

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

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Turnpikes promised a solution to the problem of bad roads, but private management of highways was a startling innovation. Some people opposed the idea of turnpikes as exemplifying two *bêtes noires* of the post-Revolutionary period, the “private corporation” and “aristocracy.” Much of the controversy, however, was rooted in local disputes over legislative concessions to turnpike protesters. The legislature both expressed and responded to turnpike protest by writing laws favorable to local users and injurious to the financial viability of the companies. Partly in consequence, the turnpikes were unprofitable. Landowners, merchants, and farmers struggled to finance turnpikes, not so much in hopes of company dividends but in hopes of improved transportation, stimulated commerce, and higher land values. Many turnpike projects failed to be constructed, and those that were constructed carried on in a condition that reflected their precarious financial state.

If stockholders and the legal authorization to pay dividends define the business corporation, then the business corporation underwent great change during the 19th century. By the end of the century, business incorporation was understood to be a freely available device by which private individuals could pursue their private interests. At the beginning of the century neither was the corporate form freely available nor was the desire for profit adequate cause, or even the primary cause, for granting a corporate charter. What’s more, “[t]he purposes of the individual investors,” as economic historian Carter Goodrich (1948:306) observed, “were by no means always confined to the expectation of direct return on their investment,” and to

Cartography: Christopher Baer, Hagley Museum and Library, Wilmington, Delaware.

The authors wish to note that the research contributions of Christopher Baer in producing this article went quite beyond the cartography. For valuable discussion we wish to thank seminar participants at Northwestern University and New York University. We thank Leon J. Bienstock for contacting numerous repositories. We thank librarians and archivists for assistance at the New York State Library, the New York Historical Society, the New York Public Library, the New York State Historical Association, and numerous county and local historical societies. For generous financial assistance we thank the Transportation Center of the University of California, the Arthur H. Cole committee of the Economic History Association, the Institute for Humane Studies at George Mason University, the Earhart Foundation, and the Hagley Museum and Library.

modern eyes a disproportionate share of the aggregate stock in the early corporations was unprofitable. At its origin, say Oscar and Mary Handlin (1945:22; cf. Hurst 1970:15), “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.” 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? And what attracted investors in spite of the community’s claim on turnpikes?

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% if you exclude companies organized under the general manufacturing law of 1811). Throughout the Northeast, turnpikes were the leading type of business incorporation (Table 1). And no other type of business corporation was more embedded in the community, both figuratively and literally. Compared to a canal or railroad the turnpike offered easy access—too much so, in the eyes of gatekeepers—and any sort of private vehicle could make use of the route. All manner of business would bring people on the turnpike, which may have been laid over a former highway or even over the traveler’s land. If laid over a former public highway, the turnpike may not even have been seen as providing a service discretely new and different from what had been enjoyed prior to its formation.

Table 1. Turnpikes as a Percentage of All Business Incorporations, by Special and General Acts, 1800–1830

State	All Incorporations	Turnpike Incorporations	% Turnpikes of All Incorporations
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
Total	3,527	946	27

SOURCE: For all states through 1800, Davis 1948:vol. 2, 22–27, 216; for New Hampshire, Vermont, Massachusetts, and Rhode Island, Taylor 1934:339–44, 346; for Connecticut, *ibid.*, pp. 338–39, and Reed 1964:75; for New York, New Jersey, and Maryland, Evans 1948:12–17; for Pennsylvania, Miller 1940:158–59.

The turnpike shared another feature of many early corporations—unprofitability. By 1810 or so turnpike stock had become notorious as an unremunerative asset. Hence, when 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 supplement the puny carrot of profit.

In our story of the New York turnpike movement, turnpike opposition and protest play a significant role. Not only were objections raised, but they were politically effective. Protest elicited legal restraints that hamstrung turnpikes. Thus 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 (protesters) and enterprising capitalists (turnpike supporters), would the material benefits have been greater for all classes if the legislature had awarded more ground to the enterprising capitalists? We suggest that the New York legislature was too sensitive and too accommodating toward turnpike protesters.¹

Among the studies of law and government policy in the early republic we may identify, in summary fashion, three schools. The Progressive historians, notably Charles Beard, found law and government policy as arenas of class conflict, with Jefferson and Jackson representing the common man in battles against the privileged and powerful (see Wilentz 1982). Consensus historians found an America rather free of class struggle, populated by go-getters who sought to use law and state government to promote their entrepreneurial interests. The leading representatives of this school are the Commonwealth scholars (Handlin & Handlin 1947; Hartz 1948, 1955; Heath 1954; Taylor 1977 [1951]; on internal improvements, see Lively 1955). A third school is made up of leftist historians who renew Progressive themes of class conflict but focus on the details of institutional settings of social, legal, and economic interaction. They often find the affluent and powerful oppressing the poor and powerless, who resisted the transformation to

¹ 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. Appendix 1 describes the variety of the sources on turnpikes in New York.

The secondary literature on the toll roads of the 19th century is rather sparse. Durrenberger (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 Wood (1919) and given an excellent general treatment in P. Taylor (1934); see also G. R. Taylor (1977 [1951]), Parks (1966), and Reed (1964). The most satisfactory state study is Hunter (1957) on Virginia, out of which came two journal articles. Jones (1990) offers a valuable Rhode Island study paralleling this one in some respects.

an acquisitive and commercial society (Horwitz 1977; Henretta 1978; Prude 1983; Clark 1990).

To use a distinction made by J. H. Hexter (1979:241–42), our story of turnpikes plays the rascal known as the “splitter,” who complicates and upsets the courageous efforts of the “lumpers” to impose order on the past. Contrary to Horwitz and several social historians, we cast doubt on the proposition that protest was class-based. Although anticommmercial ideology played a role in general opposition to turnpikes, we interpret local protest largely as an opportunistic means to acquiring concession for local users. In this respect, the turnpike episode fits well with the views of Consensus historians, among them Louis Hartz.² Furthermore, whereas Horwitz (1977:xv, 253–54) and others suggest that the noncommercial interests were forsaken, we show that the protesters were not powerless. Protesters were often successful in getting the legal authorities to satisfy their demands. But their victories were a social bad as often as they were a social good, in that legal concessions significantly hindered the construction and upkeep of many turnpikes. In line with Horwitz and Hurst (1956:3–4), we find turnpike legislation serving to release productive energy, but we qualify this point by showing that the release was more limited than it might have been.³

I. 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 financial, legal, and political affairs (Hurst 1956:10; North 1966:50–51), signaling 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 entrepôt. 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. Better transportation meant, above all, better highways.

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 19th century. That structure is depicted in Figure 1.

² E.g., Hartz (1948) demonstrates that considerable interest group struggle influenced the Pennsylvania legislature, but the groups were primarily regional, not class-based. In this sense Hartz, like us, sees much opportunism in the protest that existed.

³ Horwitz argues the pro-development tendencies of the judiciary, whereas our focus is the legislature.

Although the town highway commissioners are shown 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, as county configuration was changing almost yearly.

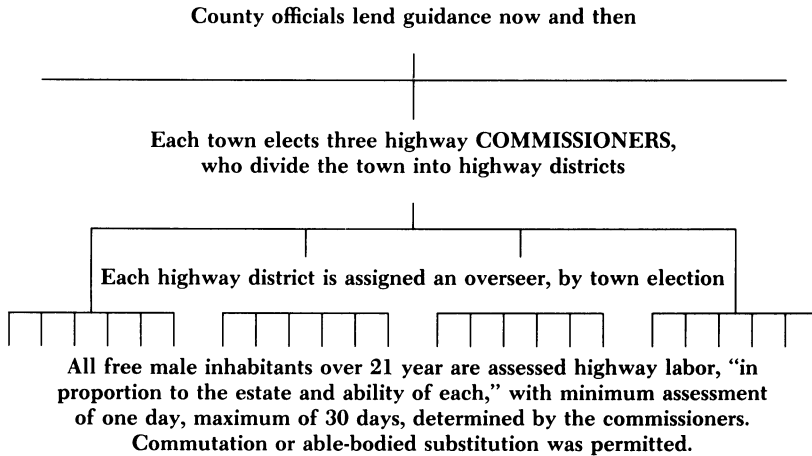


Figure 1. Town Management of Roads in New York, circa 1800.

The general highway law in 1801 determined many details that would last for decades.⁴ Eligible men in the town were assessed an average of at least three days of road work. The inhabitants could commute this assessment at 62.5 cents per day. Whether a substitute could be persuaded to take one’s place at a lower rate we do not know.⁵ The teeth of the system lay 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 \$10 against the overseer for failure to collect fines from the laborers. Should anyone fail to appear or “remain idle or not work faithfully, or hinder others from working,” the fine was \$1, which applied pro rata for fractional offenses. Scant evidence indicates that the fines were effective in getting people to work the roads. In his study of Beekmantown, New York, White (1979:198–99) finds that labor assessments generally were fulfilled.

⁴ The 1801 general highway law is much like the 1797 law, except that it downplays the role of the county superintendents of highways.

⁵ Other matters addressed included the assessment of animals and equipment to be used in road work, the assessment of newcomers to the town, remedies for insufficient assessments having been made, 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, guideposts and milestones, and swinging gates on roads that traversed someone’s pasture. 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. 1801 N.Y. Laws ch. 186, secs. VII & XXIII.

Although residents throughout New York, like those in Beekmantown, may have fulfilled their basic obligations, there was no difference of opinion about the ineffectiveness of the local road care system. In 1796 Governor John Jay spoke of the need to make the road laws “more effectual.” For decades the system remained the butt of invective. Governor Throop said 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 (*Lincoln* 1909:vol. 2, 385; vol. 3, 376, 468). 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.”⁶

The ineffectiveness is not hard to understand. As with public works of any kind, incentives were weak because the chain of activity could not be traced to a residual claimant. The laborers were brought together in a transitory, disconnected manner, preventing them from developing the appropriate skills and pride in the job. As the Handlins (1947:118) say of the similar system in Massachusetts: “It was one thing to vote assessments in town meeting and another to get farmers to sweat out their shares.” Since overseers and laborers were commonly farmers, too often the crop schedule, rather than road deterioration, dictated the repairs schedule. Except in cases of special appropriations, financing came in dribbles deriving mostly from the fines and 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. Because work areas were divided into districts, as well as into towns, problems arose because the various pieces were not working together.

Knowing that the local road system was incapable of providing roads in sparsely settled areas, lawmakers cast about for alternative in road management. In 1790 the state allocated 1,000 pounds to the land office to lay out roads and authorized another 400 pounds in 1791.⁷ In 1792 the state took the more

⁶ J. Blunt (Chairman), “Report on Roads,” p. 1, presented at the Internal Improvements Convention, 1836 (bound with item 385 N559 at New York State Library); cf. Taylor 1977 [1951]:16.

⁷ New York State appropriation for highways, 13th sess., ch. 53 (1790); 14th sess., ch. 53 (1791). Much of the money was to go to road building between the Susquehanna and Hudson rivers.

For the period covered in this article New York statutes regarding highway appropriations and matters relating to toll bridges and turnpikes (including charters, land acquisition, maintenance, location/relocation, shunpiking, and rates) are cited in text

decisive step of dividing the state into four districts and making appropriations amounting to 20,000 pounds.⁸ In 1797 (20th sess., ch. 60) and 1803 (26th sess., ch. 59) the state authorized lotteries to raise \$45,000 and \$41,000, and the state continued to invest in road building well into the turnpike era. It is hard to say whether these state efforts piggybacked on the local system or operated parallel to it.⁹

Historians have suggested that a feeling of futility suffused the road care system. Joseph Durrenberger (1931:29) goes so far as to say: "Under this policy of making only temporary repairs the labor and money devoted to highways were largely thrown away." The state lacked the funds and administration to improve matters significantly. The idea of a turnpike company, with responsibility, authority, and financing for the entire route 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. A stimulus was competition with other states. The most dramatic competition in the state concerned the sparsely settled areas west of the Hudson Valley. Would trade from these counties 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 turnpike roads in Connecticut and Massachusetts were drawing trade eastward into New England.

Turnpike promoters in New York seized upon the spirit of rivalry. 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 a dozen substantive newspaper articles on turnpikes, including two debates with turnpike critics, as well as many shorter pieces.¹⁰ All are pasted into his *Commonplace Book*, where he often scribbled messages along-

and notes only by legislative session, chapter, and year. All may be found in the appropriate year in *N.Y. Laws*.

⁸ New York appropriation for highways, 15th sess., ch. 60 (1792). Each district was to be supervised by named commissioners, and work was to be done by contract whenever possible.

⁹ Plummer (1925:45–46) makes such a distinction in discussing road policy in Pennsylvania. As with 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; *ibid.*, pp. 43–44, 26–27.

¹⁰ Watson's scrapbook (his "*Commonplace Book*") is a juicy source of contemporary debate and rhetoric. Elkanah Watson, *Commonplace Book* (manuscript scrapbook, Watson Collection, New York State Library). Watson never used his real name. For more on Watson see Lord (1942).

side the clippings. In nearly every 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 warned 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 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” (Commonplace Book, 41, 43, 45).

Benjamin De Witt wrote a well-circulated article in 1807 that described the progress of turnpikes in New York. The author 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.¹¹ Official documents also show the preoccupation with competition between states.¹² A striking case is in the *Assembly Journal* (1808:91), 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,

¹¹ De Witt’s article was included in U.S. Treasurer Albert Gallatin’s 1808 report on canals and roads to President Jefferson. De Witt counts as built some turnpikes that were not in fact built at the time.

¹² New York State legislative journals and compilations of documents cited here are identified by year and page number. The four sources are New York Legislature, Assembly, *Journal of the Assembly of the State of New York* (“Assembly Journal”); New York Legislature, Assembly, *Documents of the Assembly of the State of New York* (“Assembly Doc.”); New York Legislature, Senate, *Journal of the Senate of the State of New York* (“Sen. Journal”); New York Legislature, Senate, *Documents of the Senate of the State of New York* (“Sen. Doc.”).

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 successful competitor with other cities in the union, for supplying Pittsburgh, and other places on the Ohio and Mississippi rivers, with goods and merchandize.”

If state rivalry was a rallying point for legislative approval of turnpiking, it was *local* rivalry, pitting New Yorker against New Yorker, that fired the wills of those seeking turnpike charters. Here again Watson stoked the restless souls of New Yorkers, especially the people of Albany. 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” (Commonplace Book, 46).

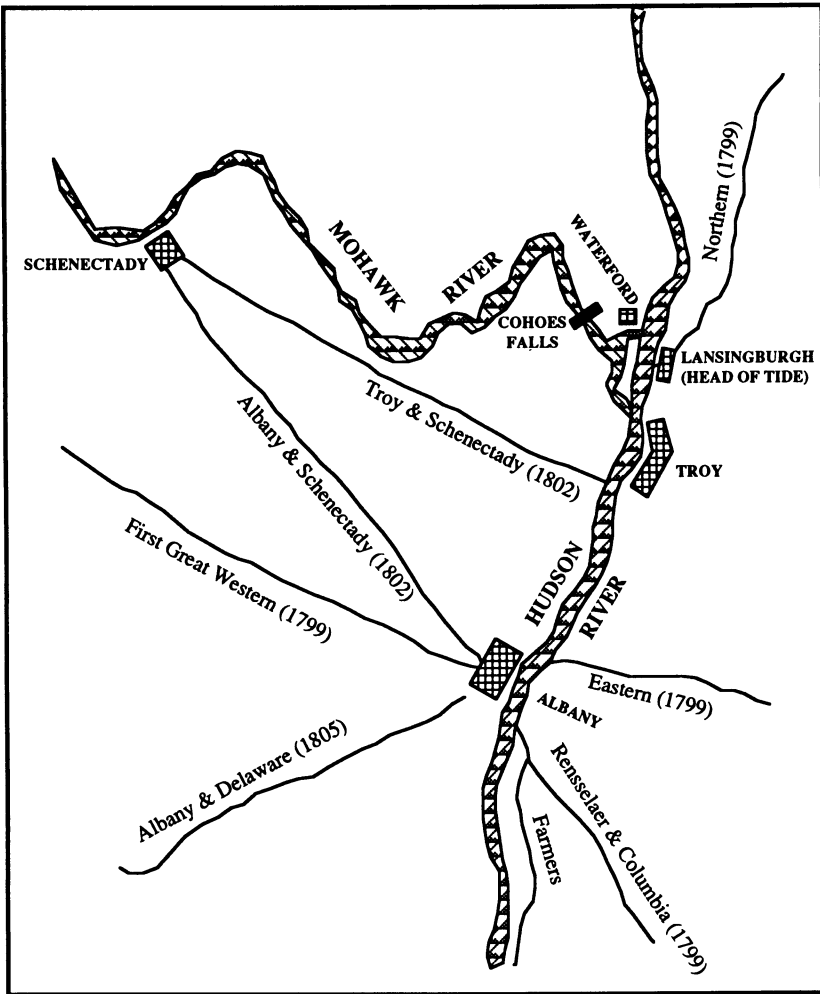
Watson’s master stroke is told of in an unpublished diary of a man named Jones who knew Watson.¹³ Albany and Troy were beginning a bitter commercial rivalry (Map 1).¹⁴ In the late 1790s the organizer of a turnpike between Albany and Schenectady despaired to Watson about the failure to interest investors in the project. Watson told the organizer “to hold himself in readings to take advantage of what might occur.” The Jones 1821 (p. 22) diary entry continues,

A few days after there appeared in one of the Troy newspapers a communication addressed [*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.

Watson’s Troy article and his follow-up published in an Albany newspaper are both pasted in his scrapbook. The Troy article speaks of diverting the western trade “from Albany to this place.” In the follow-up, addressed to the people of Albany, Watson warns of the plans of the “persevering and enterprising Trojans”: “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

¹³ Jones Diary, unpublished type copy, Schenectady County (NY) Historical Society, 1821.

¹⁴ 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); see Watson 1856:276. On the contest between Albany and Troy, especially in the railroad days, see Ellis 1943.



Map 1. Albany-area (NY) turnpikes chartered by 1805. Construction usually lagged several years behind the charter dates (shown in parentheses).

Turnpike—it awakened the Jealousy of the Albanyans—and the next year produced the Schenectady Turnpike Association” (Commonplace Book, 37, 38). As the Jones diary account accurately finishes, “the Stock was apportioned between the inhabitants of Albany and Schenectady . . . and the present road was built.”

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: “An 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.”¹⁵ 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.¹⁶ 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 retrogression.¹⁷ To some extent improvement boosterism was, like cola advertising today, combative rather than developmental.¹⁸

A Legal and Organizational Innovation

In spite of the growing interstate and local commercial rivalry, the earliest public attitude toward turnpikes was reluctance, if not resistance. In November 1796 Watson scribbled in his scrapbook (p. 29): “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.” The data in Table 2 come from Davis (1917:vol. 2, 216) showing 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 (*ibid.*, p. 188). Although some of the most important New York turnpikes were chartered by 1800, none were completed by then. New York’s full adoption of the turnpike plan came only with its 1807 general turnpike law.

The turnpike idea was an old one. Britain first authorized a toll road in 1663, with “turnpike mania” prevailing in Britain from about 1750 to 1772 (Pawson 1977:151). The British turnpikes were organized as trusts—not-for-profit organizations fi-

¹⁵ Here Chevalier (1961 [1836]:271) is quoting “a man of sense” he met on his travels in America in the 1830s. Chevalier offers many biting and delightful images in this regard. Alexis de Tocqueville (1945 [1840]:vol. 2, 144–45) gives a more searching discussion of how Americans are “restless in the midst of abundance.” The restlessness Harriet Martineau (1962 [1837]:246–53) zeros in on was that arising from the Americans’ “servitude to opinion” or conformism. (Tocqueville, of course, had plenty to say here as well.) Martineau (p. 253) 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.”

¹⁶ See Arthur 1988; Carlos & Fulton 1991, which argues that the “dominance of Toronto was the result of the chance location of the provincial capital there.”

¹⁷ Psychological experiments show that prospective setbacks will impel response more than prospective gains. See Kahneman et al. 1990.

¹⁸ In 1830, Massachusetts Chief Justice Parker said in his dissent in the *Charles River Bridge* case (which permitted a competing bridge): “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 adscitious value of real estate in one town . . . to another.”

Table 2. The Earliest Turnpike Charters

	1792	1793	1794	1795	1796	1797	1798	1799	1800	Total
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
Total	1	0	3	6	6	10	11	15	20	72

SOURCE: Davis 1917:vol 2, 216.

nanced by bonds.¹⁹ Americans never tried the trust method of turnpiking, but some commentators said in retrospect that the trust method would have proven more satisfactory than the company method.²⁰

In America, Virginia in 1785 and Maryland in 1787 authorized tolls on public roads initially constructed with tax money (Hollifield 1978:2). Connecticut in 1792 twice mixed the grant of toll collection with the grant of a lottery for public road building (Taylor 1934:6, 86, 122–23). In each case these efforts met with small success. In 1792 Pennsylvania chartered America's first turnpike company, the Philadelphia and Lancaster, 62 miles long and \$300,000 in capitalization (later raised to \$450,000). Two years later the completed road was admired for its magnificent construction (Plummer 1925:47). Although not all early turnpikes had such an auspicious beginning, the sluices were opening. As Harry Scheiber (1975:97) says, “[a]n initiative by one state would immediately raise the possibility of either competing or emulative responses by others.”

The turnpike was to be the transportation innovation of a

¹⁹ Despite some fundamental variation, Americans patterned much of their turnpike law after the British model; see Szostak 1991.

²⁰ An insightful commentator said in 1819 that 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.” “A Communication from the Comptroller, Transmitting a Report of Philip Church and Sylvanus Russell, Esqrs., Relative to a Road from Angelica to Hamilton: Together with a Petition of Sundry Persons” 14, 16 (bound with the New York State Library copy of New York Legislative Docs., 50th sess., 1827) (“Angelica-Hamilton Trust Proposal”).

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. Hunter (1957:14) remarks on the irony of unprofitable companies in America and profitable trusts in Britain.

generation. Unlike the steamboat and the railroad, the timing and appeal of the turnpike cannot be explained by a technological breakthrough or, as in the case of the canal, by 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*—authorization to lay out roadway and to demand tolls.²¹ Whereas appeal and timing are coincident for an unfettered technological innovation, for the turnpikes the appeal is explained by organizational innovations and the timing by legal innovation.²²

Compared to the public system of road care, the turnpike company is seen to have many organizational advantages. To obtain financing, turnpike organizers could reach beyond their town and concentrate on individuals most susceptible to their appeals. Turnpikes connected multiple towns, so management transcended the commissioner-overseer-laborer hierarchy in each town. Turnpike officers were free to hire contractors who bid competitively to do clearly defined jobs. The tollkeeper, who usually resided in a 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 to the turnpike directors of information and sentiment from the public.

But the most radical organizational innovation of the turnpike is that it charged users. Once 10 miles were constructed, the directors were authorized to call for the turnpike inspectors and, if satisfactory, a tollgate would be authorized, ensuring a flow of revenue. This lent a new willingness to undertake road construction and changed the obligations for road improvements. As Watson (*Commonplace Book*, 29) said in 1795: “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?” Although not everybody was to agree with Watson, user fees meant that in road provision supply could be better matched to demand and that money would be available for maintenance or dividends. What Hurst (1956:23; cf. p. 26) says about the corporation in general can be well applied to the case of turnpikes: They served “to encourage the volunteer muster not only of capital but also of promotional and managerial talent.”

²¹ In viewing the early business corporations, Hessen (1989) nicely emphasizes the centrality of legislative *permission*.

²² Albert (1983) portrays the British turnpike trusts as an “administrative innovation.”

Early Turnpike Charters

Annual turnpike incorporation in New York is shown in Figure 2. About 5% of the charters were recastings of companies that had been previously chartered, and *between 60% and 65% of turnpike projects*²³ *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.

The charters of the 10 companies chartered in 1799 and 1800 provide a picture of the legal structure of the earliest New York turnpikes. These 10 charters are quite uniform.²⁴ 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 had been subscribed, the stockholders were to elect directors, who in turn were to elect a president.²⁵ 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 preexisting 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 12 “indifferent” men and in other cases himself appoint 3 freeholders not being residents of the towns through which the road was to pass.

Procedures for entering adjacent lands 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 re-

²³ We define “projects” 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 enacted within seven years of the first.

²⁴ Three prior charters of 1797 and 1798 were nonstarters. The 10 companies being examined were chartered by the following acts: 22d sess., 2d mtg.: chs. 30, 59, 73, & 79 (1799); 23d sess.: chs. 78, 79, 102, 105, & 121 (1800). These 10 proved to be of robust birth; segments of 9 were operating in 1850 and segments of 3 were operating in 1900.

²⁵ Stockholder voting was progressive. The most common formula was one vote for 1 share up to 10 and no additional voting rights beyond 10.

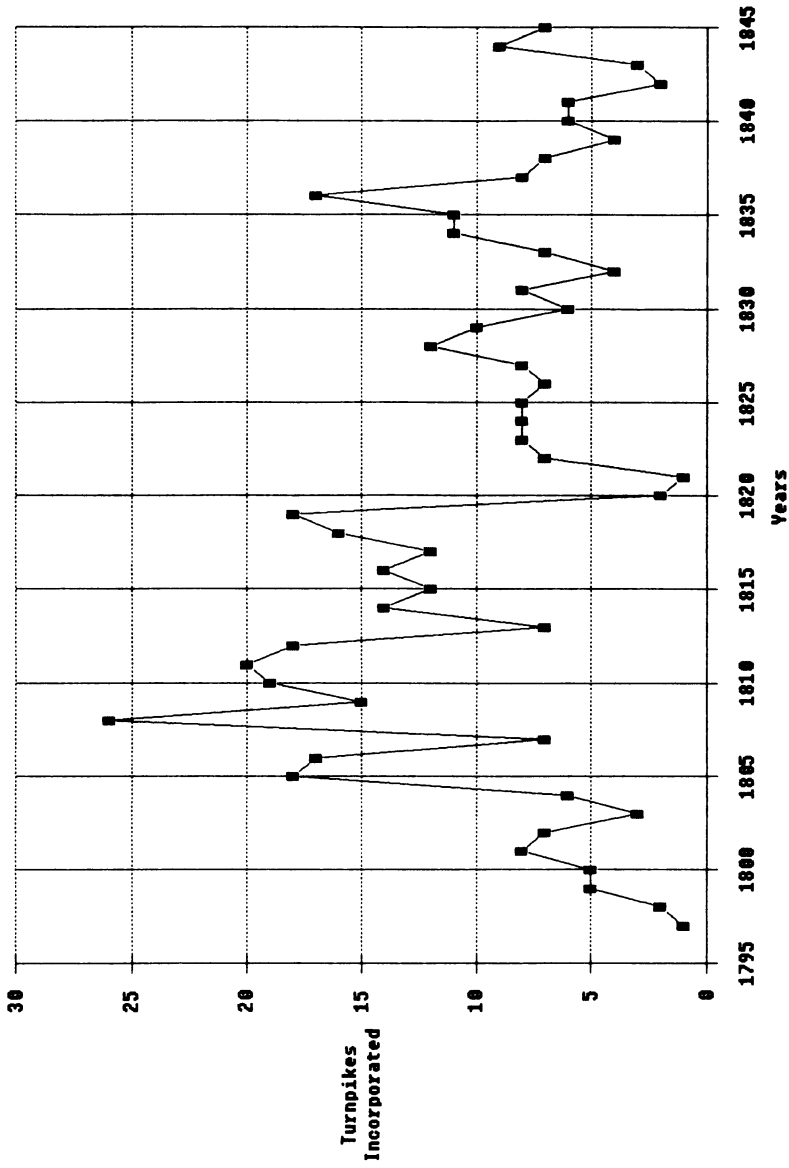


Figure 2. Turnpikes incorporated in New York State 1797–1845. Source: Evans 1948:17.

pair “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. 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 give a “solid foundation.” Guideposts and milestones were to be erected. Once 10 miles of the road had been completed, the governor, upon notice, would appoint three “skillful and judicious” persons to inspect the construction and make a recommendation. On approval the governor would grant a license to erect a tollgate and to take toll. Usually gates were to be at least 10 miles apart.

The toll rates (Table 3) remained nearly constant throughout the turnpike movement. Since the passenger vehicles—sometimes referred to as “pleasure carriages”—paid significantly higher rates, the toll schedule discriminates against wealthier travelers.²⁶ 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. Standard Toll Rate Schedule for a 10-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 (3 cents for each additional animal; sometimes carts drawn by 2 animals were rated separately and at a lower rate)	12.5
Cart (drawn by 1 draft animal)	6
Sleigh (drawn by 2 draft animals) (2 cents for each additional animal)	4–6
Horse led or ridden	4
Score of cattle (pro rata)	12–20
Score of sheep or hogs (pro rata)	6–8

Like the public system of road care, turnpike charters specified fines for misconduct. For damaging turnpike property the most common fine was \$10; for evading the toll (or “shunpiking”), the most common fine was threefold the toll due

²⁶ 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.

(although for two companies it was \$10); for unreasonable delay by the tollkeeper, the most common award to the traveler was \$2 (although in one case it was \$25).²⁷

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 sizable portion ever did.²⁸ Usually the final item on the charter provided for dissolution of the company. If toll revenues ever repaid “all monies . . . expended in purchasing, making, repairing and taking care of [the] road together with an interest of fourteen [sometimes 12 or 10] per centum per annum,” then the road was to become 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 was not completed within seven years of the charter date. Many turnpikes failed to meet these deadlines but were readily granted extensions.

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”—that is, enterprises set up to earn and pay dividends. The basic legal form—a stock-financed franchise corporation with eminent domain powers, governed by construction standards and fixed toll rates—would remain for over a century.

But the following features of the early charters quickly became sore points with turnpike remonstrators and would be altered in subsequent legislation:

1. Company officers rather than public authorities laid out the road.²⁹
2. Construction standards were vague and, more important, except in two cases, no upkeep enforcement was specified (23d sess., chs. 78 & 105 (1800)).
3. Exemptions were vague and did not cover all the cases thought to be appropriate.
4. Gate location was largely at the discretion of the company.
5. There was no provision requiring that those petitioning the legislature for a charter give public notice of their intentions.³⁰

²⁷ 23d sess., ch. 79 (1800). Sometimes the various fines also carried cost of suit.

²⁸ The general turnpike law of 1807 instructed owners to file financial reports, but “only a very small proportion” did so, according to a circular of the state comptroller (ca. 1834; Third Great Western Turnpike papers in the New York Public Library). Any reports filed have since perished.

²⁹ In 1802 the Assembly saw to it that all future turnpike charters specified that state-appointed commissioners lay out turnpikes, and amendments were passed for existing charters (Lincoln 1909:vol. 2, 511).

³⁰ The general turnpike law of 1807 (p. 57) required that public notice be printed

Even after all these features were changed in favor of “the public,” many folks still found plenty to complain about.

II. Dispute and Resolution

Turnpike Protest

It was by virtue of organizational novelty that the turnpike plan promised better roads, but the organizational features were starkly new and somewhat frightening. The introduction of a turnpike road through town immediately affected many inhabitants. The most visible impact was the strange new obligation of paying a toll. Modern researchers find a “status quo bias” for proposed changes; to the individual the losses involved in the change loom larger than the gains (Kahneman et al. 1990). As Oliver 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” (quoted in *ibid.*, p. 204). Turnpike protest thus found an easy foothold.

Turnpike protest can be split into general and local. The first kind is general opposition to the very idea of turnpiking or to the common guidelines that regulate turnpikes. The second 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. Local and general protest naturally drew from each other.³¹

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 incorporate such a turnpike at present, or that few people along the proposed route have signed the petition (*Assembly Journal* 1806:236; *Sen. Journal* 1803:54, 75). Wrangling over turnpike bills was common, especially in the Assembly. Bills are often engrossed for revision, votes are often called, and sometimes second votes were taken. (The general turnpike law of 1807 would settle most of the common battles

for four weeks in a local newspaper before application be made. The Assembly (*Assembly Journal* 1807:294) passed a resolution requiring that six weeks’ notice be made for any petitioning pertaining to a turnpike company, but it never became law.

³¹ The New York experience of turnpike opposition seems to have paralleled the experiences of other states. See Plummer 1925:49–51; Durrenberger 1931:81–82; Davis 1917:vol. 2, 216, 219, 220; Taylor 1934:113, 118, 121–22, 200, 283–87; Parks 1966:182–85.

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. The writer, John Radcliffe, is evidently an organizer of the Dutchess Turnpike and the recipient is Ebenezer Foote, 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."³² Radcliffe then reports on recent party meetings. The Federalists, Radcliffe says, are likely to nominate Foote for another term in the state Senate. The letter also reports on the Republicans' meeting, where Abraham Adriance was nominated for the same seat. Radcliffe expresses his hope that the Republicans would split over Adriance: "Adriance will be much opposed . . . —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.³³

There is a smattering of evidence from New York and other states that Federalist were, relative to Republicans, friendly to turnpikes.³⁴ It is difficult to know, however, 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 and, for the period in question, there is no ready record of party affiliations. We doubt that there was a rigid political alignment on turnpike issues, and if there was, it is quite doubtful that it persisted more than 10 years. There is almost no sign of party alignment on the issue in the plethora of contemporary materials pertaining to turnpikes. Many Republicans strongly favored government encouragement of internal improvements (Nelson 1987:125). John Brooke (1989:287–88), who studied Worcester County, Massachusetts, noted that turnpikes received support from both prominent Federalists and Republicans. Turnpikes were, at bottom, a local affair, or even a multitude of local affairs.

³² John Radcliffe to Ebenezer Foote, 3 April 1802 (item 11633, New York State Library). 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."

³³ Radcliffe concludes the letter by promising his support in Foote's campaign. As it happens, Adriance won Foote's seat. Foote served in the State Assembly 1792, 1794, 1796, and 1796/97 and in the State Senate 1799–1802. Adriance served in the State Assembly 1798/99–1802 and in the State Senate 1803–6.

³⁴ Fee 1933:144–47; Jones 1990:24–25. In Connecticut, in 1801, a political farce was performed: "Federalism Triumphant in the Steady Habits of Connecticut Alone, Or The Turnpike Road to a Fortune" (by Leonard Chester; available from Huntington Library, San Marino, CA). The play is full of contemporary private jokes and snipes at turnpikes.

The best examples of general opposition to turnpiking can be found pasted into Elkanah Watson's *Commonplace Book*. During the winter of 1801–2, Watson carried on a lengthy debate with an opponent who wrote 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 Republican. Although Watson shrewdly used the pen name "A Republican," he had significant Federalist sympathies, although he berated "the party spirit."³⁵ The debate between Watson and Civis is a fascinating sample of the period's struggle for and against social and economic change. For the most part, the present authors view Watson as an informed and pragmatic voice for progress and good sense.

Civis's four articles are classic examples of early American egalitarian protest against corporations.³⁶ 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": "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." 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."

Civis raises the specter of corporate privilege 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

³⁵ 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 Watson 1857:398.

³⁶ For a concise dissection of anticorporation rhetoric see Hurst 1956:30–49. For a view of anticorporation sentiment more respectful than Hurst's or ours, see Harvard Law Review 1989; Prude 1983:119–20.

we, have heretofore done without them—and I had rather enjoy LIBERTY and EQUAL RIGHTS in the old plain way, under some inconveniences, than 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 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.” 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 were set up to pay dividends.

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. If turnpikes were a speculative plan, Watson notes, “there are few men in the country too poor to partake of the spoil.” The down payment on turnpike stock was typically \$5.

Rarely do the general opponents of turnpiking make specific criticisms. Civis complained 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 adequate and that turnpikes “forcibly” take private property for private corporations. In response Watson says that no turnpike charter is “without special provisions interwoven in them to guard against every abuse of privilege,” and he extols turnpikes for shortening and improving roads. The improvements reduce travel time, permit larger loads, permit greater safety and comfort, and reduce wear and tear. 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.”³⁷

³⁷ Commonplace Book, 36, 42 (1), 45 (1), 39 (1), 37 (1), 44 (3), 44 (4), 41 (3), 42 (2), 44 (2), 37 (1). 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.”

Watson would have us believe that “[s]trong prejudices have been excited against Turnpikes . . . by a few leather-heads.” Turnpikes were vulnerable to “frightful phantoms” of the day, notably those based on wealth and occupational distinctions (*Commonplace Book*, 48 (4)). Indeed, underlying much of the turnpike hostility was the idea that if turnpike stockholders were getting richer, then someone else must have been getting 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 1981 [1824]:605, 263 shows similar thinking in a diatribe on usury.) On specific questions about specific turnpikes (Who shall be toll exempt? Where shall the gates be placed? How will upkeep be assured?) inhabitants voiced meaningful and justifiable concern. But these issues were shrouded in a popular hostility arising in no small part from resentment and distrust.

Turnpike opposition may also be ascribed to philosophical disposition. Lance Banning (1978) argues that many Jeffersonian Republicans used the language of civic republicanism to express their fears that growing commercialization would corrupt American virtue and independence. However, the impetus of the turnpike movement—small communities competing for commercial advancement³⁸—casts doubt on the proposition that the majority of people, whether Republican or Federalist, harbored anticommercial feelings.³⁹

Many distrusted corporations because they were granted special powers and smacked of privilege. Hendrik Hartog (1983:126–27) points out, for example, that Republicans identified the Montgomerie Charter, the document that gave New York City corporate status, with “aristocracy” because the Federalists used its provisions to bar many Republicans from voting in city elections. To get around the Montgomerie Charter, Republicans argued that the state legislature was the only legitimate repository of government power. This line of thinking tended toward strict legislative control of the turnpikes by charter provisions.

Signs of local turnpike protest are rife in the legislative

and he often discusses the need for proper checks. *Ibid.*, 44 (4), 48 (4), 41 (1), 44 (2), 49 (1).

³⁸ Hurst (1956:10) emphasizes the idea that the impetus for commercial development came from the local community, not the central state: “Corporation law has always been an instrument of wants and energies derived from sources outside the law; it has not been the prime mover.”

³⁹ Rothenberg (1981) describes the commercial orientation of early American farmers; in a similar vein see Lemon 1980. For the pro-market aspects of the Republicans, see Appleby 1984. See also the exchange in 43 *William & Mary Quarterly* (1986) between Banning and Appleby.

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 beseeched the legislature “not to establish by law the road so altered, and to declare the . . . draw bridge a nuisance” (Sen. *Journal* 1803:74). Unfortunately the journals do not elaborate reasons. The petitions themselves have perished (as explained in Appendix 1), so discerning the real contentions is mainly guesswork.

Evidence of local protest can be seen in other contemporary sources as well. Objectors to one turnpike advertised their efforts to “evade and stop . . . the unjust plan of erecting a Turnpike Road” (*Poughkeepsie Journal*, 7 Dec. 1802, p. 3). 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” (*New-Windsor Turnpike v. Wilson Road* 1805:127). 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” (*Assembly Journal* 1808: 215). A different indication of hostility is an 1805 resolution of the Albany and Schenectady Turnpike Company: “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.⁴⁰

We suspect that some people felt a need to express publicly disapproval for turnpikes while harboring a secret appreciation for the idea.⁴¹ The seemingly public role is almost invariably that of siding with the assumed downtrodden, even when the egalitarian charges appear dubious, as they largely did in the case of turnpikes. Perhaps we detect a hint of this public role playing in the following Assembly report (*Assembly Journal* 1806:225) on a petition to organize a turnpike: “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.

The following sections on upkeep, concessions to local users, and toll evasion provide further evidence of general opposition and local protest to turnpikes.

⁴⁰ Albany and Schenectady Turnpike Company, Minutes Book, 7 Sept. 1805 (manuscript, New York Historical Society).

⁴¹ Timur Kuran (1990) explores the ideas of one’s outward preferences being at variance with one’s private (or true) preferences.

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 order. In the charters of 1799 and 1800 there were quality standards for the initial condition of a new turnpike, but *upkeep* standards and procedures were either nonexistent or extremely elliptical.⁴² 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.⁴³

The vagueness surrounding upkeep was a leading sore point for turnpike opponents. In 1803 Governor George Clinton said that although new turnpike charters specify 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 suggested establishing public positions to deal with the matter (Lincoln 1909:vol. 2, 527). Similar concerns are evident when Elkanah Watson (Commonplace Book, 49 (1)) describes the need to guarantee that the public would not be charged if the road were out of repair. “Should this evil be remedied, every opposition would be silenced.”

It is likely that the outcry over inadequate upkeep specifications arose not because companies were actually demanding tolls on bad roads but because there were no guarantees against such practices. There simply were very few turnpikes operating in 1803. It usually took one to three years to open a turnpike. Furthermore, there were standards for the initial condition of the road, so it is unlikely that in these early days many turnpikes companies had the opportunity to demand toll for a shoddy product (not that they wouldn’t, given the opportunity).

Following the governor’s suggestion, an upkeep law governing all turnpikes was passed in 1804 (27th sess., ch. 81). The state appointed county turnpike commissioners to hear complaints. If the commissioners found the road out of repair, they would notify the company, which was to open the gate until

⁴² See charters for Mohawk Turnpike & Bridge Co., 23d sess., ch. 105, 561 (1800); Columbia Turnpike Road Co., 22d sess., ch. 59, 379 (1799); Seneca Road Co., 23d sess., ch. 78, 528 (1800).

⁴³ Charter for Union Turnpike Rd. Co., 24th sess., ch. 118, 272 (1801). 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 returned when satisfactory repair had been made; see in 25th sess. (1802) charters for Troy and Schenectady Turnpike, ch. 95, 106; Hudson Branch Turnpike, ch. 96, 112; Dutchess Turnpike, ch. 111, 130.

repair was made. If the company failed to open the gate, the commissioners appealed to the district attorney to prosecute the company. Penalties for noncompliance are not specified.

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 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” (*Assembly Journal* 1806:225). After considerable wrangling, a more peremptory law emerged in 1806 (*ibid.*, pp. 285–87; turnpike upkeep law, 29th sess., ch. 160, 600–601 (1806)). It gave commissioners power to order the gates open and specified a \$5 fine for every instance of toll taking after the commissioners’ order was received. Thus the new law cut out the buffer of the district attorney and specified a heavy fine.

The Council of Revision⁴⁴ vetoed the 1806 law, saying:

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.

The veto was overridden.⁴⁵ 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 beseeched the legislature to amend the new law. The memorial says the law shows bad faith in that turnpikes are enormous 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.⁴⁶ “[I]f in one instance a Law can be made, which in any way changes the origi-

⁴⁴ New York’s 1777 constitution joined the chancellor, the supreme court judges, and the governor as the Council of Revision to review legislation.

⁴⁵ *Assembly Journal* 1806:356, 360. The Assembly’s override vote was 54 to 15.

⁴⁶ The Prattsville Turnpike 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.” Undated letter (probably late 1840s) from Alvin Bushnell, Durham Center Museum, East Durham, NY.

nal 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 new terms had been known in advance and invites the state to take over the company by a full reimbursement of the stock (Legislative doc. 1807, not numbered). The memorial had no apparent impact. The 1806 upkeep law was incorporated into the 1807 general turnpike law (p. 58), with the continued toll-taking fine upped to \$10.

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. All recognized the injustice in routinely demanding toll from someone living a half-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 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 10 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,” 5 miles apart, demanding half the specified rates.

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,⁴⁷ but the “common business” exemption is particularly fuzzy. No doubt strife was common.⁴⁸

The general turnpike law of 1807 created standard exemptions for anyone traveling for the following purposes:

⁴⁷ 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 worship,’ when they never intended to attend anything of the kind in any sense known to the religious world” (Shirley 1881:430).

⁴⁸ Litigation over exemption disputes include *Jones v. Estis* 1807; *Conklin v. Elting* 1807; *Hearsey v. Pruyn* 1810; *Hearsey v. Boyd* 1810; *Chestney v. Coon* 1811; *Stratton v. Hubbel* 1812; *Stratton v. Herrick* 1812; *Bates v. Sutherland* 1818; *Newburgh & Cochection Turnpike Co. v. Belknap* 1819; *Norval v. Cornell* 1819.

- 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.

Also, toll was adjusted to wear and tear on the road in that wagons with wheels 6 inches wide paid half toll, with wheels 9 inches wide paid quarter tolls, and with wheels 12 inches wide paid no toll (p. 56). After 1807 the general law became standard reference for turnpike charters.

It is likely that some of the protest was a means to obtaining specific concessions. In his study of the New England turnpikes, Parks (1966:81) says: "What New Englanders most resented about turnpikes undoubtedly was the impingement upon their pocket book in the form of tolls. Opposition often was abandoned once favorable concessions had been secured." Durrenberger (1931:81) and Davis (1917:vol. 2, 219) make similar remarks. 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]" (Sen. *Journal* 1814:62). Concessions granted to remonstrators against the Watervliet Turnpike provides another illustration. An Assembly committee explains that in 1827 a 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" (Assembly doc. no. 154 (1828)).⁴⁹

The legislature's handling of concessions had 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 traveler's plight than to the turnpike company's.⁵⁰

⁴⁹ Assembly doc. no. 154 (1828). The next year, however, the exemption was repealed, and afterwards the farmers of Watervliet fought in vain to restore it. See amendments to charter of Watervliet Turnpike, 51st sess., ch. 141 (1828), and 52d sess., ch. 258 (1829); Assembly doc. no. 92 (1831).

⁵⁰ It seems to us that the concession issue might have been better handled by delegating it to local authorities in touch with local conditions. In rare instances we see

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 high-mounted vehicles to take a small excursion through farmland or wilderness to avoid the tollgate. In a short time a trail would emerge. A common penalty for shunpiking was \$5 dollars plus cost of suit. Toll evasion also took the form of falsely claiming toll exemptions. Tollkeepers found it costly to hinder travelers and were forced to adopt a lenient attitude. Finally, towns often laid out common roads that served as shunpikes (*In re Flatbush Avenue* 1847).

In part, toll evasion was another expression of animosity toward turnpikes. The 1807 memorial of the First Great Western Turnpike says: “As 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.”⁵¹ 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.”⁵² The committee recommended the erection of a half-house. An 1810 amendment (33d sess., ch. 120) to the Dutchess charter increased the fine for shunpiking and specified that the burden of

resort to this approach. With 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 problem with the delegation approach could have been the potential for extreme views of justice. Turnpike companies might have preferred the blunt blows of the legislature to the possibility of mortal stabs by local decisionmakers.

A good way to deal with local users would have been what economists call a *two-part tariff*. Rather than simply exempt local users, the legislation could have employed the following pattern: “Any inhabitant living within X miles of the tollgate may elect to pay a semiannual fee of Y dollars that entitles him to a $Z\%$ discount off the normal toll at the gate in question.” For example, residents living within two miles of the gate would be permitted to pay a flat fee of \$5 every six months and enjoy a 75% discount at the gate.

Such a two-part tariff (instead of exemptions) would have extracted payments from the local users—usually the chief beneficiaries of the road—without seriously interfering with low-valued marginal trips (because the marginal cost to the traveler is heavily discounted). If $Z=0$, no trips at all would be discouraged. The legislation could have stated separate options for those residing at various distances from the gate.

⁵¹ Legislative doc. no. 2 (1807). Jones (1990:27) also notes the connection between toll evasion and hostility.

⁵² New York Committee on Roads, Bridges, and Incorporation of Turnpikes, undated manuscript, reporting on application of the Dutchess Turnpike (in papers of the Dutchess Turnpike, New York State Library).

proof lay with the traveler. Regarding a petition by the Farmers Turnpike, a report reads: "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" (Legislative doc. no. 140 (1825)). Although the committee introduced a bill for 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 favored 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" (Sen. doc. no. 65 (1843)). Two years later the company was still seeking redress, and a committee report in support of the company noted 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" (Assembly doc. no. 103 (1845)). The final document on the matter 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 previous 10 years. The treasurer said that the amount collected during that time had been between \$25 and \$50. The treasurer had "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 concluded:

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. (Assembly doc. no. 113 (1848))

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.⁵³ Fisher Ames, who was president of a Massachusetts turnpike company, estimated that his company's earnings would be almost 60% greater if not for shunpiking (Parks 1966:78). In New York the pervasiveness of shunpiking was re-

⁵³ Parks 1966:154 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 1931:78-79; Taylor 1934:200-204.

flected in the frequent requests to relocate or multiply tollgates or to increase the fine for shunpiking.⁵⁴ It was also reflected in the litigation involving charges against shunpikers and property owners who permit (and even encourage) shunpiking through their property.⁵⁵ In one case where a traveler was fined for shunpiking, Chief Justice Spencer said it did not matter “that other persons have been in the habit of doing so” (*Carrier v. Schoharie Turnpike Road* 1820:55).

The general turnpike law of 1807 seems to leave the initial location of gates to the state-appointed turnpike commissioners (p. 54), but *relocation* seems to have been the province of the legislature.⁵⁶ Although the legislature often permitted companies to combat shunpiking by relocating gates, often they did not. A legal case involving the Columbia Turnpike resolved that once a company had erected a gate pursuant official instruction, it could not relocate the gate “without some strong and manifest necessity to warrant it” (*Griffen v. House* 1820:397). To obtain permission to relocate a gate, a company would have to petition the legislature. The courts would be left to decide such details, for example, as whether a gate was to be erected “near the dwelling-house of John van Hoesen.”⁵⁷ 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.

Finally, it is possible that the refusal to adopt effective statutory remedies for shunpiking—reflected in the long distances between gates, the sluggishness and uncertainty of multiplying or relocating gates, and the inadequacy of penalties against shunpikers—was 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 \$5, while the typical toll-evasion penalty on toll bridges, which faced much less evasion, was \$10 (cf. 25th sess., ch. 42, 75 (1802); 26th sess., ch. 12, 261 (1803); 27th sess., ch. 92, 518 (1804)).

⁵⁴ Some examples of gate relocation include 32d sess., ch. 81 (1809); 34th sess., ch. 9 (1811); 41st sess., ch. 29 (1818); 42d sess., ch. 199 (1819); 53d sess., ch. 121 (1830); 55th sess., ch. 176 (1832). Examples of increasing the shunpiking fine include 33d sess., ch. 120 (1810); 35th sess., ch. 29 & ch. 233 (1812); 36th sess., ch. 190 (1813). Many acts authorized the multiplication of gates.

⁵⁵ Court decisions ordering that shunpikes on private lands be closed include *Croton Turnpike Rd. v. Ryder* 1815; *Newburgh & Cohecton Turnpike Rd. v. Miller* 1821. A case brought against a shunpiker is *Carrier v. Schoharie Turnpike Rd.* 1820.

⁵⁶ In Massachusetts relocation of gates was handled locally; 1805 Mass. General Turnpike Law ch. 79, 651.

⁵⁷ In 1836 an amendment to the Revised Statutes authorized county judges to decide the location and relocation of turnpike gates; sess. 59, ch. 284, 399 (1836).

III. The Unfolding of the Movement

Unprofitability

As in other states, turnpike companies in New York were generally unprofitable. Much contemporary opinion supports this view. An impartial source said that in conflicts over turnpike management, “in a vast majority of cases, the turnpike companies are the great sufferers.”⁵⁸ Turnpike foe Horatio Spafford (1981 [1824]:605) indicated general turnpike unprofitability. In a tract on roads Bloodgood (1838:97) said of the New York turnpikes: “Generally they have never remunerated their proprietors, nor paid much more than the expense of actual repairs.” In 1840 Chief Justice Nelson made the sweeping statement that of all types of franchise corporations—which were an unprofitable lot—none had been “less gainful to the corporators” than turnpikes (*People v. Kingston & Middletown Turnpike Road Co.* 1840:345). Although there is no way to bolster this impression with systematic data, the tidbits from contemporary documents are consistent with the general contemporary perceptions of unprofitability. Reports of various companies, for example, stated, “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,” and “the road [is] indebted . . . and no dividends of course made.”⁵⁹ 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.

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 even petitioned for increases we do not know, but it appears to have been little.⁶⁰ 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 the rates were not increased during the ensuing decade.⁶¹ In addi-

⁵⁸ Angelica-Hamilton Trust Proposal, p. 14 (cited in note 20).

⁵⁹ Assembly doc. no. 219 (1834); 40th sess., ch. 11, 9 (1816); Assembly doc. no. 256 (1831); Assembly doc. no. 155 (1832); Assembly doc. no. 113 (1831); Hamilton & Skeneatelas Turnpike Company (incorporated 1806) Records, stockholder list dated 26 July 1825, last page (manuscript, New York State Historical Association).

⁶⁰ Examples of acts increasing toll rates include 25th sess., ch. 84 (1802); 29th sess., ch. 41 (1806); 31st sess., ch. 70 (1808); 35th sess., ch. 29 (1812); 43d sess., ch. 133 (1820); 49th sess., ch. 29 (1826).

⁶¹ Albany and Schenectady Turnpike Company, Minutes Book, entry of 5 Jan.

tion, 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. Higher toll rates might have induced greater toll evasion. (In 1989 when the Garden State Parkway increased its tolls from 25 cents to 35 cents, the evasion rate increased by about 70% and remained there until policing was stepped up (Wyckoff 1990; New Jersey Highway Authority 1990)).

Financing in the Shadow of Unprofitability

Although dividends were meager, the community benefits arising from a turnpike were copious. Benjamin De Witt (1807:215) said that turnpikes “encourage settlements, open new channels for the transportation of produce and merchandise, increase the products of agriculture, and facilitate every species of internal commerce.” 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 15 and 50 miles long and cost about \$1,500 per mile. Such projects were too large for a coterie of affluent citizens to bankroll. We have stockholder counts for only six New York companies; the lowest is the Owego & Ithaca Turnpike, with 28 subscribers, and the highest is the Third Great Western, with 183.⁶² Since turnpike stock was recognized as unremunerative (particularly after about 1810), turnpike supporters faced 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 tempting option.

To secure financing, turnpike organizers had to marshal more than the usual investment incentives. Various tactics were used to animate public spirit for turnpikes, including town meetings, correspondence, person-to-person solicitation, and newspaper articles. Thus social pressure was used to surmount

1819 (manuscript, New York Historical Society). The rates were increased by 56th sess., ch. 168 (1833).

⁶² T. F. Leilich, “The Owego & Ithaca Turnpike Co., 1807–1840,” p. 6 (unpublished manuscript, 1915, available at Tioga Co. (NY) Historical Society); Third Great Western Turnpike (manuscript papers, New York State Historical Association).

the free-rider problem. An 1820 newspaper article encouraging support for the New Paltz Turnpike indicates the nature of these efforts (*Poughkeepsie Journal*, 12 July 1820, p. 3). 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.” Klein (1990) details similar examples of moral suasion (including items from Elkanah Watson).

The effectiveness of community boosterism is remarkable given the bleak financial prospects of turnpikes. From 1810 through 1845 between 75 and 95 New York turnpikes companies were chartered and successfully constructed. Each such company represents a successful case of the voluntary provision of a public good.

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% 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 failure rate, we may wish to contemplate the increased demand for charters that would have existed if turnpike stock had been more remunerative. On the other hand, a charter might have been a device for discovering the interest of the community in such a project. A failed company might simply be the artifact of testing the waters when genuine need for the project was small.⁶³

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 (1981 [1824]:17, 125) 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

⁶³ We are grateful to Charlie Calomiris for this point.

he remarks that turnpikes have been “an excellent school, in every road district, and people now work the highways to much better advantage than formerly.” 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.”⁶⁴

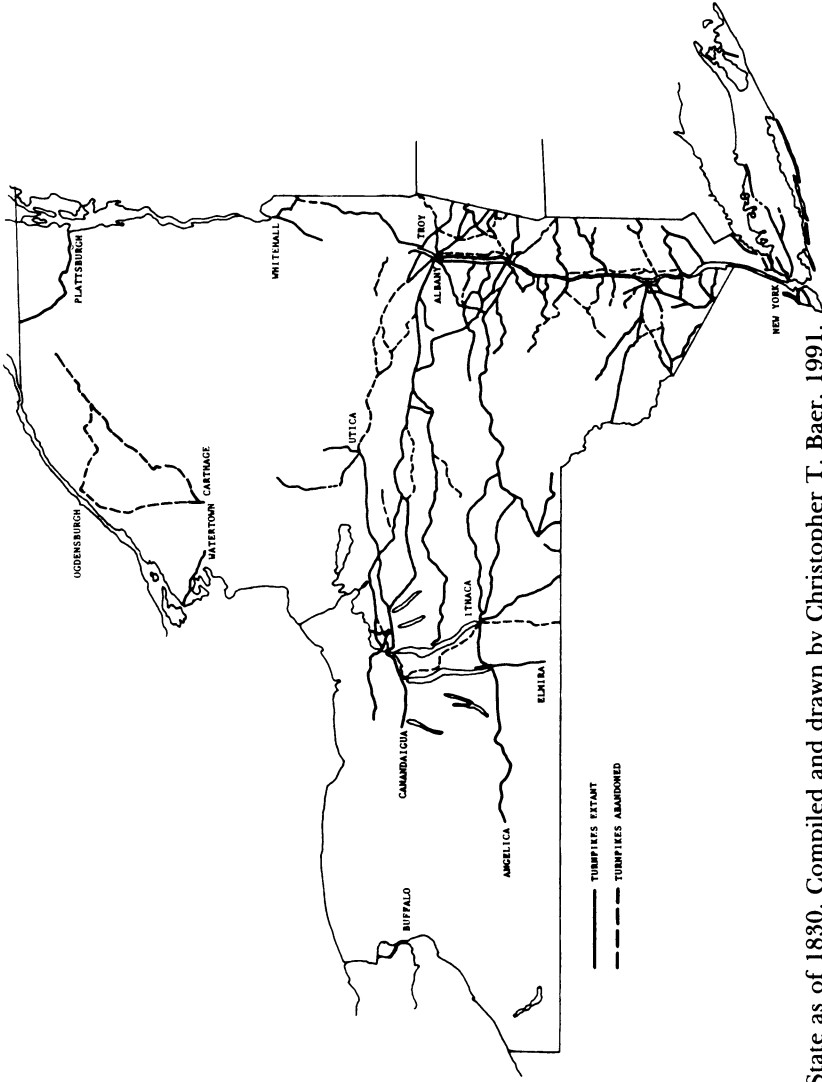
The extent of the system is reflected in Map 2, which shows the turnpikes that existed up to 1830. In 1831 an Assembly committee remarked fairly that turnpikes “have become so numerous as to intersect every portion of the State” (Assembly doc. no. 332 (1832)). One can see that the turnpikes of the time were mainly either routes to the Hudson Valley or components of the major arteries reaching into the western counties. Of the turnpikes charters through 1845, roughly 165 had been built, partially or wholly. Although turnpikes were a marked improvement over the alternative, people continued to complain about their condition. British writers, for example, were “unanimously unimpressed” with New York turnpikes (Haydon 1982:15). 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 dividend payments, as some insinuated. Flagging conditions often attracted the gaze of the turnpike inspector, who would order the gates open, pushing the company into further financial hardship.

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, benefiting more communities. Inasmuch as turnpikes merely redistributed rather than created wealth, grounds for remorse are undermined. It is hard to assess this factor, but we are inclined to think of it as a minor countervailing point. And if, from the statewide viewpoint, turnpike construction should have been dampened, making all turnpikes unprofitable hardly seems like the appropriate way 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. A fascinating petition from 1819 says that the public insists on “the proper formation and maintenance of the road,”

⁶⁴ Chief Justice Nelson in *People v. Kingston & Middletown Turnpike Rd. Co.* 1840:193; Justice Gridley in *Benedict v. Goit* 1848:467.



Map 2. Turnpikes of New York State as of 1830. Compiled and drawn by Christopher T. Baer, 1991.

although from the inadequacy of toll revenue, “such a result . . . is utterly impracticable.” They explain that a turnpike is necessarily monopolistic, so regulation is in order, 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.” The petitioners develop an argument that merits 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.⁶⁵

Throughout the 19th century toll-road companies relied on community boosterism to get off the ground, and once launched they carried on in a state of financial hardship.

In 1825 canals began killing off many of the turnpikes. Railroads joined in a bit later. In 1838 the legislature amended the turnpike law (61st sess., ch. 262, 254), stating that whenever a turnpike company is dissolved, the road shall become a public highway. 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. Chartering continued, but building and maintaining these roads was a struggle.

The frustration with cash-starved turnpikes helped 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 (Majewski et al., in press; Klein & Majewski 1991). Plank roads were abandoned or converted into turnpikes. Dozens of short turnpikes persisted until the turn of the century,

⁶⁵ Angelica-Hamilton Trust Proposal, p. 15 (cited in note 20).

when a new public sector effort, associated with the Good Roads Movement, closed down the remaining turnpikes.

IV. Conclusion

Sorting Out the Pieces

We have investigated three questions:

- Why were turnpikes unprofitable?
- Why did people invest in turnpikes?
- Were the turnpikes wisely regulated?

We do not have simple and definitive answers to these questions. Let us consider each in turn.

Turnpike unprofitability can *in principle* be explained in four distinct ways:

1. Turnpike officers did not seek profit. They viewed the turnpike as a philanthropic cause, even a symbol or monument to the community. They may have felt, as others surely did, that it was unseemly to profit from turnpike stock and therefore desisted from actions that would have enhanced profitability.
2. Travel demand was insufficient to repay turnpike investors.
3. Shunpiking was rampant and unavoidable; even under the most favorable laws for combatting shunpiking, toll evasion would be widespread.
4. State regulations hamstrung the turnpikes. 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.

Our feeling is that each of these explanations plays an important role. We cannot say that one in particular was the “real” cause of unprofitability. Explanation 1—community-oriented control—probably deserves the least weight. We know that in at least a few cases in the northeastern states people were willing to garner profits when they could. Explanation 2—insufficient demand—certainly applied to many projects, but we must ask why so much effort would be put into projects that could not pay for themselves even hypothetically. Explanation 3—shunpiking—certainly played a role, but it is hard to say how large. Explanation 4—regulatory hamstringing—is quite plausible, but whether it accounts for one, two, or three quarters of the explanation we are not prepared to say.

Two distinct reasons can be given for continued construction of turnpikes:

1. People believed that turnpike stock would pay. This hope may have been hometown foolishness or, for certain turnpikes, failure to foresee the devastating competition that would arise from canals and railroads.
2. People put money into turnpikes mainly to effect a local improvement. Improved transportation would facilitate trade and increase land values. The individual contributed out of social pressure, the participatory ethic, or public spiritedness.

Again, both explanations deserve significant weight. The first, however, is limited by the continued chartering of turnpikes after unprofitability was manifest and by the fact that unprofitability was typical even before the canal era.

The answer to the third question—Were turnpikes wisely regulated?—hinges on the answers given to the first two. Since we do not have pat answers to the first two, again we must be vague. Inasmuch as overly stringent regulation caused turnpike unprofitability, in turn leading to fewer socially desirable turnpikes, regulation was unwise. We are inclined to see this dynamic as playing a substantial but not overwhelming role. We are not saying that zero regulation would have been best, only that regulation went too far in serving the turnpike remonstrators, whose interests were visible, immediate, and politically sensitive. In contrast, the bad consequences of overregulation—roads that were decrepit or never built—were diffused, delayed, and attributed to other causes.

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 Handlins' "commonwealth corporation." The turnpikes were born of economic ambitions. They far surpassed the public system of road care in organizational effectiveness, and these benefits were realized at a time of eager aspirations. They are prototypical of Hurst's idea of the corporation as an advanced form of contract designed to marshal private capital and managerial effectiveness, combined with special state-given powers. 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 occasional hostility.

A citizen with antiturnpike 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 antiturnpike sentiments in official actions.

Many voices were heard on turnpike issues. Some can be lumped together and styled as “the community,” some as “the economy.” It is a coarse and problematic distinction—sometimes both voices would emanate from the same larynx. But history is messy. We have suggested here how the economy and the community interacted in the creation of law.

Parts of our story are at variance with the stories of other scholars. The Handlins portray the early public service corporation of Massachusetts as a rather placid, consensual organization wisely sculpted by the regulatory powers of the responsive state. “In internal improvements,” they say, “incorporation spread rapidly and without serious conflict.”⁶⁶ Yet we have found that New Yorkers often disagreed over turnpikes and regulation seems to have been overly severe, to the detriment of turnpike profitability.⁶⁷

Morton Horwitz (1977) recognizes conflict in early national legal innovations. He 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 (*ibid.*, p. 100; cf. p. xv) 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 ac-

⁶⁶ Handlin & Handlin 1947:120; cf. pp. 55, 76, 78, 97. In discussing the Massachusetts turnpikes and their unprofitability, they say (p. 120): “[C]alls for aid rose up to the legislature. Again the Commonwealth benignly smoothed the way by enacting special laws regulating passage, by permitting changes in route, in construction, and in the location of gates, by extending building time, by adjusting tolls, and by allowing the roads to abandon unprofitable sections.” We doubt that the Massachusetts lawmakers were as benignly responsive to turnpikes as the Handlins make out.

⁶⁷ Throughout the country turnpikes were usually unprofitable; see Klein 1990:791–93.

tive elements in the population.” He 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 turnpike opposition was not only voiced but was effective in restricting turnpikes and exacting liberal concessions. If anyone felt “the burden of economic development,” it would seem to have been those 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 (1975:99) 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.” 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.

Anticorporate ideology and cumbersome, inflexible regulation help explain, though only partially, the nature of many of the early American business corporations—namely, public service organizations operating under financial distress.

Appendix 1

Source Materials for the New York Turnpikes, 1797–1845

Records pertaining to the turnpikes of New York are rather incomplete. Unlike some states (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, those 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 in the New York State Library (Albany), the New-York Historical Society and the New York Public Library (both in New York City), the New

York State Historical Association (Cooperstown), and the Columbia County Historical Society (Kinderhook).

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New York

NOTE: For the period covered in this article New York statutes regarding highway appropriations and matters relating to toll bridges and turnpikes (including charters, land acquisition, maintenance, location/relocation, shunpiking, and rates) are cited in text and notes only by legislative session, chapter, and year. All may be found in the appropriate year in N.Y. Laws.

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