 1821* (1964) (Ph.D. Thesis, Yale University). The most satisfactory state study is R. Hunter, *The Turnpike Movement in Virginia* (1957) (Ph.D. Thesis, Columbia University), out of which came two journal articles. A valuable study paralleling this one in some respects is Daniel P. Jones, *Commercial Progress versus Local Rights: Turnpike Building in Northwestern Rhode Island*, 48 *Rhode Island History* 21 (1990).

## II. WHY TURNPIKES? WHY THEN?

To American fortune seekers the ratification of the Constitution was like the "bang" of a starting gun. The Constitution built an interstate framework for monetary, financial, legal and political affairs,<sup>7</sup> signalling to anticipative runners that a race was afoot -- a race to capture the trade of the interior, to develop western lands, to expand population, to build the leading entrepot in the region, the state, or the country. During the 1790s the steamboat was still in an experimental phase, canal construction was hard to finance and limited in scope, and railroads were yet to be spoken of. Transportation improvement meant, above all, highway improvement.

### The Town System of Road Care

In basic structure, local road care in New York remained nearly constant throughout the colonial period and well into the nineteenth century. That structure is depicted in Figure 1.

[Figure 1 here.]

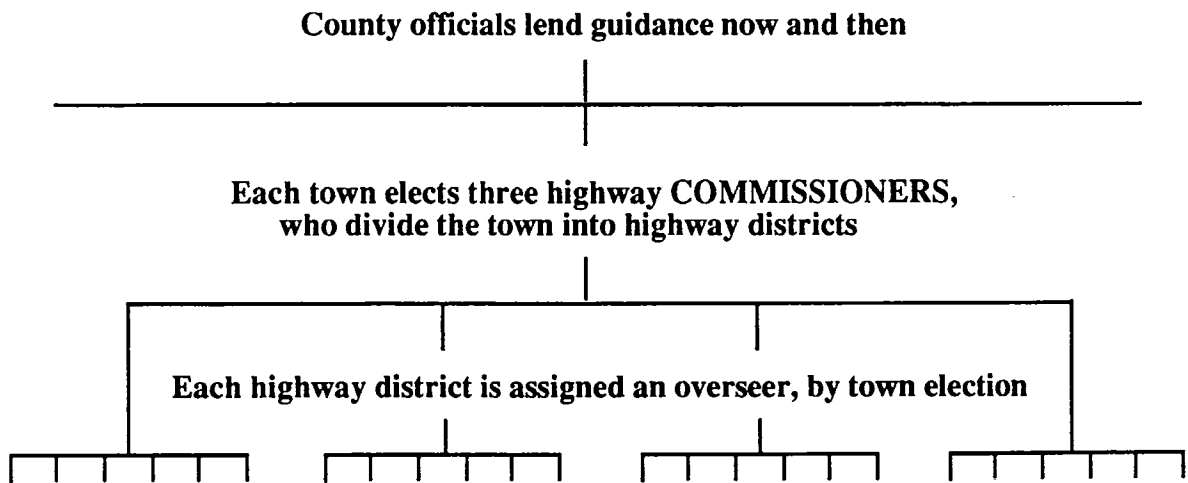
It seems that compliance with the road care system was desperately low during the War of Independence. The highway law for most of the state was reframed in March of 1779, reasserting the commissioner-overseer-laborer hierarchy.

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<sup>7</sup>J.W. Hurst *supra* note 4 at 10; D.C. North, *Growth and Welfare in the American Past* 50-74 (1966).

**Figure 1**

*Town Management of Roads in New York, circa 1800.*



**All free male inhabitants over 21 years are assessed highway labor, "in proportion to the estate and ability of each," with minimum assessment of one day, maximum of 30 days, determined by the commissioners. Commutation or able-bodied substitution was permitted.**

During that year the fines for noncompliance in the two great divisions of the state were increased five- and sixfold. In 1780 they were again doubled.<sup>8</sup> Such exigent measures are not to be found afterward.

Although the town highway commissioners are shown in Figure 1 as second in command, they had most of the responsibility and authority for local road management (hence the capital letters). The tier above the commissioners was often shifting and finding new definition. One reason is that the county configuration of the state was changing almost yearly. During the years between the General Highway Law of 1797 and that of 1801, for instance, the legislature carved out seven new counties.

The 1801 law, which is very similar to the 1797 law (except that the role of the county superintendants of highways is downplayed), determined many details that would last for decades.<sup>9</sup> For the list of eligible men in the town the average assessment was to be at least three days. The inhabitants could commute his assessment at the rate of 62.5 cents per day. Whether a substitute could be persuaded to take one's place at a better rate, we do not know. The law addresses numerous other matters, including the assessment of animals and equipment to be used in road work, the assessment of newcomers to the town, remedies for

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<sup>8</sup>Laws of N.Y., Chaps. 31 & 24, 2nd Sess. (1779); Chaps. 6 & 60, 3rd Sess. (1779-80).

<sup>9</sup>Chap. 43, 12th Sess. (1797); Chap. 186, 24th Sess. (1801).

insufficient assessments having been made,<sup>10</sup> the coordination with other towns for intertown connections, the laying out of new roads and procedures for determining damages, prohibitions against obstruction and maltreatment of roads, and various details on matters of fallen trees, guide posts and milestones, and swinging gates on roads that traversed someone's pasture.

The teeth of the system were in the fines. At virtually every step of the program a fine was specified for failing to carry out a task, including a fine of ten dollars against the overseer for failure to collect fines from the laborers. Should anyone fail to appear for road work as scheduled or should anyone "remain idle or not work faithfully, or hinder others from working,"<sup>11</sup> the fine was one dollar, which applied *pro rata* for fractional offenses. Scant evidence indicates that the fines were effective in getting people to work on the roads. In his study of Beekmantown, New York, Philip White finds that labor assessments were met in letter and that the road care was the leading expenditure of the community.<sup>12</sup>

Although residents fulfilled their basic obligations, the system as a whole failed. Indeed, there was no difference of opinion about the effectiveness of the local road care system. In 1796 Governor John Jay spoke of the necessity of

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<sup>10</sup>Labor assessments could be augmented by up to one-third the original assessment and a levy of up to \$250 from the inhabitants was permitted; Chap. 186, 24th Sess., VIII & XXIII sects. (1801).

<sup>11</sup>*Id.*, X sect.

<sup>12</sup>Philip L. White, *Beekmantown, New York: Forest Frontier to Farm Community* 198-200 (1979).



rendering the road laws "more effectual." For decades the system remained the butt of invective. Governor Throop says in 1832 that the road tax is "generally looked upon as a burthen, and is worked out with as little fidelity in labor, or regard to time, as the laws and indulgent overseers will permit." Two years later Governor Marcy echoed these remarks.<sup>13</sup> A report on roads undertaken for the 1836 New York Internal Improvements Convention said "the public roads in this state have not visibly improved for years... No epithet, however strong, can properly characterize their wretched state."<sup>14</sup>

The ineffectiveness of the system is not hard to understand. As in public works of any kind, incentives were weak because the chain of activity could not be traced to a residual claimant, unless we count the nameless inhabitant, who was, like the general taxpayer today, without incentive or authority. Moreover, the laborers were assembled together in a transitory, disconnected manner, preventing them from acquiring the appropriate skills and developing pride in the job. Who would work diligently in a job where one's coworkers disrespect the job and shirk their tasks at every opportunity? To work diligently would be to play the sucker. Since overseers and laborers were commonly farmers, too often crop schedules rather than roadway deterioration dictated when repairs would be made. Financing, except in cases of special appropriations, came in dribbles deriving mostly from the fines and

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<sup>13</sup>*Messages from the Governors*, II 385, III 376, 468 (1909).

<sup>14</sup>J. Blunt (Chairman), *Report on Roads 1* (1836). This pamphlet is bound with item 385 N559 at the New York State Library. See also G. Taylor *supra note 3* at 16.

commutations of the assessed inhabitants. Commissioners could hardly lay plans for decisive improvements. When a needed connection passed through unsettled lands it was difficult to mobilize labor because assessments could be worked out only in the district in which the laborer resided. In dividing work areas into districts, as well as into towns, problems arose because the various pieces were not working together.

Contemporary accounts make it clear that a feeling of futility suffused the system. To all of these weaknesses in the system, the idea of a turnpike company, with responsibility, authority, and financing for the entire route collected under a board of directors, held out great promise of remedy, and at a time when remedy was urgently needed.

#### Regional Rivalry and the Onward Spirit

The need to upgrade road care was strong in the 1790s. The most dramatic competition in the state concerned the sparsely settled areas west of the Hudson Valley. As these counties developed, would their trade flow southward through Pennsylvania on the waters of the Susquehanna and the Delaware, or would dependable overland routes connect these counties to the waters of the Mohawk and the Hudson? Another focus of state rivalry was the east bank of the Hudson, as Connecticut and Massachusetts, by means of turnpike roads, were drawing trade from these counties eastward into New England.

Turnpike promoters in New York seized upon the rivalrous spirit. Elkanah Watson, a life-long enthusiast for improvements of many kinds, was the state's

shrewdest and most active voice for turnpikes, although he never held public office. Between 1795 and 1805 he wrote no less than a dozen substantive newspaper articles on turnpikes, including two debates with turnpike critics, as well as many narrower pieces. All are collected in his *Commonplace Book*, where he often scribbled telling messages alongside the clippings.<sup>15</sup> Watson never attached his real name to his turnpike writings.

In nearly every larger article Watson alludes to the "enlightened" exertions of other states, "ever jealous of our progress and competition with them." In one case he quotes at length a speech from 1796 of Pennsylvania Governor Mifflin that described how Pennsylvania's actions have "excited in one of our sister states [New York] . . . an emulation so active as to demand" further improvements from the Pennsylvania legislature. Watson alerted his fellow New Yorkers that Pennsylvania is "extending turnpike roads, up to our very borders," with "a steady eye fixed on the trade of our Western counties." "Most fortunately," he disingenuously exclaimed in 1801, "we are awake: the spirit of turnpikes has generally diffused itself, and the most effectual counter-current to their views will be to branch out turnpike roads from the [Hudson] river." At Watson's behest, a newspaper printed a "letter from a gentleman travelling in the Western counties," which dwells on how the "race of competition between the Commercial Cities of this State on the one side, and

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<sup>15</sup>Commonplace Book 29-50, manuscripts division, N.Y.S. Library. On Watson see C. Lord, *Elkanah Watson and New York's First County Fair*, 23 *N.Y. Hist.* 437 (1942).

Philadelphia and Baltimore on the other, cannot fail [to be] of infinite importance to our Western Counties, who are the immediate objects of this competition."<sup>16</sup>

Benjamin De Witt, in a well circulated article of 1807, described, not too reliably, the progress of turnpikes in the state. He exclaimed that "every State may be considered, in relation to matters of this kind, as a distinct country and people." He expressed his hope that his summary report would be useful to the legislature, although "it may have a tendency to excite emulation of our sister States," and concluded by expressing his hope that through turnpike construction New York would attract more of the trade of New Jersey, Pennsylvania, Connecticut, Massachusetts, and Vermont.<sup>17</sup>

Official documents also show the preoccupation with state competition. A striking case is in the Assembly Journal of 1808, where a committee supporting a petition asking for a turnpike charter notes with alarm that "wealthy and influential citizens in Pennsylvania, aware of the local advantages of our state, are exerting themselves with zeal . . . to turn . . . the produce of our western country, to the Philadelphia market, by opening different turnpike roads, between the Delaware and Susquehannah rivers, and the line of this state." The proposed turnpike "promises to [make] the city of New York, . . . by means of the villages on the Hudson, . . . a

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<sup>16</sup>Watson, *Commonplace Book*, 41, 43, 45.

<sup>17</sup>A Sketch of the Turnpike Roads in the State of New York, 2 Trans. of the Soc. for the Promotion of Useful Arts in the St. of N.Y. 190 (1807); reprinted in *The New American State Papers, Transportation*, I 215, 218 (1982). (De Witt's article was included in the report on canals and roads made by Treasure Albert Gallatin to President Jefferson in 1808.)

successful competitor with other cities in the union, for supplying Pittsburgh, and other places on the Ohio and Mississippi rivers, with goods and merchandize."<sup>18</sup>

If state rivalry was a rallying point for legislative approval of turnpiking, it was *local* rivalry, pitting New Yorker against New Yorker, that really fired the wills of those who petitioned the legislature for turnpike charters. Here again Watson stoked the restless souls of New Yorkers, especially the Albanians. To animate support for a turnpike between Albany and Waterford, to the north, Watson asked if there was any man "so blind" as not to feel the need of Albany to be "on a fair footing of competition for . . . the Northern trade with Lansingburgh and Troy, who, by most laudable efforts, are endeavoring to monopolize" that trade. "If we cannot divert, we can at least divide with them this important growing commerce."<sup>19</sup>

Watson's *coup de maitre* is told of in an unpublished diary of a man who knew Watson.<sup>20</sup> Albany and Troy were beginning a bitter commercial rivalry [see Map 1].<sup>21</sup> In the late 1790's the organizer of a turnpike between Albany and Schenectady despaired to Watson about the failure to draw investors to the project.

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<sup>18</sup>N.Y. Ass. Jour., 31st Sess. 92, 91 (1808).

<sup>19</sup>Watson, Commonplace Book 46.

<sup>20</sup>Entry of Aug. 14, 1821, Jones Diary (ms) 22-23, Schenectady County Historical Society.

<sup>21</sup>In 1788 Watson presciently wrote of the rise of the new town of Troy (then called Vanderhyden) and predicted its eclipsing of Lansingburgh (then called New City); *Men and Times of the Revolution or Memoirs of Elkanah Watson* 276 (1856). On the contest between Albany and Troy, especially in the railroad days, see D. Ellis, *Albany and Troy -- Commercial Rivals*, 24 N.Y. Hist. 484 (1943).

Watson told the organizer "to hold himself in readings to take advantage of what might occur." The diary continues,

A few days after there appeared in one of the Troy newspapers a communication adressed [sic] to the People of that place pointing out to them the great benefits which would accrue to them from the Western trade and urging them...to build a turnpike road from Schenectady to Troy. No sooner did this piece appear than the Albany folks took the alarm...

Both his bogus Troy article and his follow-up published in an Albany paper are pasted in Watson's scrapbook. (Watson had the Troy article reprinted alongside his Albany article.) The Troy article speaks of diverting the western trade "from Albany to this place." In the follow up, addressed to the Albanians, Watson warns of the plans of the "persevering and enterprising Trojans." "But when we see and feel the effects of rivals, constantly rising to divert [trade] from this natural emporium, . . . [with the] competitor under our very noses, and within sight of our city, surely we must awake from our dreams of security." Beneath this article in his scrapbook Watson scribbled gleefully, "the above was a . . . publication before the Trojans dreamt of a Turnpike -- it awakened the Jealousy of the Albanyans -- + the next year produced the Schenectady Turnpike Association."<sup>22</sup> As the diary account accurately finishes, "the Stock was apportioned between the inhabitants of Albany and Schenectady . . . and the present road was built."<sup>23</sup>

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<sup>22</sup>Commonplace Book 37, 38.

<sup>23</sup>Jones Diary 23.

[Map 1 here.]

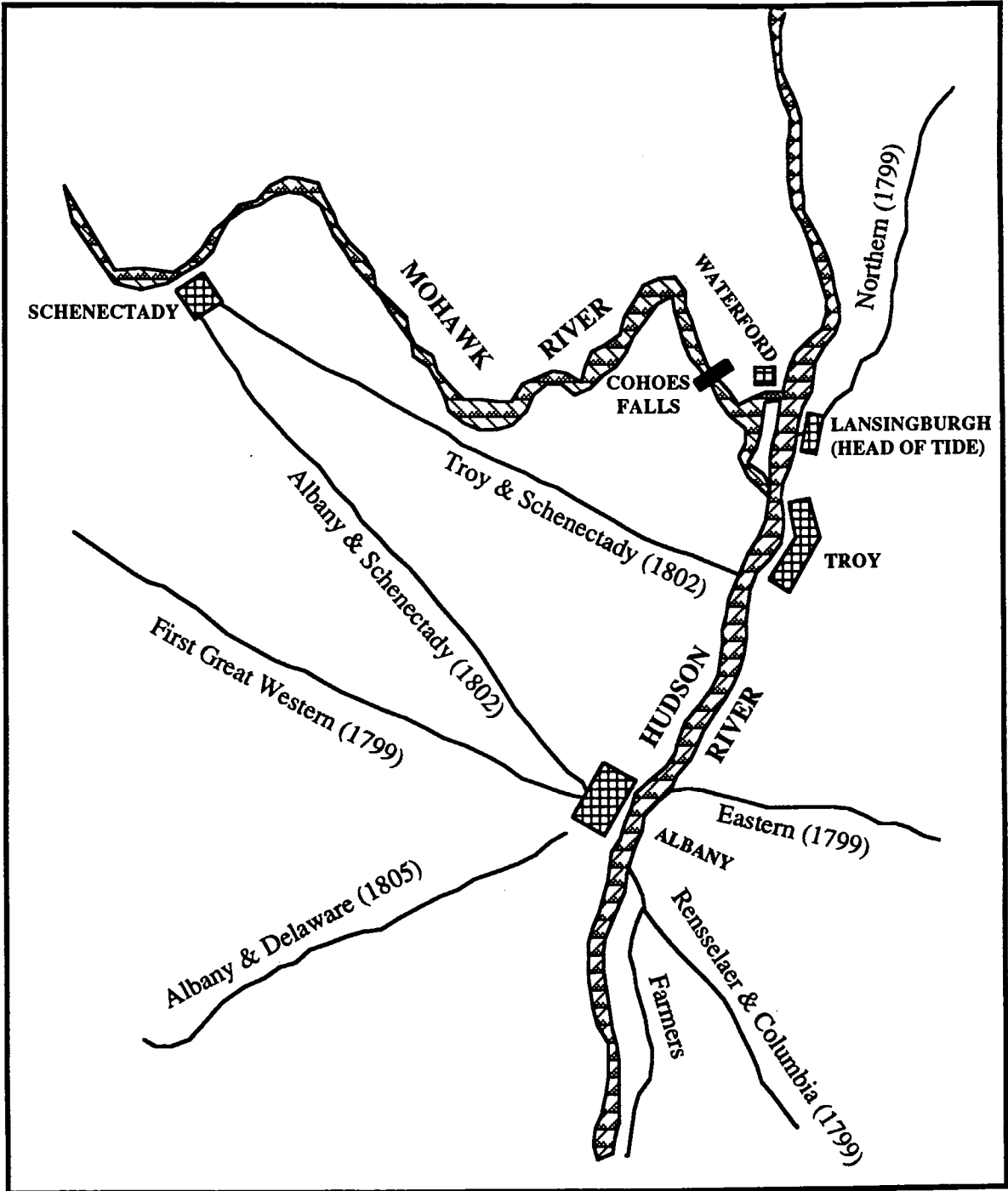
The incident illustrates the deeply rooted anxiety and rivalry that consumed localities. The restless quality of Americans was well noted by foreign visitors, as when Michel Chevalier wrote, "[a]n American is always on the lookout lest any of his neighbors should get the start of him. If one hundred Americans were going to be shot, they would contend for first place."<sup>24</sup> From the bottom up, New Yorkers were immersed in the effort to build and grow wealthy, and improved transportation figured prominently in their plans. In this period of rapid settlement, small advantages at the start could indeed decide eminence in the future.<sup>25</sup> Simply "sitting out" of the commotion was not a viable option for a town, because the forwardness of neighboring towns would imply, both psychologically and materially, a falling

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<sup>24</sup>Here Chevalier is quoting "a man of sense" he met on his travels in America in the 1830s; *Society, Manners, and Politics in the United States*, J.W. Ward (ed.) 271 (1961 [1836]). Chevalier offers many biting and delightful images in this regard. Alexis de Tocqueville gives a more searching discussion of how Americans are "restless in the midst of abundance," *Democracy in America* (Reeve-Bowen-Bradley text) II 144-47 (1945 [1840]). The restlessness Harriet Martineau zeros in on was that arising from the Americans' "servitude to opinion" or conformism. (Tocqueville of course had plenty to say here as well.) She doubts whether anywhere in the Old World "there is so much heart-eating care, so much nervous anxiety, as among the dwellers in the towns of the northern States of America, from this cause alone." *Society in America*, S.M. Lipset (ed.), 246f, quote at 253 (1962 [1837]).

<sup>25</sup>W. Brian Arthur, Urban Systems and Historical Path Dependence, in J.H. Ausubel and R. Herman, eds., *Cities and Their Vital Systems* 85 (1988).

**Albany Area Turnpikes Charter by 1805**  
(Construction usually lagged several years behind the charter dates, shown in parentheses)





behind.<sup>26</sup> To some extent improvement boosterism was, like cola advertising today, combative rather than developmental.<sup>27</sup>

### The State Embarks on Road Building in the 1790s

It is against this hurry-scurry backdrop that we should understand New York's casting around for alternatives in road management. Lawmakers knew that the local road system was incapable of providing roads in sparsely settled areas. The first state appropriations for roads were made in 1790 when the land office was authorized to spend 800 pounds in laying out a road between the Susquehanna and Hudson Rivers, and 200 pounds was allocated to the supervisors of Washington county to repair roads. The next year another 400 pounds were authorized for road efforts by the land office. In 1792 the state took a much more decisive step.<sup>28</sup> The state was divided into four districts with each supervised by named commissioners. Work was to be done by contract whenever possible and appropriations summed to 20,000 pounds. Lotteries to raise \$45,000 and \$41,000 were organized in 1797 and

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<sup>26</sup>Psychological experiments show that prospective setbacks will impel response more than prospective gains. See Daniel Kahneman, Jack L. Knetsch, and Richard H. Thaler, *The Endowment Effect, Loss Aversion, and Status Quo Bias (Anomalies Column)*, 5 *J. Econ. Perspectives* 193 (1990).

<sup>27</sup>In 1830, Massachusetts Chief Justice Parker said in his opinion of the Charles River Bridge case (which permitted a competing bridge, although Parker dissented): "The whole history and policy of this county from its first settlement furnish instances of changes and improvements, the effect of which has been to transfer the adscititious value of real estate in one town ... to another" (7 *Pick.* at 514).

<sup>28</sup>Laws of N.Y., Chap. 53, 13th Sess. (1790); Chap. 60, 15th Sess. (1792).

1803, and the state continued to invest in road-building well into the turnpike era.<sup>29</sup> It is hard to say whether these state efforts piggy-backed on the local system in conception and execution or operated parallel to the local system.<sup>30</sup>

### A Legal and Organizational Innovation

New York's earliest attitude toward turnpikes was reluctance, if not resistance. In November of 1796 Watson scribbled in his scrapbook: "I have laboured a Long time to bring forward Turnpikes in this State - without any success - the current of public mind begins to be in favour of the Object."<sup>31</sup> Table 2 reproduces Joseph Davis's table which shows that, except for New Jersey, New York was the last of the eastern states to try the turnpike idea. In toll-bridge chartering, which began about five years earlier than turnpike chartering, New York was dead last, chartering its first in 1797.<sup>32</sup> Note that although some of the most important New York turnpikes were chartered by 1800 none were completed by then and these years were the

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<sup>29</sup>Chap. 60, 20th Sess. (1797); Chap. 26, 21st Sess. (1798); Chap. 59, 26th Sess. (1803).

<sup>30</sup>Wilbur Plummer makes this distinction in discussing road policy in Pennsylvania, *Road Policy in Pennsylvania* 45-46 (1925). As in turnpike chartering, Pennsylvania outflanked New York in state road building. Its first authorization for state road building was in 1785 and its first lottery for road building was authorized in 1782; Plummer, 43f, 26f.

<sup>31</sup>Watson, *Commonplace Book*, 29.

<sup>32</sup>J.S. Davis, *Essays in the Earlier History of American Corporations* II 216, 188 (1917).

veriest beginning of the movement. New York's full adoption of the turnpike plan came only with its General Law in 1807.

[Table 2 here.]

The turnpike idea was an old one. Britain's first authorization of a toll-road was in 1663. "Turnpike mania" prevailed in Britain from about 1750 to 1772, and turnpike creation continued unevenly through about 1850. The turnpike roads girdled the country so densely that Eric Pawson's map of the turnpike system in 1770 resembles a car window that just met with a sailing baseball.<sup>33</sup> The British turnpikes were organized as trusts, rather than as companies. They were independent organizations operated not-for-profit and financed by bonds.<sup>34</sup> Americans never really tried out the trust method of turnpiking, but, as we shall see, some commentators said in retrospect that the trust system would have been the wiser plan.

It was under public direction that toll-roads first appeared in America. Virginia in 1785 and Maryland in 1787 authorized tolls on public roads initially constructed with tax money. Connecticut in 1792 twice mixed the grant of toll collection with the grant of a lottery for public road building.<sup>35</sup> In each case these

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<sup>33</sup>E. Pawson, *Transport and Economy: The Turnpike Roads of Eighteenth Century Britain* 151 (1977).

<sup>34</sup>Despite some fundamental variation, Americans patterned much of their turnpike law after the British model; see Richard Szostak, *Institutional Inheritance and Early American Industrialization* (ms) (1990).

<sup>35</sup>W. Hollifield, *Difficulties Made Easy: History of the Turnpikes of Baltimore City and County* 2-3 (1978). P. Taylor, *supra note xx*, 86, 122-25.

**Table 2**

**The Earliest Turnpike Charters**

	1792	1793	1794	1795	1796	1797	1798	1799	1800	Totals
New Hampshire. . . . .					1			2	1	4
Vermont . . . . .					1	1		3	4	9
Massachusetts . . . . .					1	2		3	3	9
Rhode Island . . . . .			2						1	3
Connecticut. . . . .				4		6	6	2	5	23
New York . . . . .						1	2	5	5	13
Pennsylvania . . . . .	1		1		2		1			5
Maryland . . . . .					1		2			3
Virginia . . . . .				2					1	3
<u>Total. . . . .</u>	<u>1</u>	<u>0</u>	<u>3</u>	<u>6</u>	<u>6</u>	<u>10</u>	<u>11</u>	<u>15</u>	<u>20</u>	<u>72</u>

*Source: J.S. Davis, Essays in the Earlier History of American Corporations 216 (1917).*

endeavors groped for success. In 1792 Pennsylvania chartered the first turnpike company, the Philadelphia and Lancaster, 62 miles in length and \$300,000 in capitalization (later raised to \$450,000). Two years later the road was completed and regarded as a magnificent construction.<sup>36</sup> Although not all early turnpikes had such an auspicious beginning, the sluices were opening. As Harry Scheiber says, "[a]n initiative by one state would immediately raise the possibility of either competing or emulative responses by others."<sup>37</sup>

The turnpike was to be the transportation innovation of a generation. Unlike the steamboat and the railroad, the timing and appeal of the turnpike cannot be explained by the occurrence or diffusion of a technological breakthrough, nor, as in the case of the canal, to the opening of the state's purse. What made the turnpike a superior method of road care were its *organizational* advantages, and what made those advantages materialize was not some inspired vision but mere legislative *authorization*.<sup>38</sup> Whereas timing and appeal are coincident for an unfettered

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<sup>36</sup>Plummer, *supra note* 30 at 47-48.

<sup>37</sup>Federalism and the American Economic Order, 1789-1910, 10 *Law & Society Review* 57 (1975) at 97.

<sup>38</sup>Robert Hessen emphasizes the centrality of legislative *permission* in viewing the early business corporations; *Do Business and Economic Historians Understand Corporations?*, Research Report No. 1043, G.S.B., Stanford University (1990).

technological innovation, the timing and appeal of the turnpikes require dual explanation as a legal and organizational innovation.<sup>39</sup>

The defects of the public system of road care described earlier make clear many of the organizational advantages of turnpike companies. To obtain financing turnpike organizers could reach beyond their town and could zero in on individuals most susceptible to their appeals. Turnpikes connected multiple towns, transcending the commissioner-overseer-laborer hierarchy in each town. Turnpike officers hired contractors who bid competitively to do clearly defined jobs. Once ten miles were constructed the directors would call for the turnpike inspectors and, if satisfactory, a tollgate would be authorized. The tollkeeper, who usually resided in an tollhouse, gave turnpike companies a man on the scene. In unofficial but important ways the tollkeeper would act as security guard, custodian, handyman, representative, and conduit of information and sentiment from the public to the turnpike directors. Travelers would readily voice dissatisfaction (*a la* Albert Hirschman<sup>40</sup>) when the serviceability of the road was flagging.

But the most radical organizational innovation of the turnpike is that it charged users. This lent a new willingness to undertake road construction and changed the obligations for road improvements. As Watson said in 1795:

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<sup>39</sup>William Albert has portrayed the British turnpike trusts as an "administrative innovation;" *The Turpike Trusts*, in D.H. Aldcroft and M.J. Freeman (eds.), *Transport in the Industrial Revolution* 31 (1983).

<sup>40</sup>*Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (1970).

no tax can operate so fair and so easy, as that of paying a turnpike toll, since every person is taxed in proportion to the benefit he derives from a good road, and all strangers and travellers are made equally tributary to its support -- What can be more just?<sup>41</sup>

Although not everybody was to agree with Watson, user fees meant that in road provision supply could be better matched to demand and that a steady stream of money would be available for repairs or dividends.

### Early Turnpike Charters

Annual turnpike incorporation in New York is shown in Figure 2. Bear in mind that: a) approximately five percent of the charters were recastings of companies that had been previously chartered, and b) between 60 and 65 percent of turnpike projects<sup>42</sup> never constructed enough roadway to justify a tollgate. Although the incorporation count from 1797 through 1846 comes to 449, the number of those turnpike companies that actually built roadway and collected tolls was more like 165.

[Figure 2 here.]

The first three charters were nonstarters and were subsequently rechartered.<sup>43</sup> To view the legal inception of the turnpikes we consider the ten companies

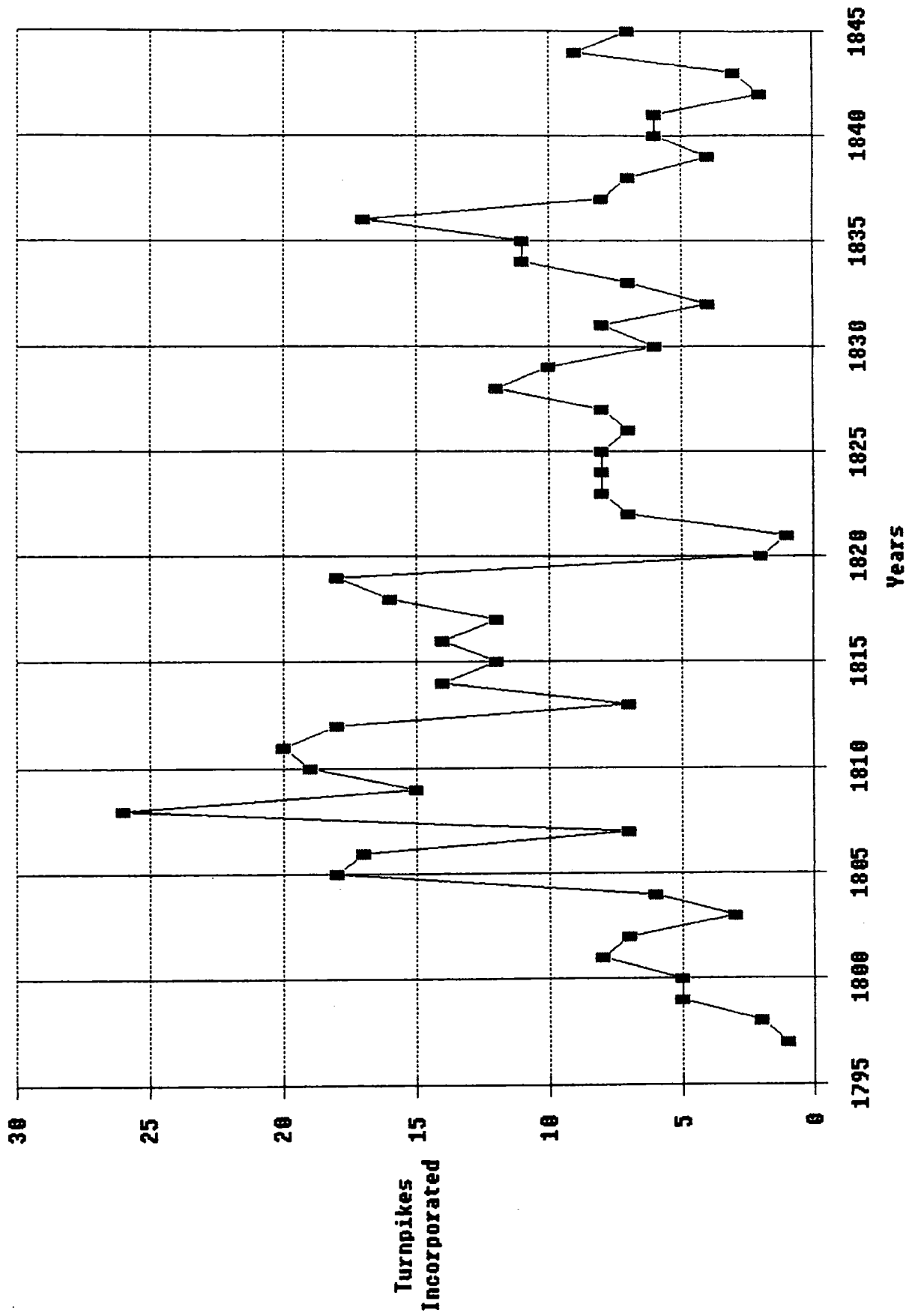
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<sup>41</sup>Watson, Commonplace Book 29.

<sup>42</sup>"Projects" we define by the route and the ensemble of organizers, not by charters. For example, the "Albany and Columbia" was chartered in 1798 and the same operation was rechartered the next year as the "Rensselaer and Columbia." We count this as two charters but one project. Usually we count as one project any series of charters for the same operation passed within seven years of the first.

<sup>43</sup>Chap. 87, 20th Sess. (1797); Chaps. 88 & 94, 21st Sess. (1798).

Figure 2  
Turnpikes Incorporated in New York State until 1845





chartered in 1799 and 1800, which proved to be of more robust birth: segments of nine were operating in 1850 and segments of three were operating in 1900.

These ten charters are quite uniform.<sup>44</sup> Each opens with a listing of the petitioners and a general statement of the purpose and powers of the company. Subscription procedures are specified, including the price per share (usually \$20 to \$50), the down-payment on shares, and the total number of shares. Once some specified portion of the whole is subscribed the stockholders were to elect directors, who in turn were to elect a president. Stockholder voting was progressive (the most common formula was one vote for one share up to ten, and no voting rights beyond ten). The directors would decide when calls would be made, and the stock was freely transferable.

Compensation to landowners was made for two distinct acts: taking acreage and entering lands. For turnpikes that were to follow the alignments of pre-existing roadbeds, the takings procedures were at one with the entry procedures. In the other cases the corporate officers were to lay out the road and settle with landowners along the route. When negotiations were deadlocked, or when the owner was "feme covert, under age, or non compos mentis, or out of the country," the company officials would apply to a common-pleas judge who would in some cases have the county sheriff assemble a jury of twelve "indifferent" men and in other

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<sup>44</sup>Chaps. 30, 59, 73 & 79, 22nd Sess. (1799); Chaps. 78, 79, 102, 105 & 121, 23rd Sess. (1800).

cases himself appoint three freeholders not being residents of the towns through which the road was to pass.

Entry procedures were specified because nearby stone, gravel, sand, and earth were used in constructing the turnpike. In entering lands workmen were to give advance notice, to do "as little damage ... as possible," to repair "any breaches they make in the enclosures thereof," and to make amends "for any damage that may be sustained." Disagreements were to be arbitrated by three "indifferent" freeholders chosen by the parties or by a justice of the peace should the parties disagree in choosing the arbitrators.

Construction specifications were brief in the early charters. The specified width of the clearing was usually four rods (66 feet), with 24 or 28 feet bedded with a hard substance, shaped in a convex manner to giving a "solid foundation." Guideposts and milestones were to be erected. Once ten miles of the road was completed the Governor, upon notice, would appoint three "skillful and judicious" persons to inspect the construction and make a recommendation. Upon approval the Governor grants a license to erect a tollgate and to take toll. Usually gates were to be at least ten miles apart.

The toll rates remained nearly constant throughout the turnpike movement and are shown in Table 3. Since the sulkey and coach categories represent

passenger vehicles, the toll schedule suggests a prejudice against "pleasure" travel.<sup>45</sup> Everyone was obliged to pay unless explicitly exempted. The typical list of exemptions for these early charters was those traveling "to or from public worship, or to or from his common business on his farm or to or from any mill."

[Table 3 here.]

Fines for several species of misconduct were set down: for injuring or defacing the milestones, guideposts, tollgates or other turnpike property, the most common fine is ten dollars; for evading the toll (or "shunpiking"), the most common fine is threefold the toll due (although for two companies the fine is as high as ten dollars); for unreasonable delay by the tollkeeper, the the most common award to the traveler was two dollars (although in one case it was \$25).<sup>46</sup> Sometimes these penalties also carried costs of suit.

The turnpike companies were authorized to declare half-yearly dividends, and were required to file annual reports to the state comptroller, although there is no evidence that any sizeable portion ever did. Usually the final item on the charter is for dissolution of the company. On the sanguine side: if toll revenues ever compensate for "all monies ... expended in purchasing, making, repairing and taking care of [the] road together with an interest of fourteen [sometimes twelve or ten]

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<sup>45</sup>Since the "pleasure" categories included mail and passenger coaches, perhaps the differential rates represents some price discrimination. In 1834 the legislature began dropping the "pleasure" travel differential, specifying coaches rates at the lower wagon rates.

<sup>46</sup>The Susquehannah Turnpike charter, Chap. 79, 23rd Sess. (1800).

**Table 3**

**Standard Toll Rate Schedule for a Ten Mile Gate  
on the Turnpikes of New York**

	cents
Chariot, coach, or phaeton (Sometimes referred to as "pleasure carriages drawn by two horses")	25
Sulkey, chair, or chaise (Sometimes referred to as "pleasure carriages drawn by one horse")	12.5
Wagons and all other four wheeled carriages drawn by two draft animals (three cents for each additional animal; sometimes carts drawn by two animals were rated separately and at a lower rate.)	12.5
Cart (drawn by one draft animal)	6
Sleigh (drawn by two draft animals) (two cents for each additional animal)	4-6
Horse led or ridden	4
Score of cattle ( <i>pro rata</i> )	12-20
Score of sheep or hogs ( <i>pro rata</i> )	6-8

per centum per annum," then the road becomes state property. No turnpike ever met its end this way. On the bleak side: the charter would be forfeited if construction did not commence within two years of the charter date or if the road were not completed within seven years of the charter date. Many turnpikes failed to meet these deadlines but were readily granted extensions.

Some important specifications of the early charters were to be changed in the ensuing years and some new features introduced. But the basic concerns remained. The most notable general feature of the turnpike charters is that, although heavily regulated, from a strictly legal viewpoint these creatures look like "business corporations." With one exception,<sup>47</sup> the charters made no mention whatever of the public utility to be derived from the company.

Let us emphasize some features of the early charters that quickly became sore points with turnpike remonstrators and would be altered in subsequent legislation:

- a) Company officers rather than public authorities laid out the road.<sup>48</sup>
- b) Construction standards were vague and, more importantly, except in two cases,<sup>49</sup> no upkeep enforcement was specified.
- c) Exemptions were vague and did not cover all the cases thought to be appropriate.

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<sup>47</sup>First Great Western charter, Chap. 30, 22nd Sess. 338 (1799); the Susquehannah Turnpike charter uses the term "body politic," *Id.*

<sup>48</sup>In 1802 the Assembly saw to it that all future turnpike charters specify that state-appointed commissioners lay out turnpikes, and amendments were passed for existing charters. See *Messages from the Governors*, II, 511, note 9 (1909).

<sup>49</sup>Namely, the Seneca and the Mohawk, Chaps. 78, 105, 23rd Sess. (1800).

- d) Gate location was largely at the discretion of the company.
- e) There was no provision requiring that those petitioning the legislature for a charter give public notice of its intentions.<sup>50</sup>

Even after all these points were renovated in favor of "the public," many folks still found plenty to complain about.

### III. DISPUTE AND RESOLUTION

#### Turnpike Opposition

It was by virtue of organizational novelty that the turnpike plan promised an advance in road care, but the organizational features were starkly new and somewhat frightening. The introduction of a turnpike road through town would affect many inhabitants, and they were not quite sure how. At the advent of social changes one's thoughts are often focused on only the most immediate and most obvious way in which one's life will be affected. For a large portion of the community the most visible impact of the turnpike plan would be the strange new obligation of paying a toll. Furthermore, researchers find a "status quo bias" for proposed changes; to the individual the losses involved in the change loom larger than the benefits. As Oliver

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<sup>50</sup>The general turnpike law of 1807 required that public notice be printed for four weeks in a local newspaper before application be made; Chap. 38, 30th Sess. 57. The Assembly passed a resolution requiring that six weeks notice be made for any petitioning pertaining to a turnpike company, but it never became law; see Assembly Journal, 30th Sess., 294 (1807).

Wendell Holmes said in 1897: "It is in the nature of a man's mind. A thing which you enjoyed and used as your own for a long time, whether property or opinion, takes root in your being and cannot be torn away without your resenting the act and trying to defend yourself, however you came by it."<sup>51</sup> Thus turnpike opposition found an easy foothold.

Turnpike opposition can be split into local and general. The first is specific objections to local proposals. For example, inhabitants remonstrated against a turnpike bill because it did not make adequate concessions to the frequent and customary users of the road. The second kind of opposition is general objections to the very idea of turnpiking or to the common guidelines that regulate turnpikes. Both types of opposition -- the local and the general -- naturally drew from each other.<sup>52</sup>

Signs of local turnpike opposition are rife in the legislative journals during the first decade of turnpike chartering. The journals state only the gist of committee reports dealing with petitions and remonstrations. For example, remonstrators against the Westchester Turnpike prayed the legislature "not to establish by law the road so altered, and to declare the ... draw bridge a nuisance."<sup>53</sup> Unfortunately the

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<sup>51</sup>Quoted in Kahneman, Knetsch, and Thaler, *supra* note 26 at 204.

<sup>52</sup>The New York experience of turnpike opposition seems to have paralleled the experiences of other states. See Plummer *supra* note 30 49-51; Durrenberger *supra* note 6 81-82; Davis *supra* note 32 216, 219, 220; Taylor *supra* note 6 113, 118, 121-22, 200, 283-87; Parks *supra* note 6, 182-85.

<sup>53</sup>Senate J., 26th Sess. 74-75 (1803).

journals do not elaborate reasons. The petitions themselves have perished (as explained in Appendix 1), so discerning the real contentions is mainly guesswork.

Signs of local opposition are seen in other contemporary sources. Objectors to one turnpike advertised their efforts to "evade and stop...the unjust plan of erecting a Turnpike Road."<sup>54</sup> In litigation involving the New Windsor and Blooming Grove Turnpike, the turnpike's counsel requested a change in venue on the grounds that, "from the prejudices of the county against turnpike roads, an impartial trial could not be had." (The judge instead called for a struck jury.<sup>55</sup>) A few years later the same turnpike sought legislative redress to problems arising because local inhabitants "make so great opposition...that the object cannot be effected."<sup>56</sup> A different indication of hostility is an 1805 resolution found in the Minute Book of one company saying, "if any Toll Gatherer shall be molested, injured or prosecuted by any person or persons for truly & faithfully executing the Duties enjoined on him," the company will assume any damages.<sup>57</sup>

General opposition or, at least, reluctance to turnpiking is evident in frequent rejections of turnpike petitions before 1807. The legislative journals document this reluctance with elliptical remarks stating that "it would be improper and impolitic" to

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<sup>54</sup>Poughkeepsie Journal, Dec. 7 1802, 3.

<sup>55</sup>New-Windsor Turnpike v. Wilson, 3 Caines 127 (1805).

<sup>56</sup>Assembly J., 31st Sess. 215 (1808).

<sup>57</sup>Minute Book, Albany & Schenectady Turnpike, entry of Sept. 7, 1805, New York Historical Society.



incorporate such a turnpike at present, or that few people along the proposed route have signed the petition.<sup>58</sup> Wrangling over turnpike bills was common, especially in the Assembly. Bills are often engrossed for revision, votes are often called (only then would the yea-ers and nay-ers be recorded), and sometimes second votes were taken. (The general law of 1807 would settle most of the common battles and make turnpike chartering more of a rubber-stamp procedure.)

We get some insight into the party lines on turnpikes from a piece of correspondence from 1802 between two Federalists.<sup>59</sup> The writer is evidently an organizer of the Dutchess Turnpike and the receiver is a state senator. The charter of the Dutchess Turnpike was receiving final approval at the time of the letter. The letter opens: "I feel highly gratified in the success of our turnpike - It was more than could be expected considering the opposition and general dislike to such bills in the lower house." (The next sentence is intriguing: "I feel myself under many obligations to you for your assistance and friendship in this business and shall be happy in the opportunity of making a return.")

The writer, John Radcliffe, goes on to report on recent party meetings. The Federalists, Radcliffe says, are likely to nominate the letter receiver, Ebenezer Foote, for state senate. The letter also reports on the Democrats' meeting, where Abraham Adriance was nominated for the same seat in the Senate. Radcliffe expresses his

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<sup>58</sup>Assembly J., 29th Sess. 236 (1806); Senate J., 26th Sess. 54, 75 (1803).

<sup>59</sup>John Radcliffe to Ebenezer Foote, letter dated Apr. 3, 1802, N.Y.S. Library Item 11633.

hope that the Democrats will be split over Adriance: "Adriance will be much opposed + if Ulster [county] leave him off I think he will fail - They are much disgusted with his conduct about turnpikes and carry their resentment so far that I am in hopes it will defeat his election." Presumably Adriance was a violent opponent of turnpikes. Radcliffe concludes the letter by promising his support in Foote's campaign. As it happens, Adriance won Foote's seat.<sup>60</sup>

This epistolary tidbit comports with a smattering of evidence from other states that Federalist were, relative to Democrats, friendly to turnpikes.<sup>61</sup> It is difficult, though, to know to what extent there was political alignment on turnpike issues. An investigation of legislative voting in New York would be arduous because votes were called irregularly (on most votes there is no record of yeas and nays) and, for the period in question, there is no ready record of party affiliations (the civil lists provide only terms and districts). We think it unlikely that there was a rigid political alignment on turnpike issues, and if there was it is very doubtful that it persisted for more than ten years. There is almost no sign of such a party-ization of the issue in the plethora of contemporary materials pertaining to turnpikes. Turnpikes were, at

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<sup>60</sup>Foote served in the State Assembly 1792, '94, '96, and '96/97, and in the State Senate 1799-1802. Adriance served in the State Assembly 1798/99-1802, and in the State Senate 1803-06.

<sup>61</sup>See Walter R. Fee, *The Transition from Aristocracy to Democracy in New Jersey, 1789-1829* 144-47 (1933). In Connecticut, in 1801, a political farce was performed: "Federalism's Triumph; or, The Turnpike Road to a Fortune." The play (available at the Huntington Library) is full of contemporary private jokes and snipes at turnpikes. On Rhode Island see Daniel P. Jones *supra* note 6 at 24-25, 31.

bottom, a local affair, or even a multitude of local affairs. On a community issue, neighbors do not take positions on the basis of their affiliations with political parties.

For insights to turnpike opposition, Elkanah Watson's *Commonplace Book* is again our richest source. In a debate during the Winter of 1801-02, Watson carried on a lengthy debate with an opponent writing as "Civis." In a margin of his scrapbook Watson comments:

this Civis was a member of the Legislature[,] a Doct[or] M[oses] Younglove from Columbia County - a man seeking popularity - he found means to prejudice 2/3's of an ignorant Legislature who were opposing Turnpike incorporations... - at length t'wards the Close of the Session...they gave way to Reason + conviction + several turnpikes were incorporated.

Younglove ("Civis") was an assemblyman during 1802; his party is unknown but presumably Democrat. In the debate Watson, with characteristic shrewdness, used the pen name "A Republican." Watson in fact berated what he called "the party spirit," but had significant Federalist sympathies.<sup>62</sup>

In Civis's four articles we hear that turnpiking is "hostile to sound republican maxims," that it "evinces a transition...from freedom toward despotism," that turnpikes "encourage unfair speculation," that "the opulent will generally become the stockholders:"

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<sup>62</sup> Watson's attacks on "the party spirit" are themselves characteristic of Federalist thinking. According to his memoirs Watson was a close friend of John Adams and a strong supporter of protective tariffs, the hallmark of the Federalist economic program. See *Men and Times of the Revolution; or Memoirs of Elkanah Watson*, Winslow C. Watson, ed., second ed. (1857) at 398.

to them the more numerous and less wealthy must pay toll, and they must have double interest; thus [turnpikes] tend to make the rich richer and the poor poorer; to divide the community into two orders of opposite interests, payers and receivers.<sup>63</sup>

Another general opponent of turnpikes, writing as "A Friend to the Poor," argues forcefully that turnpikes pit the haves against the have-nots: "the poor, the farmers, and the mechanics will be grievously oppressed."<sup>64</sup>

Civis also raises the corporation *bete noire* against turnpikes, saying, "it is not turnpike corporations only that excite my apprehension... [W]e are continually incorporating companies of various description, of a combined interest, distinct from the general interest of the people, and in some cases probably opposed to it." Civis continues:

In this we follow the monarchical monopolizing plan of Britain... Our fathers, and we, have heretofore done without them - and I had rather enjoy LIBERTY and EQUAL RIGHTS in the old plain way, under some inconveniences, then sacrifice them at the shrine of Monarchical improvements.

In answering Civis, Watson distinguishes different types of corporations. He concedes that "certain corporations have become powerful instruments in the hands of statesmen," but, he says, to argue that "therefore all corporations have a dangerous tendency, is a sort of reasoning truly puerile." (Watson says that such

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<sup>63</sup>Civis, in Watson, *Commonplace Book* 41.

<sup>64</sup>*Commonplace Book* 36.

indiscriminate condemnation of corporations is "not very uncommon.") He mentions incorporation of "religious societies, the founders of libraries, [and] the ladies of New-York, who have associated for charitable purposes."<sup>65</sup> He then derisively quotes Civis on incorporation leading to despotism. Watson's argument is really a bit tricky, because, unlike the corporations he mentions, turnpikes on paper were "business corporations."

Watson says that most people invest in turnpikes for the indirect benefits, and he notes that, if dividends are the main concern, monied men have much better ways of investing their wealth. He ridicules "speculation" as a "scare-crow" and says that by this accusation "there are few employments that cannot be proved to be criminal." He mirthfully describes the speculative nature of several occupations, running down to the minister and the chimney-sweep.<sup>66</sup> If turnpikes were a speculative plan, Watson notes, "there are few men in the country too poor to partake of the spoil."<sup>67</sup> The down-payment on turnpike stock was typically five dollars.

Rather rarely do the general opponents of turnpiking make specific criticisms. In the next sections we will examine the concerns with upkeep and concessions to local users. Beyond this, Civis complains that the labor needed to construct turnpikes may "render labourers scarce and dear - to the...injury of the agricultural interest." Civis also suggests that the exemptions from toll have not always been

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<sup>65</sup>Commonplace Book 42(1).

<sup>66</sup>Commonplace Book 42(1).

<sup>67</sup>Commonplace Book 45(1), 39(1), 37(1).

adequate, and that turnpikes "forcibly" take private property for private corporations.<sup>68</sup> In response Watson says that no turnpike charter is "without special provisions interwoven in them to guard against every abuse of privilege," and he extolls turnpikes for shortening and improving roads. These virtues reduce travel time, enable larger loads, cause less wear and tear, greater safety, and greater pleasure. Furthermore, a turnpike company relieves the inhabitant of road taxes. Rather than the poor inhabitant being called to work on the roads, "every distant traveller is made tributary to support the road."<sup>69</sup>

(The contention that turnpikes would not maintain a road quality sufficient to justify toll-taking will be discussed in the next section. Two sections hence we probe whether opposition was a means of obtaining concessions.)

Watson and his opponents were not entirely opposed. Civis supports turnpikes that would "gather so much toll yearly as to be soon exonerated from the debt, and then be free, or else become a source of revenue to the state."

(Incidentally, turnpikes were not debt financed.) Watson, by a similar token, says, "[a]lthough a warm and decided advocate for Turnpikes, I am no advocate for the abuse of the privilege," and he frequently discusses the need for proper checks.<sup>70</sup>

Watson would have us believe that "[s]trong prejudices have been excited against Turnpikes...by a few leather-heads." Turnpikes were vulnerable to "frightful

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<sup>68</sup>Commonplace Book 44(3), 44(4), 41(3).

<sup>69</sup>Commonplace Book 42(2), 44(2), 37(1).

<sup>70</sup>*Id.* 44(4), 48(4), 41(1), 44(2), 49(1).

phantoms" of the day, notably those based on wealth and occupational distinctions.<sup>71</sup> In much of the turnpike hostility we see the familiar zero-sum fallacy, just as we do today when American Japan-bashers, upon seeing the Japanese growing wealthier, conclude that Americans must be growing poorer. Consider the following remark of Horatio Spafford, the author of two New York State Gazetteers: "[T]his description of incorporations [turnpikes] has done less harm than any other, because the property invested has been less productive." (Spafford shows similar thinking in a diatribe on usury.<sup>72</sup>)

We suspect that on the turnpike issue, like some issues today, some people with a public image to protect felt a need to express publicly disapproval for turnpikes while harboring a secret appreciation of the idea.<sup>73</sup> For example, in 1806 an Assembly committee reporting on a turnpike petition says, "the committee believe that turnpikes do not advance the public good, yet they are of opinion, that the present application is as free from imperfections as any which have been presented to this house" and support the petition.<sup>74</sup>

On specific questions about specific turnpikes -- who shall be toll exempt?, where shall the gates be placed?, how will upkeep be assured? -- inhabitants voiced

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<sup>71</sup>*Id.* 48(4).

<sup>72</sup>*A Gazetteer of the State of New-York* 605, 263 (1824).

<sup>73</sup>In several papers Timur Kuran explores the idea of one's outward preferences being at variance with one's private (or true) preferences; e.g., *Private and Public Preferences*, 6 *Economics and Philosophy* 1 (1990).

<sup>74</sup>Assembly J., 29th Sess. 225 (1806).

meaningful and justifiable concern. But these issues were enshrouded by a popular hostility arising in no small part from suspiciousness and resentment.

Joyce Appleby and Lance Banning have debated the ideological landscape of the Early National Period. Appleby portrays the Republicans as advocates of democracy and free commerce and the Federalists as advocates of central direction of the economy by the paternal State. Banning contends that the Republicans were civic republicans who deplored trends toward modernization that the Federalists supported.<sup>75</sup> Viewed on way, turnpike companies could be seen as monopolistic agencies that served paternalistic ends for the central state. We are inclined, however, to see turnpikes as decentralized institutions serving the commercial and social needs of the local initiators. As noted previously, there does not seem to have been a strict political alignment over the turnpike issue. Yet evidence suggests that the Federalists were more disposed toward turnpikes, while turnpike opponents adopted the fashionable Republican expressions of the day (often with egalitarian overtones). Thus Banning's interpretation would seem to fit the turnpike experience better than Appleby's would, but the issue is not cut and dry.

#### Peremptory Upkeep Law

Since turnpike companies were often granted existing (though crude) roadbeds, and since they typically enjoyed a monopoly position, upkeep guidelines were in

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<sup>75</sup>Joyce Appleby, *Capitalism and the New Social Order: The Republican Vision of the 1790s* (1984); Lance Banning, *The Jeffersonian Persuasion: Evolution of a Party Ideology* (1978). See also their exchange in 42 *William and Mary Quarterly* (1986): Banning, *Jeffersonian Ideology Revisited: Liberal and Classical Ideas in the New American Republic*, 3; Appleby, *Republicanism in Old and New Contexts*, 20.



order. As was stated above, in the charters of 1799 and 1800 there were quality standards for the initial condition of a new turnpike, but standards and procedures for the *continued upkeep* of the road were either nonexistent or extremely elliptical.<sup>76</sup> The 1801 charters contain elliptical remarks to the effect that the company is to "maintain and keep the [road] in good order," but procedures are not specified.<sup>77</sup> In 1802 we see greater attention to upkeep, as charters designate that three commissioners, appointed by the state, would hear complaints, examine the road, and order the gates open if they found the condition wanting. Toll-taking privileges would be repaired when satisfactory repair had been made.<sup>78</sup>

It seems that the vagueness surrounding upkeep in the early charters was a leading sore point for turnpike opponents. In 1803 Governor George Clinton says that although new turnpike charters are specifying that turnpike commissioners handle disputes about turnpike operation, "no remedies were extended to the imperfections" of the earlier charters. In these earlier charters "no mode is prescribed to exact a compliance from the companies with the intentions of government." He suggests establishing public positions to deal with the matter.<sup>79</sup> Similar concerns are evident when Elkanah Watson describes the need to guarantee

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<sup>76</sup>For elliptical guidelines see the Mohawk charter (Chap. 105, 1800, at 561), the Columbia charter (Chap 59, 1799, 379), or the Seneca charter (Chap. 78, 1800, at 528).

<sup>77</sup>Union Turnpike charter, Chap 118, 272.

<sup>78</sup>Chap. 95, 25th Sess., 106; Chap. 96, 112; Chap. 111, 130.

<sup>79</sup>*Messeges from the Governors*, II, 527-28.

the public that it would not be charged if the road were out of repair. "Should this evil be remedied, every opposition would be silenced."<sup>80</sup>

It is hard to know whether outcry over inadequate upkeep specifications arose because companies were actually demanding tolls on bad roads or simply because there were no guarantees against such practices. Perhaps both animated turnpike opposition, but, we suspect, it was mainly the lack of a guarantee. There simply were very few turnpikes operating in 1803. It usually took one to three years to open a turnpike. Furthermore, there were quality standards for the initial condition of the road. Thus it is unlikely that many turnpikes companies had the opportunity to demand toll for a shoddy product in these early years (not that they wouldn't, given the opportunity).

The Governor's suggestion was taken up, and in 1804 an upkeep law governing all turnpikes was passed. The state appointed county turnpike commissioners who would hear complaints. If they find the road out of repair they notify the company, which is immediately to open the gate until repair is made. If the company fails to do so the commissioners appeal to the district attorney to prosecute the company. Penalties for noncompliance are not specified.<sup>81</sup>

This law did not allay hostility to turnpikes. In 1806 an assembly committee introduced a revision of the law, arguing that "incorporations of this kind generally tend to aristocracy; and if their privileges are not well defined, probably may lead to

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<sup>80</sup>Commonplace Book 49 (1).

<sup>81</sup>Chap. 81, 27th Sess. 588-90 (1804).

anarchy... [T]he restrictions in the [1804] act...are not sufficiently coercive to meet the encroachments made by those corporations, on the rights of persons travelling their roads."<sup>82</sup> After considerable wrangling, a more peremptory law emerged in 1806.<sup>83</sup> It gave commissioners power to order the gates open and specified a fine of five dollars for every instance of continued toll-taking after receiving the order of the commissioners. Thus the new law cut out the buffer of the district attorney and specified a heavy fine.

The Council of Revision<sup>84</sup> vetoed the 1806 law, saying:

The bill affords no guide or limitation to the judgment of the commissioners, nor any opportunity to the proprietors of the turnpike to be heard... The order of the commissioners is to be peremptory in the first instance, and requires instantaneous obedience. The bill therefore vests in these commissioners an arbitrary power over the interest and property of individuals, which is unknown to the constitution, and if carried into effect, would become in a high degree injurious and alarming... [T]he rights vested in the stockholders of a turnpike company, incorporated by law, are as sacred and as much entitled to protection, as any other private rights, and the stockholders cannot be constitutionally deprived of them, by the mere allegation of a forfeiture without a trial...<sup>85</sup>

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<sup>82</sup>Assembly J., 29th Sess. 225 (1806).

<sup>83</sup>Assembly J., 29th Sess. 285-87 (1806); Chap. 160, 29th Sess. 600-01 (1806).

<sup>84</sup>New York's 1777 constitution joined the chancellor, the supreme court judges, and the governor as the Council of Revision to review legislation.

<sup>85</sup>Assembly J., 29th Sess. 356-57 (1806).

The veto was overridden (the Assembly vote was 54 to 15).<sup>86</sup> The language of the veto indicates the tension between viewing turnpikes as public highways (as judges often insisted) and viewing them as a species of private property, a tension that endured until the last turnpike was shut down.

A memorial of the First Great Western Turnpike Company begs the legislature to amend the new law. The memorial says the law shows bad faith in that turnpikes are large and highly uncertain undertakings that provide roads for the state. The law is "pregnant with effects ruinous to their interests." There is no guarantee that fair-minded commissioners shall be entrusted with the new peremptory powers. "[I]f in one instance a Law can be made, which in any way changes the original tenure of a property, vested by Charter, there can remain no confidence that future encroachments will not be made on it and continued to its final annihilation." The memorial claims that the company would not have been undertaken if the terms of the new law had been known in advance. In ending, the memorial invites the state to take over the company by a full reimbursement of the stock.<sup>87</sup> The memorial made no apparent impression on the lawmakers. The 1806 upkeep law was incorporated into the 1807 general turnpike law (with the continued toll-taking fine upped to ten dollars).<sup>88</sup>

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<sup>86</sup>*Id.*, 360.

<sup>87</sup>Legislative Docs. (1807), no pagination.

<sup>88</sup>Chap. 38, 30th Sess. 58 (1807).

### Concessions to Local Users

Just as the natural-monopoly aspect of turnpikes called for upkeep regulation, so too did it call for concessions to local and frequent users. It was recognized on all hands that it would be unjust to demand routinely a toll from someone living half a mile from a newly erected gate. The problem was how to adjust duties from the various users. How would distinctions be drawn and how would they be enforced? One goal was to prevent unjust toll-taking, another was to prevent unjust free passage. The practical trade-off between these goals was considerable. Keep in mind that those living along a turnpike were its greatest beneficiaries. As in the case with upkeep regulation, the laws were far more sensitive to the goal of no unjust toll-taking than to the goal of no unjust free passage.

One means of permitting free travel was spacing tollgates at great distances. Normally tollgates had to be at least ten miles apart, permitting some traffic to use the road without encountering a gate. Also, gates were not permitted near town centers. In later years, when the financial distress of the companies was manifest, companies were often permitted "half-houses," five miles apart, where half the specified toll would be taken.

The most basic form of concession was the toll exemption. As noted above, the earliest charters typically exempted travel to or from public worship, a mill, or on "his common business on his farm." Even the most unambiguous exemptions face the problem of proof (Gatekeeper: "How do I know you're going to church?"<sup>89</sup>), but

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<sup>89</sup>The historian of a New Hampshire turnpike notes that "ungodly sinners evaded the payment of toll by claiming that they were passing ... to or from 'public

the "common business" exemption is particularly fuzzy. No doubt strife was common (as case law suggests).<sup>90</sup> Also the earliest exemptions were thought to be inadequate. One of Watson's opponents ("A Friend to the Poor") speaks of travelling to a physician: "You must go and find the keeper of the gate, and perhaps he is asleep, and thus you are hindered half an hour, and a life lost for want of medical aid."<sup>91</sup>

The general turnpike law of 1807 created a norm by exempting anyone travelling to or from each of the following:

- \* public worship
- \* a funeral
- \* a grist-mill for the grinding of grain for family use
- \* a blacksmith's shop to which he usually resorts
- \* a poll or town meeting to vote
- \* a physician or midwife
- \* jury duty or to give witness in court
- \* military service
- \* and no toll shall be taken at a gate from anyone residing within one mile of the gate.

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worship,' when they never intended to attend anything of the kind in any sense known to the religious world;" John M. Shirley, *The Fourth New Hampshire Turnpike*, *Granite Monthly* at 430 (1881).

<sup>90</sup>Litigation over exemption disputes include: *Jones v. Estis*, 2 Johns. 379 (1807); *Conklin v. Elting*, 2 Johns. 410 (1807); *Hearsey v. Pruyn*, 7 Johns. 179 (1810); *Hearsey v. Boyd*, 7 Johns. 183 (1810); *Chestney v. Coon*, 8 Johns. 116 (1811); *Stratton v. Hubbel*, 9 Johns. 357 (1812); *Stratton v. Herrick*, 9 Johns. 356 (1812); *Bates v. Sutherland*, 15 Johns. 510 (1818); *Newburgh & Cocheton Turnpike v. Belknap*, 17 Johns. 33 (1819); *Norval v. Cornell*, 16 Johns. 73 (1819).

<sup>91</sup>[David Bell], *Commonplace Book*, 36(1).

(Also, toll was adjusted to wear and tear on the road in that wagons with wheels six inches wide paid half toll, with wheels nine inches paid quarter tolls, and with wheels twelve inches paid no toll.)<sup>92</sup> The general law applied to a turnpike only if that company's charter said so (unlike the upkeep law discussed above). After 1807 the general law became a boilerplate reference for turnpike charters.

It is likely that some of the protest to turnpikes was a means to obtaining concessions. In his study of the New England turnpikes, Parks says: "What New Englanders most resented about turnpikes undoubtedly was the impingement upon their pocket book in the form of tolls. Opposition frequently was abandoned once favorable concessions had been secured."<sup>93</sup> Similar remarks are made by other historians.<sup>94</sup> We see a hint of negotiation in the effort of the Mohawk Turnpike to undo the toll exemption on sleighs. A Senate committee reports: "At the time this company was incorporated [1800], there were so few in existence that the want of experience and the novelty of the measure, produced much opposition among the people, and some of the restrictions peculiar to this company [namely, the sleigh exemption]."<sup>95</sup>

The conflict over the Watervliet Turnpike gives a clear sign of opposition being appeased by concessions. An Assembly committee explains that in 1827 a

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<sup>92</sup>Chap. 38, 30th Sess. 56 (1807).

<sup>93</sup>Parks *supra* note 6 at 185.

<sup>94</sup>Durrenberger *supra* note 6 at 81; Davis *supra* note 32 at 219.

<sup>95</sup>Senate J., 37th Sess. 62 (1814).

petition to form the turnpike "was resisted by the farmers of Watervliet... During the succeeding season it appears that a compromise was effected, by which some of the farmers of Watervliet were induced to withdraw their opposition, under a stipulation that they should forever be exempt from the payment of toll."<sup>96</sup> (The next year, however, the exemption was repealed, and afterwards the farmers of Watervliet fought in vain to get it restored.)<sup>97</sup>

A final form of free travel, though not an official concession, was toll evasion, which is treated in the next section.

The legislature's handling of the concession issue has two notable features: first, it sought to resolve matters of a local and *sui generis* nature by laying down guidelines from the state capitol; second, it chose guidelines that were more sensitive to the traveller's plight than to the turnpike company's. It seems to us that the concession issue might have been better handled by delegating it to local authorities in touch with the local conditions. In rare instances we see resort to this approach. For example, the charter of the New Windsor and Blooming Grove Turnpike listed no exemptions and instead instructed those living within five miles of any gate to negotiate a yearly rate of commutation, and, if agreement could not be reached, for a judge to appoint a committee of three freeholders to decide a rate.<sup>98</sup> With

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<sup>96</sup>Assembly Docs., 51st Sess. 154 (1828).

<sup>97</sup>Chap. 141, 51st Sess. 154 (1828); Chap. 258, 52nd Sess. 393 (1829); Assembly Docs. No 92 (1831).

<sup>98</sup>Chap. 120, 24th Sess. 281 (1801). Note that the 1804 law permitted commutation (Chap. 81, 27th Sess. 590). In a legal opinion of 1850 a judge says that turnpikes often commuted with travellers who lived near a gate but were not



concessions decided locally and individually, it would be possible to reduce the trade-off between no-unjust-toll-taking and no-unjust-free-passage. One possible problem with the delegation approach may have been the possibility of extreme views of justice. Turnpike companies may have preferred the blunt blows of the legislature to the possibility of mortal stabs by local decision makers. (Recall from above that it was the New Windsor and Blooming Grove Turnpike that complained of local impediments to its success.)

### Toll Evasion

Perhaps the most serious problem for turnpikes, again of a particularistic nature, was toll evasion. The main form of toll evasion was "shunpiking." It was quite easy for horses and the high-mounted vehicles of the day to take a small excursion through farmland or the wilderness in order to circumvent the tollgate. In a short time a trail would emerge. A common penalty for shunpiking was five dollars plus cost of suit. Toll evasion also took the form of falsely claiming toll exemptions. Tollkeepers found it costly to hinder travellers and were forced to

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protected by exemptions (Mallory v. Austin, 7 Barb 629-30). In a printed notice, "Rules and Regulations for Gate Keepers," the Third Great Western turnpike laid down that people commuting and travelling five miles were to pay "what in the estimation of the gate keeper" would be half the probable legal toll for a year, *etc.*; undated, N.Y. Public Library, Third Great Western Papers.

adopt a lenient attitude. Finally, towns often laid out common roads that served as shunpikes.<sup>99</sup>

In part, toll evasion was another expression of animosity toward turnpikes. The 1807 memorial of the First Great Western Turnpike says, "[a]s is usual with novel institutions, the [turnpike] companies had and still have to contend with the prejudices of many people whose conduct towards them is governed by a spirit of settled hostility, evinced in numerous and too frequently successful efforts to evade payments lawfully due."<sup>100</sup> By evading toll, malcontents could administer their own justice, as well as save a nickel.

The undying nature of shunpiking is evident in a committee report on the Dutchess Turnpike: "[S]oon after the erection of that Gate, the first shunpike was made going round... [A] law was passed authorizing the removal a short distance East. After this alteration two new shunpikes were made."<sup>101</sup> The committee recommends the erection of a half-house. An 1810 amendment to the Dutchess charter increased the fine for shunpiking and specified that the burden of proof lay with the traveller.<sup>102</sup> Regarding a petition by the Farmers Turnpike, a report reads:

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<sup>99</sup>See for example *Flatbush Ave. v. the Jamaica & Flatbush Turnpike*, 1 Barb. 286 (1847).

<sup>100</sup>Leg. Docs. No. 2 (1807). Daniel P. Jones also notes the connection between toll evasion and hostility, *supra note 6* at 27.

<sup>101</sup>Undated, Report of Committee on Roads, Bridges, and Incorporation of Turnpikes, on application of Dutchess Turnpike, N.Y.S. Library.

<sup>102</sup>Chap. 120, 33rd Sess. 145.

"Your committee are...of opinion, that abuses have been practiced by persons travelling said road, in claiming exemptions...when they were legally liable to pay, [and]...by persons leaving said road...[and] entering upon said road, after having passed the gate."<sup>103</sup> Although the committee introduced a bill of relief, none was passed.

Reports concerning the Schoharie Turnpike indicates how serious the shunpiking problem could be. In 1843 the company sought permission to relocate one of its gates because "from one-half to two-thirds of travel for some years have passed around the gate." The committee favors the company, noting that it "had always shown itself lenient and liberal towards these inhabitants in their exactions of toll," and "that the company have never made a dividend since the construction of its road."<sup>104</sup> Two years later the company was still seeking redress, and a committee report in support of the company notes that "since the erection of the gate in question,...there [have] been many layings and discontinuances of roads and pieces of roads in the vicinity of said gate, by which means the greatest or larger share of travel goes...around the gate."<sup>105</sup> The final document on the matter (to our knowledge) is the report of the company's treasurer, responding to the Assembly's inquiry of how much in penalties the company had collected from shunpikers during the last ten years. The treasurer says the amount collected during that time is

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<sup>103</sup>Leg. Docs., in Assembly, No. 140, 48th Sess. (1825).

<sup>104</sup>Sen. Doc., No. 65, 66th Sess. 2,3 (1843).

<sup>105</sup>Assembly Docs., No. 103, 68th Sess. 2 (1845).

between \$25 and \$50. The treasurer "has no hesitation in saying" that this amount "would not half pay the cost, expense, and trouble" expended in prosecuting shunpikers during that time. The treasurer concludes:

The penalty for passing round a gate...is five dollars... [S]ay that only ten [offenses] occur daily, as on an average for ten years, (and the undersigned verily believes that there has been more,) the penalties would amount to one hundred and eighty-two thousand five hundred dollars, for ten years.<sup>106</sup>

Despite the many documents and the sympathy of the investigating committees, the legislative record shows no relief for the company.

Shunpiking seems to have plagued turnpikes throughout the Northeast.<sup>107</sup>

Fisher Ames, who was president of a Massachusetts turnpike company, estimated that his company's earnings would be almost sixty percent greater if not for shunpiking.<sup>108</sup> In New York the pervasiveness of shunpiking is reflected in the frequent requests to relocate or multiply tollgates or to increase the fine for shunpiking.<sup>109</sup> It is also reflected in the litigation involving charges against

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<sup>106</sup>Assembly Docs., No. 113, 71st Sess. 1,2 (1848).

<sup>107</sup>Parks (*supra note 6* at 154) says of New England: "Schemes for avoidance of toll payment were widespread and furnished one of the most difficult problems in turnpike operation." See also Durrenberger *supra note 6* at 78-79; Taylor *supra note 6* at 200-204.

<sup>108</sup>Parks *supra note 6* at 78.

<sup>109</sup>Some examples of gate relocation: Chap. 85, 32nd Sess. (1809); Chap. 9, 34th Sess. 99 (1811); Chap. 29, 41st Sess. 26 (1818); Chap. 199, 42nd Sess. 252 (1819); Chap. 121, 53rd Sess. 125 (1830); Chap. 176, 55th Sess. 295 (1832). Examples of increasing the shunpiking fine: Chap. 120, 33rd Sess. 145 (1810); Chap. 29, 35th Sess. 365 (1812); Chap. 233, 35th Sess. 587 (1812); Chap. 190, 36th Sess. 204 (1813).

shunpikers and property owners who permit (and even encourage) shunpiking through their property.<sup>110</sup> In one case where a traveller is fined for shunpiking the opinion says it does not matter "that other persons have been in the habit of doing so."<sup>111</sup>

The General Law of 1807 seems to leave the initial location of gates to the state-appointed turnpike commissioners, but *relocation* seems to have been the province of the legislature.<sup>112</sup> Although the legislature often permitted companies to combat shunpiking by relocating gates, often they did not. An 1820 legal case involving the Columbia Turnpike resolved that once a company had erected a gate pursuant official instruction, it cannot relocate the gate "without some strong and manifest necessity to warrant it."<sup>113</sup> To obtain permission to relocate a gate, a company would have petition the legislature. As we saw in the case of the Schoharie Turnpike, even after wrestling with procedures, relief was not assured even in desperate circumstances. Turnpike companies needed flexibility and timeliness in combatting shunpikes, which could proliferate like mushrooms.

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Many acts authorized the multiplication of gates.

<sup>110</sup>Court decisions ordering that shunpikes on private lands be closed include *Croton Turnpike v. Ryder*, 1 Johns. Ch. 611 (1815); *Newburgh & Cohecton Turnpike v. Miller*, 5 Johns. Ch. 101 (1821). A case brought against a shunpiker is *Carrier v. Schoharie Turnpike*, 18 Johns. 56 (1820).

<sup>111</sup>*Carrier v. Schoharie*, 18 Johns 55 (1820).

<sup>112</sup>Chap. 38, 30th Sess. 54 (1807).

<sup>113</sup>*Griffen v. House*, 18 Johns. 397.

For the most part countermeasures by companies had to be cleared in Albany by cumbersome procedures. The courts would be left to decide such things as whether a gate was erected "near the dwelling-house of John van Hoesen."<sup>114</sup> It would seem that delegating authority to local officials would have better handled the issues of tollgate relocation and multiplication. But only in isolated cases did this occur, until 1836 when an amendment to the Revised Statutes authorized county judges to decide the location and relocation of turnpike gates.<sup>115</sup> It would seem that this belated delegation of authority would have benefited the turnpikes, although, again, we have to ask whether a local solution would not have flipped the turnpike company out of the frying pan and into the fire. A legal treatise from 1895 says that when legislative instruction regarding gate location is "doubtful or ambiguous, then ... it is to be *construed most strongly against the grantee* and in favor of public trade and convenience."<sup>116</sup>

Finally, it is also possible that the statutory obstacles to effectively combatting shunpiking -- the wide placement of gates, the sluggishness and uncertainty of multiplying or relocating gates, the inadequacy of penalties against shunpikers -- were yet another way in which the legislature made concessions to local users. It is interesting to note that the typical toll-evasion penalty on turnpikes was five dollars,

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<sup>114</sup>People v. Denslow, 1 Cain. 177 (1803).

<sup>115</sup>Chap. 284, 59th Sess. 399 (1836).

<sup>116</sup>Seymour D. Thompson, *Commentaries on the Law of Private Corporations*, Vol. V (1895), at 4566, original italics.

while the typical toll-evasion penalty on toll bridges, which faced much less evasion, was ten dollars.<sup>117</sup>

Toll evasion, of course, reduced profitability. Also, toll evasion might help explain why toll rates were increased rarely despite continued unprofitability.

#### IV. THE UNFOLDING OF THE MOVEMENT

##### Unprofitability

As in other states, turnpike companies in New York were, in general, unprofitable. Above we noted remarks to this effect from 1825 and from 1840. An 1838 tract on roads says of the New York turnpikes: "Generally they have never remunerated their proprietors, nor paid much more than the expense of actual repairs."<sup>118</sup> There is no way to firm up this impression with systematic data. Companies were instructed to file financial reports,<sup>119</sup> but "only a very small proportion" did so,<sup>120</sup> and the reports that were filed have perished. Surviving financial records are extremely fragmentary, consisting mainly of brief remarks. We have good records for only five or six companies, and generalizing on the basis of

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<sup>117</sup>Cf. Chap 42, 25th Sess. 75 (1802); Chap. 12, 26th Sess. 261 (1803); Chap. 92, 27th Sess. 518 (1804).

<sup>118</sup>S. DeWitt Bloodgood, *Treatise on Roads* at 97 (1838).

<sup>119</sup>Chap. 38, 30th Sess. 56 (1807).

<sup>120</sup>Printed circular of the State Comptroller (circa 1834), in the Third Great Western papers at N.Y.Public Library.

these would be inappropriate because of the bias in the survival of records. The records of a well-managed and long-lasting company would be much more likely to survive, and three of the companies for which we have records fit this description (the Second Great Western, the Third Great Western, and the Columbia).

The tidbits from contemporary documents are consistent with the general impressions of unprofitability. Various companies say, "the stock at present is considered of no value," "the toll will by no means keep [the road] in repair," "no dividend has ever been made on the stock," stockholder return has been "less than three-fourths of one per cent per annum," the stock "has been wholly unproductive," "the road [is] indebted ... and no dividends of course made," and so on.<sup>121</sup> Less dismal remarks are also found, but not many and not much less dismal. Nearly all turnpikes were returned to the public domain by abandonment or condemnation, without stockholder compensation.

There are three lines of reasoning that can help explain continued turnpike unprofitability and construction. Probably all have some merit:

1. **Unwarranted Optimism.** Investors may have been expecting to profit, but traffic volume was simply inadequate to make even an unregulated turnpike profitable. Some of this hope may have been hometown

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<sup>121</sup>Assembly Doc, No. 219 (1834); Laws of N.Y., Chap. 11, 40th Sess. 9 (1816); Assembly Doc., No. 256 (1831); Assembly Doc., No. 155 (1832); Ass. Doc. No. 113 (1831); manuscript stockholder list of the Hamilton & Skeneateles (inc. 1806), last page, 1825, New York Historical Association, item 1-12.



foolishness and, for certain turnpikes, failure to see the devastating competition that would arise from canals.

2. **Community-Oriented Control.** Stockholders may not have been keen on reaping a profit even if they were able. They may have viewed the turnpike as a sort of philanthropic cause, even a symbol or monument to the community. They may have agreed with the commoners that there was an unseemliness about profiting by turnpike stock, and therefore desisted from actions that would have enhanced profitability.

Both of these explanations have their place, but both have problems. The first is compromised by the continued chartering of turnpikes after unprofitability was manifest (see Figure 2), and by the prevalence of unprofitability even before the canals wiped out many turnpikes. The second is compromised by the implausibility of such purely charitable motivations. (We think social motivations played a large role, but we tend to think that unprofitability called forth social motivations, rather than vice versa.)

The explanation for unprofitability we are here especially interested in is:

3. **Legal (and Technological) Handicaps.** The controversy over turnpikes generated a set of laws and jurisprudential attitudes that crippled the financial viability of turnpikes. Many more turnpikes would have been profitable if they had operated under more favorable laws and had

been safeguarded from popular hostilities. (Also, even under more favorable laws, the sheer technological circumstances would permit widespread toll evasion.) People put money into turnpikes mainly to effect a local improvement, without much hope of direct remuneration.

Turnpikes labored under the peremptory upkeep law, rigid toll rates, inadequate countermeasures to toll evasion, considerable concessions to local users, and a "settled hostility" at the many edges of turnpike operation. At many turns, problems arose like those of the Prattsville Turnpike, which beseeched the governor to replace the local turnpike inspector because of "his avowed hostility to the ... Prattsville Turnpike Road which is located in his neighborhood."<sup>122</sup>

The legislature's attitude seems to have been that an existing turnpike should be kept alive but not healthy. Very rarely were toll rates increased. To what extent companies were even petitioning for increases, we do not know, but it appears to have been little.<sup>123</sup> Turnpikes may have realized the futility of seeking rate increases. In the Minute Book of the Albany & Schenectady Turnpike, for example, an entry from 1819 speaks of the company petitioning the legislature for toll increases, but

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<sup>122</sup>Letter by Alvin Bushnell, undated (probably late 1840's), Durham Center Museum (the company was chartered in 1843).

<sup>123</sup>Examples of acts increasing toll rates: Chap. 84, 25th Sess. 97 (1802); Chap. 41, 29th Sess. 358 (1806); Chap. 70, 31st Sess. 66 (1808); Chap. 29, 35th Sess. 365 (1812); Chap. 133, 43rd Sess. 120 (1820); Chap. 29, 49th Sess. 22 (1826).

the rates were not increased during the ensuing decade.<sup>124</sup> In addition, toll evasion may help explain the absence of rate increases. In increasing price any firm faces a trade-off between more revenue per unit sold and fewer units sold. But the turnpikes also faced a margin in toll evasion. It is quite plausible that higher toll rates would have induced greater toll evasion, especially given the protestant nature of much toll evasion. (When the Garden State Parkway increased its tolls from 25 cents to 35 cents in 1989, the evasion rate increased by about 70 percent and remained there until policing was stepped up.<sup>125</sup>)

Our focus on legal obstacles to profitability is meant only as a development of an understanding of the turnpike movement. The scantness of data permits us little confidence in weighting the three explanations just set out. We suspect that all played a significant part. Getting a better reading of their relative importance would be a formidable research task.

### Financing in the Shadow of Unprofitability

Although dividends were meager, the community benefits arising from a turnpike were copious. Benjamin De Witt said that turnpikes "encourage settlements, open new channels for the transportation of produce and merchandise,

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<sup>124</sup>Minute Book, N.Y. Historical Society, entry of Jan. 5, 1819| The rates were increased by Chap. 168, 56th Sess. 196 (1833).

<sup>125</sup>Parkway sees cheating and considers gates at toll lanes, Star Ledger, January 26, 1990; Parkway toll violations program showing success, News Release of the New Jersey Highway Authority, July 5, 1990.

increase the products of agriculture, and facilitate every species of internal commerce."<sup>126</sup> All these advantages would generate higher land values.

Contemporary sources of all varieties show a foremost concern with the local benefits to be derived from turnpikes. Also, turnpikes were a prime implement of competition in the rivalries between towns and regions.

Turnpikes were enormous undertakings. They were commonly between fifteen and fifty miles in length, and cost about \$1,500 per mile. They were too large for a coterie of affluent citizens to bankroll. We have stockholder counts for a mere six companies; the low and the high are represented by the Owego & Ithaca Turnpike, with 28 subscribers, and the Third Great Western, with 183.<sup>127</sup> With turnpike stock recognized as unremunerative (particularly after about 1810), we can see that turnpike financing involved a grave free rider problem. The prospective beneficiaries of a turnpike numbered in the hundreds, and buying stock was much like making a charitable contribution to a community improvement (or public good). Once stock subscriptions were sufficient to construct the road, there would be no way to withhold the benefits from those who did not contribute. Free riding, in the form of not buying stock, was a sensible option.

To secure financing, turnpike organizers had to marshal more than the usual investment incentives. Various tactics were used to animate public spirit for

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<sup>126</sup>*Supra note 17* at 215.

<sup>127</sup>T. F. Leilich, *The Owego & Ithaca Turnpike Co., 1807-1840*, 6 (ms) (1915), available at Tioga Co. Historical Society; N.Y.S. Historical Assoc., *Third Great Western Papers*.

turnpikes, including town meetings, correspondence, person-to-person solicitation, and newspaper articles. Thus social pressure and participatory feelings were used to surmount the free rider problem. A newspaper article encouraging support for the New Paltz Turnpike, indicates the nature of these efforts. The article says that "the *interest* if not the *reputation*" of Poughkeepsie depends on raising the needed money:

[I]t can only be done by the stock being distributed very generally among the inhabitants of the village -- each finding a motive to take a little, not from an expectation of its being productive (though it no doubt would pay something) but from an expectation that the investment would be returned with treble interest, in the addition which would be made to business and the value of property.

The editor of the newspaper prefaces the article by saying that "[i]t will really be a matter of most serious regret, and we had almost said indelible disgrace, if our village cannot raise 3 or 4000 dollars to effect an object of such great and lasting importance to its prosperity."<sup>128</sup> Similar examples of moral suasion (including items from Elhanah Watson) are explicated at length elsewhere.<sup>129</sup>

The effectiveness of community boosterism is remarkable given the bleak financial prospects of turnpikes. From 1810 through 1845 between 75 and 95 New

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<sup>128</sup>Poughkeepsie Journal, July 12, 1820, 3, cols 3,2.

<sup>129</sup>Daniel Klein, The Voluntary Provision of Public Goods? The Turnpike Companies of Early America, 28 Economic Inquiry 788.

York turnpikes companies were chartered and successfully constructed toll roadway. Each such company represents a successful case of public good provision.

But for present purposes it is the failures that concern us. Of about 440 projects initiated in New York through 1845, between 60 and 65 percent failed to construct enough roadway to justify the opening of a single tollgate. The problem was a deficiency of willing investors, resulting from the bleak prospects of the stock (and the less than compensating efforts at community boosterism). In addition to this high stillbirth rate, we may wish to contemplate the increased demand for charters that would have existed if turnpike stock was more remunerative. On the other hand, though, a charter may have been a device for discovering the interest of the community in such a project. A failed company may simple be the artifact of "testing the waters" when genuine need for the project was small.<sup>130</sup>

#### The Effectiveness of the Turnpike Plan

The organizational advantages of turnpike companies relative to public road care did indeed translate into better roads. The ever-suspicious gazetteer Horatio Spafford concedes grudgingly that "if evils or inconveniences have been found in the speculating extent of the turnpike system, that system has also done much good." Elsewhere he remarks that turnpikes have been "an excellent school, in every road district, and people now work the highways to much better advantage than

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<sup>130</sup>We are grateful to Charlie Calomiris for this point.

formerly."<sup>131</sup> In case law, judges said that turnpikes were "valuable and meritorious enterprises" and that they further "the advancement and prosperity of the commercial, manufacturing, agricultural and social interests of the community."<sup>132</sup>

The extent of the system is reflected in Map 2, which shows the turnpikes that existed up to 1830. In 1831 an Assembly committee remarked fairly that turnpikes "have become so numerous as to intersect every portion of the State."<sup>133</sup> One can see that the turnpikes of the time were mainly either routes to the Hudson valley or components of the major arteries that reached into the western counties. Of the turnpikes charters through 1845 roughly 165 had been built, partially or wholly.

[Map 2 here.]

Although turnpikes were a marked improvement over the alternative, people continued to complain about their condition. For example, "British writers of the period were unanimously unimpressed with the achievement of the New York" turnpikes.<sup>134</sup> In part people held turnpikes to a higher standard, but in addition most turnpikes were cash-starved and simply could not keep the road in respectable shape. Perhaps company officers shaded too much on upkeep in order to make

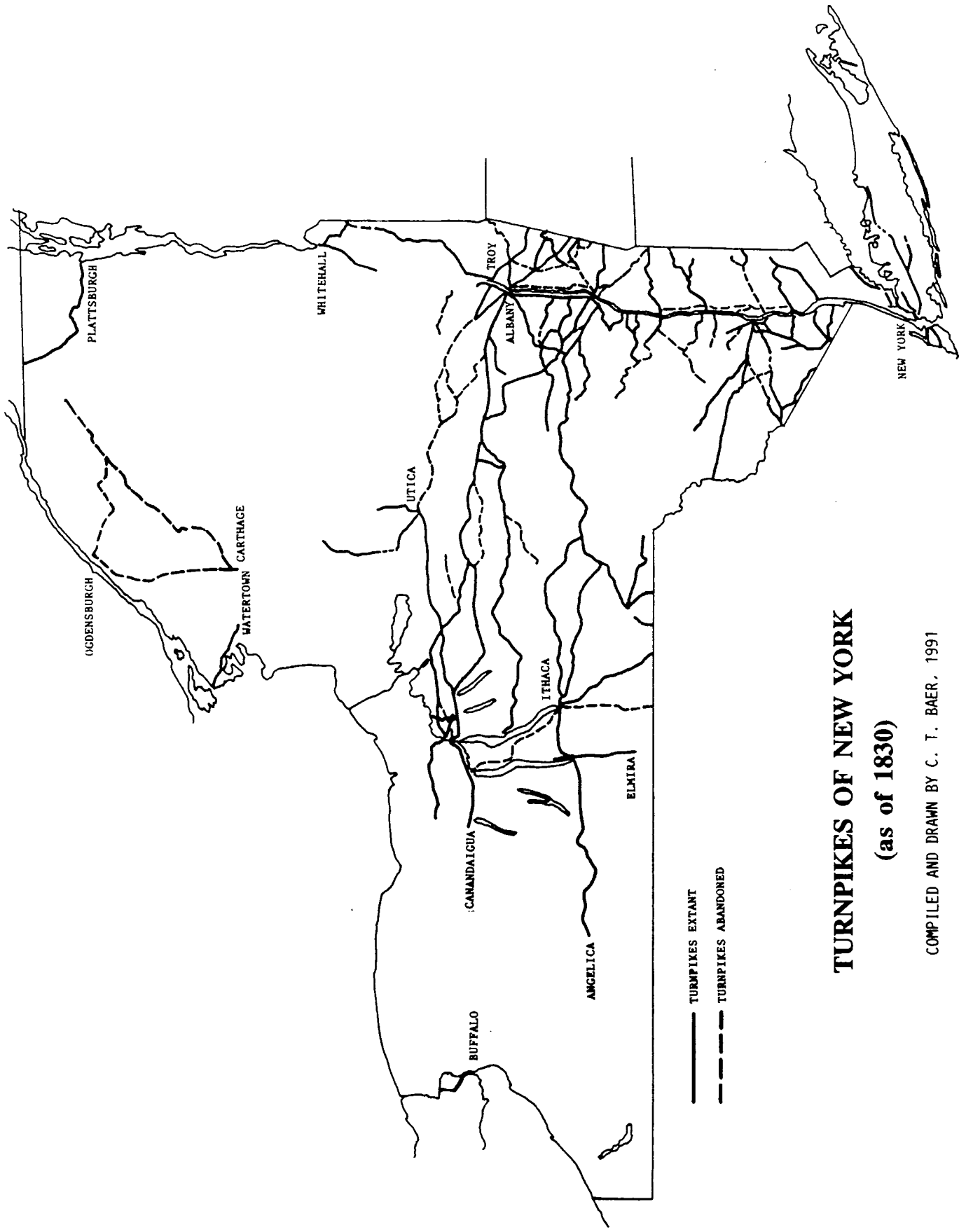
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<sup>131</sup>*Supra note 72* at 17, 125.

<sup>132</sup>*People v. Kingston & Middlefield Turnpike*, 23 Wend. 193 (1840); *Benedict v. Goit*, 3 Barb. 467 (1848).

<sup>133</sup>Assembly Doc. No. 332, 1 (1832).

<sup>134</sup>*Upstate Travels*, ed. Roger Haydon, 15 (1982).



**TURNPIKES OF NEW YORK**  
**(as of 1830)**

COMPILED AND DRAWN BY C. T. BAER, 1991



dividend payments, as some insinuated. Flagging condition often attracted the gaze of the turnpike inspector, who would order the gates open, pushing the company further into financial hardship. Such was the beginning of the end for many companies.

Turnpikes were indeed a community improvement. They were markedly more effective than alternative methods of road care, and their benefits redounded throughout the community. Had turnpikes been more profitable the movement would have been enhanced both in quantity and in quality, benefitting more communities.

(Note, however, that in as much as turnpikes were a combative, or distributional, device in the battles between regions, rather than a strictly developmental device, grounds for remorse are undermined. It is hard to assess the distributional factor, and we are inclined to think of it as a minor countervailing point. Also, if, from the statewide viewpoint, turnpike construction should have been dampened, making turnpikes unprofitable hardly seems like the appropriate means of doing so.)

### The Continuing Struggle to Build Roads

The first decade of the turnpike movement in New York set the broad terms for toll road operation for the entire movement. Throughout the nineteenth century toll road companies needed the fuel of community boosterism to get off the ground, and once launched they carried on in a state of financial hardship.

Beginning in 1825 canals began killing off many of the turnpikes. Railroads joined in the slaughter a bit later. In 1838 the legislature pass a general amendment stating that whenever a turnpike company is dissolved the road shall become a public highway.<sup>135</sup> Between 1825 and 1845 turnpike mileage dropped considerably. At the same time, however, the canals and railroads stimulated new demands for shorter toll roads that would serve as feeders. Thus chartering continued. But building and maintaining these roads was a struggle.

In part it was the frustration with cash-starved turnpikes that set the stage for the plank road mania (1847 to about 1853). A plank road was a toll road surfaced with wooden planks. People hoped that this new surfacing would answer their prayers for affordable roads, but those hopes were dashed when it was found that the planks wore out twice as quickly as experts claimed.<sup>136</sup> Plank roads were abandoned or converted into turnpikes. Dozens of short turnpikes persisted until the turn of the century, when a new public sector effort, associated with the Good Roads Movement, closed down the remaining turnpikes.<sup>137</sup> Had the laws governing turnpikes been more favorable to the interests of the companies, turnpikes probably

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<sup>135</sup>Chap. 262, 61st Sess. 254 (1838).

<sup>136</sup>John Majewski, Christopher Baer, & Daniel B. Klein, *Market and Community in Antebellum America: The Plank Roads of New York* (ms) (1991); Daniel B. Klein & John Majewski, *Promoters and Investors in Antebellum America: The Spread of Plank Road Fever* (ms) (1991).

<sup>137</sup>We are in progress on a study of the toll roads in this era.

would have played a much more vital and adaptable role in inland transportation throughout the nineteenth century, and quite possibly into the twentieth.

### Would Turnpike Trusts Have Been More Successful?

In 1819 some men petitioned the legislature for a grant of money to construct a road (between Angelica and Hamilton) and to erect tollgates to defray the expenses. They were proposing a turnpike trust, although one financed primarily by a state loan. Their petition is a remarkable commentary on the system of turnpike companies.

The petitioners say that companies endeavor "to increase their dividends to the utmost limit of the law," while the public insists on "the proper formation and maintenance of the road ... [although from the inadequacy of toll revenue] such a result ... is utterly impracticable." They explain that, unlike a bank or factory, a turnpike is necessarily monopolistic, so the legislature needs to regulate carefully turnpike operation. But the petitioners are pessimistic about the legislature's ability in "justly graduating the tolls of the different companies to the exigencies of the case, arising out of the unbounded varieties of climate, soil, distance of materials, price of labor, and other innumerable local circumstances." Hence there arises "a ceaseless strife between the public and those corporate bodies," and "in a vast majority of cases, the turnpike companies are the great sufferers."<sup>138</sup>

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<sup>138</sup>A Petition of Sundry Persons [1819], included in A Communication from the Comptroller, 1827, which is bound into the N.Y.S. Library volume of New York Legislative Docs., 50th Sess. 14,16 (1827).

Wisely avoiding any zero-sum thinking, the petitioners develop an argument that merits lengthy quotation:

It by no means, however, follows [that] because the companies are, in these majority of instances, losers, ... the public has been a gainer. As soon as the tolls fail to produce a sum sufficient to repair the wear and tear of the road, the road will be neglected, although it may not become impassable. It is true, the legislature has attempted ... to force them to open their gates whenever their roads are out of repair. Yet, from the nature of the law, it is one not very likely to be strictly executed; and even if strictly executed, only affords the traveller the poor consolation of passing over a bad road, without payment of toll ... [T]he law passed for his protection is only an additional evidence of the impossibility of forcing an expenditure of money, where there is not a prospect of an adequate return.<sup>139</sup>

The petitioners propose the alternative system of trusts, which are debt financed. They extol at length the trust system of England, "the only nation in Europe that has arrived to any degree of perfection in the improvement of roads." Since the trust method preserves a public image and seeks to make specified payments on monies advanced, opposition will be diminished. "[T]he public[,] neither liable nor suspicious of imposition, ... will cheerfully acquiesce in general regulations promotive of the improvement of the system, which would not perhaps be submitted to if emanating from an authority regarded with so much jealousy as the private incorporated company." The petition concludes with a passage from Adam Smith

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<sup>139</sup>*Id.*, 15.

that extols turnpikes but says they cannot "with any safety be made the property of private persons."<sup>140</sup>

The petitioners were awarded an appropriation of \$1500 and put their plan into practice with, it seems, limited success.<sup>141</sup> The trust model was espoused by others as well, but rarely were specific plans proposed and almost never were they approved.<sup>142</sup>

The petitioners probably overstated turnpike preoccupation with dividends, but their argument neatly parallels our own. If trusts had been the custom, turnpikes would have sold bonds rather than stock. The petitioners may well be right that trusts would have excited less "enmity" from the public.<sup>143</sup> A more placid public

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<sup>140</sup>*Id.*, 19-21.

<sup>141</sup>The 1827 communication says that the trust has been successful in constructing the road (ten miles) at the cost of \$3000 (a state appropriation of \$1500 and donated labor totalling \$1500). This is indeed a low figure for the job described. The trustees attribute this low cost to "the public prepossession in favor of an improvement, which is ... not ... placed under the control of private individuals, and which is based, as little as any transactions possibly can be, upon private speculation" (*Id.*, 7). But evidently the road condition did not satisfy local judges and the gate was often thrown open. "[L]ittle toll has therefore been collected." The petitioners request a toll increase and a relaxation of the upkeep law (8-11).

<sup>142</sup>Report on Roads, Internal Improvement Convention of 1836 advocates trusts. A petition of 1839 requested erecting a toll on a public road to defray construction expenses, and remarked, "the plan is certainly ... [free] from the odium which attaches to exclusive grants of public franchises for individual benefit." (Assembly Docs., No. 300 (1839).) In 1839 the legislature authorized borrowing for a road in Deerfield and a tollgate (Chap. 244, 62nd Sess.). An 1831 act authorized a tollgate on a public road from Ogdensburg to Canton (see Sen. Doc. No. 62 (1849)).

<sup>143</sup>Petition of Sundry Persons 16 [1819].

attitude may have translated into more favorable laws, the ability to service the bonds, and more and better turnpike roads.

Note, however, that in one respect the company plan was more community oriented than the trust plan. Since the obligation to service a bond is much stronger than the obligation to make dividend payments on stock, bonds would have been much less suited to pitching turnpike financing as a public-spirited contribution to a community improvement.<sup>144</sup>

In a hypothetical New York where the laws would have been crafted to safeguard the financial health of the turnpike companies, while eliciting reasonable performance, our guess is that the company system would dominate a trust system. A company system enjoys more managerial effectiveness than a trust system. (Historians of the British system say that the plethora of trustees made turnpike management very inefficient.<sup>145</sup>) Also the just noted community improvement aspect of turnpike stock probably would have continued to play a useful role. But given the New York that actually was, a trust system may indeed have worked better than the company system that existed.

## V. CONCLUSION

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<sup>144</sup>Hunter *supra* note 6 at 14 remarks on the irony of unprofitable companies in America and profitable trusts in Britain.

<sup>145</sup>P. Taylor *supra* note 6 at 81-86; see also Pawson *supra* note 33.

### The Economy, The Community, and the Law

The turnpikes serve as the outstanding example of the early American public service business corporation. In community embeddedness, financial performance, and sheer number, they exemplify the "commonwealth corporation" written of by the Handlins.

The turnpikes were born of economic ambitions. They far surpassed the public system of road caren organizational effectiveness, and these benefits were realized at a time of eager aspirations.

But much of the community was unprepared for the idea of private companies demanding toll for road travel. The mere term "corporation" struck an unfriendly note, and prejudices against turnpikes were excited in public debate. The reality was a social setting of suspicion and occassional hostility.

A citizen with anti-turnpike sentiments could bring them to bear in a variety of ways. Official actions included petitioning the legislature to act against a turnpike, remonstrating against a turnpike petition, being an assessor in a land settlement, being a juror on a case involving a turnpike, complaining of the turnpike condition to the turnpike inspectors, and speaking against turnpikes in town proceedings. Unofficial actions included evading tolls, opening a shunpike through one's property (or permitting a shunpike to emerge), and writing or speaking against turnpikes in public. Public officials -- including legislators, state officials, justices of the peace, judges, turnpike inspectors, and town commissioners of highways -- all had their opportunities to express anti-turnpike sentiments in official actions.

Many voices were heard on turnpike issues. Some can be lumped together and referred to as "the community," some as "the economy." It is a coarse and problematic distinction -- sometimes voices of the two sorts would emanate from the same larynx. But history is messy. In this paper we have suggested how the economy and the community encountered each other in the processes of lawmaking and to what effect. We have argued that turnpikes labored under many unfavorable laws, as well as diffuse actions of disfavor by the public. We suspect that the unfavorable legal environment partly accounts for turnpike unprofitability. Unprofitability in turn meant that many turnpikes failed to attain financing and that those that were financed persisted in sorry condition and died an early death. We present this dynamic as one of several pieces in the puzzle of continued turnpike unprofitability and construction.

Parts of our story are at variance with stories of the law and legislation of the period told by other scholars. In studying Massachusetts the Handlins portray the early public service corporation as a rather placid, consensual organization wisely sculpted by the regulatory powers. Louis Hartz gives a similar picture for Pennsylvania.<sup>146</sup> In our study, New Yorkers frequently disagreed over turnpikes and regulation seems to have been overly severe, to the detriment of turnpike profitability. (The turnpikes of Massachusetts and Pennsylvania also were unprofitable).<sup>147</sup>

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<sup>146</sup>Handlins, *supra* note 3; Hartz *supra* note 3.

<sup>147</sup>See Klein, *supra* note 129, at 791-93.



Morton Horwitz recognizes conflict in Early National legal innovations. Horwitz uses a distinction, made earlier by the Handlins, between subsidizing economic development through the fiscal system and subsidizing through the legal system ("such as monopolies and franchises"). The latter, of course, was the norm in that day. Horwitz says, "it does seem fairly clear that the tendency of subsidy through legal change during this period was dramatically to throw the burden of economic development on the weakest and least active elements in the population."<sup>148</sup> Horwitz goes on to impute regressive motives to the choice of subsidization through the legal system. Our story of turnpike companies -- the leading form of business corporation of the day -- suggests that the sentiments of the "weakest and least active elements of the population" were not only voiced but were effective in exacting liberal concessions from turnpike companies. If anyone suffered "the burdern of economic development" it would seem to have been the middle-class and local well-to-do who poured thousands into worthless turnpike stock.

The fact that liberal concessions were made to the local users runs contrary to Harry Scheiber's point that "rivalistic state merchantilism tended to militate against effective regulatory policies that would have placed firm controls, for well considered and defined 'public interest' objectives, upon private enterprise."<sup>149</sup> We have suggested that the regulation of the New York turnpikes may indeed have failed to serve the public interest, but if so it certainly was not for a want of firm controls.

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<sup>148</sup>Horwitz, *supra* note 4, at 100-101.

<sup>149</sup>*Supra* note 37, at 99.

Anti-corporate ideology and cumbersome, inflexible regulation help explain the nature of many of the early American business corporations -- namely public service organizations operating under financial distress.

## Appendix: Source Materials for the New York Turnpikes, 1797-1845

Records pertaining to the turnpikes of New York are rather incomplete. Unlike some state (such as Pennsylvania, Virginia, and Ohio) New York State did not invest in turnpikes, so turnpike records were not official public business for archival preservation. Except for the odd surviving item, whatever petitions and financial records the State did gather from turnpike companies have since perished, probably in the State Library fire of 1911. When a turnpike sought permission to erect tollgates state commissioners would file inspection reports and the Governor would issue a license to companies that passed muster, but again no such records have survived.

The richest source of information is the Session Laws, from which much can be inferred about the progress of a turnpike project. Other legislative sources include the Journals and the Documents volumes. Even the New York State Library is missing many of the volumes in these series. The Journals are extremely terse and badly indexed (when indexed at all).

Case law from the New York Supreme Court is enlightening both for general observations and for information about specific turnpikes. Other sources that help to determine whether a chartered turnpike was in fact constructed are state gazetteers (1813, 1824, and 1836), city directories and contemporary maps. Other contemporary sources include pamphlets, periodicals, miscellaneous reports, letters, diaries and scrapbooks. Extensive company records have survived for only four or five companies. These records are found at the New York State Library (Albany), the New-York Historical Society (New York City), the New York Public Library (New York City), the New York State Historical Association (Cooperstown), and the Columbia County Historical Society (Kinderhook).