

Atkinson, Evelyn

Working Paper

The "People's Bridge": Popular Sovereignty and the Charles River Bridge Case

Working Paper, No. 280

Provided in Cooperation with:

George J. Stigler Center for the Study of the Economy and the State, The University of Chicago Booth School of Business

Suggested Citation: Atkinson, Evelyn (2018) : The "People's Bridge": Popular Sovereignty and the Charles River Bridge Case, Working Paper, No. 280, University of Chicago Booth School of Business, Stigler Center for the Study of the Economy and the State, Chicago, IL

This Version is available at:

<https://hdl.handle.net/10419/262682>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



Stigler Center

for the Study of the Economy and the State

**The “People’s Bridge”: Popular Sovereignty
and the *Charles River Bridge Case***

Evelyn Atkinson
University of Chicago, Department of History

June 2018

New Working Paper Series No. 25

Stigler Center for the Study of the Economy and the State
University of Chicago Booth School of Business
5807 S Woodlawn Ave
Chicago, IL 60637

The “People’s Bridge”: Popular Sovereignty and the *Charles River Bridge* Case¹

Evelyn Atkinson

ematkinson@uchicago.edu

University of Chicago Department of History

Paper Presented to the Stigler Workshop²

February 2018

Abstract

This working paper examines the “free bridge” controversy in Boston in the 1820s-30s, which arose from a popular movement to limit the monopoly power of local bridge corporations in the name of popular sovereignty and ensuring widespread access to the market. The state regulation that resulted from this movement prompted one of the most famous early legal cases on state-corporate relations, *Charles River Bridge v. Warren Bridge* (1836), which solidified corporations’ ability to claim federal protection under the Contract Clause of the Constitution and helped lay the foundation for the legal doctrine of constitutional corporate personhood. The received wisdom is that this case was simply a fight between two corporations in which the Supreme Court, for political and policy reasons, denied the property and contract rights of the older corporation in favor of allowing the state to promote economic and technological advancement by chartering the newer corporation. However, this paper argues that this case was primarily a debate over the nature of the corporation: whether the people were sovereign over the corporations that they, via the legislature, had created for the purpose of achieving internal improvements; or whether such corporations could shield themselves from public accountability by claiming constitutional rights. By allowing “internal improvement” corporations like bridges, turnpikes, and railroads to claim constitutional rights under the Contract Clause, the Court endorsed a vision of the corporation not as an agent of the public but as a private, rights-bearing entity whose interests were potentially opposed to the public welfare.

¹ Many thanks to Naama Maor, Alison LaCroix, Jonathan Levy, and the University of Chicago Booth School of Business Stigler Workshop for their advice and comments.

² This paper is a work in progress. Please do not cite without permission.

In March 1827, the citizens of Charlestown met in Town Hall. The meeting “was one of the most numerous and spirited ever held in that town.”³ In the town square, “groups, squads, multitudes, all anxious, all zealous,” gathered in opposition to Massachusetts Governor Levi Lincoln’s veto of a bill to create a free bridge from Charlestown to Boston.⁴ Anger at the Governor’s veto was felt across the Charles River in Boston as well. Men “who had hitherto been generally satisfied” with the conduct of the governor “now aroused themselves[sic]” in “disapprobation of this measure.”⁵ The free bridge controversy, one local newspaper opined, was “the most important subject that has been before the Legislature for years – perhaps we may say, since the constitution was formed.”⁶

In the summer of 1823, local merchants John Skinner, Isaac Warren and several other citizens of Charlestown and Boston[] had first introduced a petition to the Massachusetts legislature calling for a free bridge between the fast growing settlement and the metropolis. The Charles River Bridge, chartered in 1785, already existed between the two towns; yet public discontent with the high tolls and inconvenience of this bridge was strong, and the citizens now demanded free passage over the river. The Massachusetts Legislature debated the issue for four years, and in 1827, over the objections of the Charles River Bridge Corporation, at last passed a bill approving the construction of a new bridge. The “public convenience and necessity,” the Legislature announced, required the construction of the Charlestown Free Bridge, also to be called the Warren Bridge after local Revolutionary War hero Joseph Warren.⁷ Governor Levi Lincoln, however, promptly vetoed the bill. He explained that chartering a new, free bridge would “*necessarily* and *inevitably*” destroy “the interest and stock of the proprietors” of the Charles River Bridge Corporation, and undermine investor confidence in undertaking future internal improvement projects.⁸ Such legislative action, he claimed,

³ “Great Meeting at Charlestown,” American Traveller, Boston, March 27, 1827.

⁴ “Great Meeting at Charlestown,” American Traveller, Boston, March 27, 1827.

⁵ “The Traveller: Legislature,” American Traveller, Boston, March 13, 1827.

⁶ “Charlestown Free Bridge,” Salem Gazette (Salem, Massachusetts) • 03-09-1827 • Page [2].

⁷ Letter to Editor, American Traveller (Boston, Massachusetts) • 03-26-1830 • Page [2].

⁸ “House of Representatives,” Salem Gazette (Salem, Massachusetts) • 03-13-1827 • Page [2].

could only be justified when it was abundantly clear that “the public exigency demands it,” and here the legislature had not made the case that it did.⁹

The bridge veto caused outrage throughout the nearby counties. At the heart of the controversy was a deep-seated fear that the monopoly exercised by the Charles River Bridge Corporation was creating an aristocratic class of shareholders that threatened to undermine the commonwealth’s young democracy. By charging tolls, it was argued, the proprietors of the bridge had grown rich on the backs of the local farmers and merchants who were compelled to cross the bridge to access the markets of the metropolis. A free bridge, advocates argued, would not only destroy the monopoly through competition, but would restore the founder’s vision of popular democracy by creating a “‘people’s avenue’ to the city.”¹⁰

In 1828, the Massachusetts Legislature again passed a bill chartering the Warren Bridge Corporation. Under the bill’s provisions, the company was to take tolls for just long enough for the proprietors to recoup their costs plus 5% interest, not to exceed six years or \$60,000, after which the bridge would revert to the city, and, it was understood, become free.¹¹ In framing the bill, the Legislature emphasized the imperative public necessity of the bridge, and this time, the Governor signed the bill into law.¹²

Construction on the Warren Bridge began in June and was completed by Christmas Day 1828, to “[c]onsiderable parade” and “demonstrations of joy.”¹³ When it opened to the public, “[s]alutes were fired” and “a very numerous procession was formed, which after crossing and re-crossing the bridge, passed through the principal streets in the city.”¹⁴ After a five year battle, the “People’s Bridge” was complete.¹⁵ As the proprietors of the

⁹ "House of Representatives," Salem Gazette (Salem, Massachusetts) • 03-13-1827 • Page [2].

¹⁰ "Warren Bridge," American Traveller (Boston, Massachusetts) • 01-02-1829 • Page [3].

¹¹ "Special Report on Charlestown and Cambridge Bridges," *Documents of the City of Boston for the Year 1874*, Volume 1 (Boston: Rockwell & Churchill, City Printers, 1875), 46.

¹² "Charlestown Free Bridge," Salem Observer (Salem, Massachusetts) • 03-15-1828 • Page [2]; Untitled, Gloucester Telegraph (Gloucester, Massachusetts) • 03-15-1828 • Page [2]; "Charlestown Free Bridge," American Traveller (Boston, Massachusetts) • 03-21-1828 • Page [1].

¹³ "Warren Bridge," American Traveller (Boston, Massachusetts) • 12-26-1828 • Page [2].

¹⁴ "Warren Bridge," American Traveller (Boston, Massachusetts) • 12-26-1828 • Page [2].

¹⁵ "Warren Bridge," American Traveller (Boston, Massachusetts) • 12-26-1828 • Page [2].

old bridge had feared, the new bridge promptly took two-thirds of the traffic that had previously travelled over the Charles River Bridge.¹⁶

The Charles River Bridge Corporation was not prepared to cede power so quickly, however, and proceeded to launch a legal campaign against the Warren Bridge. The Charles River Bridge Corporation claimed that by authorizing a competing bridge, the Massachusetts legislature had violated its vested charter right to control traffic over the Charles River between Boston and Charlestown, which was protected against state impairment by the Contract Clause of the federal Constitution.

The resulting case, *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge* (1837), is commonly considered a turning point in American legal history. The traditional narrative is that in this case, a vanguard of Supreme Court justices led by Chief Justice Roger Taney forsook an older vision of robust protection of private property rights in favor of allowing state action that favored free enterprise and economic development, even when private rights were impaired in consequence.¹⁷ The case has also been framed as primarily a political contestation over the best way to promote the construction of internal improvements, such as bridges, turnpikes, and railroads.¹⁸ The issue of what level of government, state or federal, should fund and construct internal improvements – or whether internal improvements should best be left to private development, or some combination of public and private – was a key point of tension between the emerging Jacksonian and Federalist parties in the 1820s-30s.¹⁹ Taney, in this reading, threw the weight of the Supreme Court behind the Jacksonian platform of promoting state control of internal improvements.

¹⁶ Deposition of Isaac Blanchard of Charlestown, *Charles River Bridge v. Warren Bridge*. Records, 1828, Harvard Law Library Special Collections; Deposition of Moses Seavey of Medford, *Charles River Bridge v. Warren Bridge*. Records, 1828, Harvard Law Library Special Collections.

¹⁷ See Stanley I. Kutler, *Privilege and Creative Destruction: The Charles River Bridge Case* (Philadelphia: J.B. Lippincott Co., 1971), 5; James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1956), 27-28; Hovenkamp, *Enterprise and American Law*, 110; Stephen Campbell, “Internal Improvements,” in *A companion to the era of Andrew Jackson* (New York : Blackwell Pub., 2013), 144; Charles W. Smith, Jr., *Roger B. Taney: Jacksonian Jurist* (Chapel Hill: Univ of North Carolina Press, 1936), 110; Bernard Schwartz, “Taney Court,” in *A History of the Supreme Court* (1993), 77.

¹⁸ Hovenkamp, *Enterprise and American Law*, 111; Stephen Campbell, “Internal Improvements,” in *A companion to the era of Andrew Jackson* (New York : Blackwell Pub., 2013), 144.

¹⁹ John Lauritz Larson, *Internal Improvements*, []; Stephen Campbell, “Internal Improvements,” in *A companion to the era of Andrew Jackson* (New York : Blackwell Pub., 2013).

Although not incorrect, these readings are too simplistic. None of the literature on the case has examined the grassroots movement for a free bridge that culminated in the chartering of the Warren Bridge Corporation, or the way in which the movement's language of popular sovereignty percolated through the legal arguments and decisions as the case made its way to the Supreme Court. To do so reveals that *Charles River Bridge* was not merely a case of two corporations competing with each other for bridge traffic; nor was it a purely a political move by Justice Taney to redirect the Court to promote a Jacksonian political agenda; nor simply an endorsement of state control of internal improvements over federal or private development. Rather, it was a contestation about the fundamental nature of democracy itself. Free bridge supporters advocated a theory of popular sovereignty in which the public, via the legislature, exercised a robust right to direct their own economic wellbeing by protecting themselves from aggregations of wealth that threatened to undermine popular democracy.²⁰

Scholarship on the case has also ignored the importance of *Charles River Bridge* in the development of a new theory of the corporation emerging in this period. Part of this theory of popular sovereignty involved the nature of the internal improvement corporation and such corporation's relationship to the public and the state. Proponents of the free bridge movement saw internal improvement corporations, such as bridge, turnpike, and railroad companies, as entities created primarily to promote the public interest, the shareholders of which had no more rights than were explicitly set out in their charters. In this view, the state always had the right to charter competing corporations when in the public's interest. This was a more traditional conception of the corporation – the corporation was a creature of the state intended to achieve a public purpose and so ultimately subject to public control. The Warren Bridge Corporation was designed to be and functioned as such a corporation. The Charles River Bridge Corporation, however, argued for a new conception of the internal improvement corporation as a private rather than a public entity, whose interests were potentially in opposition to that of the public welfare, and which possessed constitutionally-protected rights that should be weighed

²⁰ Daniel Walker Howe has called the *Charles River Bridge* case “a vindication of both state sovereignty and economic development,” which is a more accurate reading. However, Howe's birds-eye overview of the case does not examine how grassroots claims of popular sovereignty over corporations influenced the development of the case.

equally against those of the public. This newer conception of the corporation had been introduced a decade or so earlier in the case of *Dartmouth College v. Woodward* by Justice Story. Although the Warren Bridge Corporation ultimately prevailed, the Supreme Court's decision reinforced *Dartmouth College*'s holding that the Contract Clause of the federal Constitution applied to corporations. In so doing, the Court endorsed this newer vision of the corporation – that the corporation was a private entity with constitutional rights that potentially conflicted with those of the public. The *Charles River Bridge* decision thus laid the foundation for future corporate challenges to exercises of popular sovereignty, and ultimately for the development of corporate constitutional personhood, [as the following chapters will reveal].

The Free Bridge Movement

The free bridge movement in Boston in the early 1820s was motivated by concerns about the fragility of the young American democracy and the threat posed to it by “aristocratic monopolies.” The Charles River Bridge Corporation, which controlled passage over the Charles River between Charlestown and its environs and the Boston metropolis, became an emblem of this larger concern. The struggle to diminish the power of the Charles River Bridge Corporation by chartering a competing free bridge was an attempt by local farmers, merchants, and travellers to reassert democratic control over their economic wellbeing.

The Charles River Bridge Corporation was not always anathema. When its proprietors first petitioned for a charter in 1785, they did so with the strong support of the community. The bridge was seen as vital to the economic welfare of the region, which was still recovering from the devastating effects of the Revolution. Appealing to the Legislature to support the bridge, a committee of representatives from the small settlement of Charlestown petitioned to “humbly sheweth” that as a result of the “calamities of war” recently suffered, namely the burning of Charlestown, they had been “reduced to a state of indigence.”²¹ Although they were grateful for the present ferry

²¹ Petition from Citizens of Charlestown for Charles River Bridge, 1785, *Charles River Bridge v. Warren Bridge*. Records, 1828, Harvard Law Library Special Collections.

across the river, they explained, it was inconvenient, especially in the winter. They emphasized the need for greater commercial connection with the capital; a bridge to Boston would allow them to “enjoy[]the advantages of a considerable trade with the metropolis” and to “hope for the pleasure of seeing their town arise from its ashes to its former state.”²² With the Charles River Bridge, the surrounding areas would “become places of considerable trade, by means whereof, people from the country may with facility dispose of their produce, and make their purchases without loss of time.”²³ The promotion of the public’s economic welfare – greater access to markets and consequent prosperity – was the driving force behind early support for the Charles River Bridge.

The Charles River Bridge opened in 1786 on the anniversary of the Battle of Bunker Hill, in which Charlestown had been razed. Citizens “who were warmed by sentiment, or inspired by patriotism, almost wept at the recollection” of the battle and its contrast with “the joyous scenes which were now everywhere presented.”²⁴ A parade of more than six thousand persons marched from the State House over the bridge, while thirteen cannons were fired.²⁵ “The streets, the windows and eminences in the neighborhood of the bridge swarmed with spectators to the amount of at least twenty thousand,” and the bridge proprietors provided an “elegant dinner for eight hundred persons” at their own expense.²⁶ Those less inclined to sentiment were “abundantly pleased” at the prospect of the “golden harvest” that increased business with the metropolis would afford.²⁷ The Charles River Bridge, they claimed, “exhibit[ed] the greatest effect of private enterprise within the United States” and portended the blossoming future of the young Republic.²⁸

Yet by the 1820s the Charles River Bridge no longer held a place of high esteem in the minds of local citizens. In their petitions for a free bridge, Warren Bridge

²² Petition from Citizens of Charlestown for Charles River Bridge, 1785, Charles River Bridge v. Warren Bridge. Records, 1828, Harvard Law Library Special Collections.

²³ Petition from Citizens of Charlestown for Charles River Bridge, 1785, Charles River Bridge v. Warren Bridge. Records, 1828, Harvard Law Library Special Collections.

²⁴ “The Ferry, The Charles-River Bridge and The Charlestown Bridge, Historical Statement Prepared for the Boston Transit Commission By Its Chairman” (Boston: Rockwell and Churchill Press, 1899), 6 (quoting *The Independent Chronicle and Universal Advertiser*).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 6.

²⁸ *Id.*

advocates repeatedly emphasized that the “public convenience and necessity” required the construction of a new bridge. They explained that travellers over the Charles River Bridge were forced to pass through Charlestown’s main square, which was “narrow, and often crowded, to the danger and inconvenience of the traveller.”²⁹ The drawbridge was frequently raised to accommodate passing ships, compelling bridge users to wait for five to ten minutes to cross.³⁰ The street on the Boston side into which the bridge emptied was similarly narrow and crowded.³¹ The situation was exacerbated by the undeniable fact that “travel from the north and east to Boston has greatly increased” in recent years and was likely to “continue to increase far beyond the travel from any other section of the country.”³² Furthermore, since the Charles River Bridge had been constructed in 1785, the market center of Boston had shifted west. “Much the greater part of the population” of Boston as well as “much the greater part of the business of the place” was now conducted away from the current bridge’s outlet.³³ A new, more centrally-located bridge was necessary, supporters argued, so that the farmers, mechanics, and merchants of surrounding towns could more conveniently access the markets of the city center.³⁴

Yet the public convenience and necessity was just one small piece of the debate. The “marrow of the whole controversy,” some argued, was not public necessity, but the collection of tolls.³⁵ Bridge passengers – local farmers, merchants, and other travellers – were compelled to pay an already-wealthy company to access the metropolitan market to buy and sell goods. Rather than an enterprise vital to promoting the public welfare, the company was now seen as an aristocratic monopoly that posed a challenge to the democracy of the commonwealth.

²⁹ "Free Bridge to Charlestown," Boston Commercial Gazette (Boston, Massachusetts) • 02-26-1827 • Page [2].

³⁰ Deposition of Thomas Rand of Charlestown, Charles River Bridge v. Warren Bridge. Records, 1828, Harvard Law Library Special Collections.

³¹ "Free Bridge to Charlestown," Boston Commercial Gazette (Boston, Massachusetts) • 02-26-1827 • Page [2].

³² To the Hon. Senate and House of Representatives, Columbian Centinel American Federalist (Boston, Massachusetts) • 11-05-1825 • Page [3].

³³ Deposition of Robert Calder of Charlestown, Charles River Bridge v. Warren Bridge. Records, 1828, Harvard Law Library Special Collections.

³⁴ A Citizen, An Appeal to the Good Sense of the Legislature and the Community, in Favor of a New Bridge to South Boston (Boston: True & Green, 1825).

³⁵ "Charlestown Free Bridge," Salem Observer (Salem, Massachusetts) • 02-24-1827 • Page [2].

Over the four decades since its chartering, the Charles River Bridge Corporation had indeed grown increasingly powerful. In 1792, popular demands for additional avenues to the city had resulted in the chartering of the West Boston Bridge from Cambridge to Boston.³⁶ The Charles River Bridge Company had opposed the construction of this second bridge, appealing to the Legislature that its investors had not yet recouped their investment and that their charter was an exclusive grant of a right to operate a bridge over the Charles River.³⁷ A Committee of the Legislature found “no ground to maintain” such a claim.³⁸ However, expressing sympathy for the company’s claim that the building of the bridge was “a work of magnitude and hazard” and that the erection of the West Boston Bridge “may diminish the emoluments of the proprietors of Charles River bridge,” which could discourage future investments, the Legislature agreed to extend the company’s charter by thirty years, for a total of seventy years’ grant to take toll on passage over their bridge.³⁹ In 1805, the board of directors of the Charles River Bridge Corporation voted “to defend the interests of the Corporation... against the attempts of all other Corporations or persons, to erect another Bridge over Charles River to the Town of Boston,” and “powerfully and pertinaciously” opposed an additional bridge from Lechmere’s Point to Boston in 1806-07.⁴⁰ Although they were unsuccessful in preventing the construction of this second bridge, stockholders in the Charles River Bridge Corporation continued to reap considerable returns on their investments. Between 1812 and 1823, Charles River Bridge stock was worth between \$1,800 and \$2,200 per share.⁴¹ By 1826, Boston Mayor Josiah Quincy noted, “an original proprietor of a single share had received back not only the principal of his investment with interest, but also a surplus of \$7,000.”⁴² In 1833, a Legislative report found that the Charles River Bridge

³⁶ Charles River Bridge v. Warren Bridge Records, 1828, Deposition of Charles Bartlett, Harvard Law Library Special Collections; Report by Joint Committee on petition by Andrew Craigie, Christopher Gore and others to build Canal Bridge Feb 1807, Charles River Bridge v. Warren Bridge Records, 1828, Harvard Law Library Special Collections;

³⁷ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 385 (1829).

³⁸ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 386, 387 (1829).

³⁹ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 387 (1829).

⁴⁰ Charles River Bridge v. Warren Bridge Records, 1828, Deposition of Charles Bartlett, Harvard Law Library Special Collections; Warren Bridge Papers [], 18

⁴¹ House Committee Report (1827), 4 (in Act to Establish Warren Bridge Corp, <https://books.google.com/books?id=iggXAAAAYAAJ>)

⁴² “The Ferry, The Charles-River Bridge and The Charlestown Bridge, Historical Statement Prepared for the Boston Transit Commission By Its Chairman” (Boston: Rockwell and Churchill Press, 1899), 7.

had cost \$50,000 to build, yet the corporation since its construction had received more than a million dollars in tolls.⁴³ The proprietors of the Charles River Bridge protested the “nonsensical noise” involving these calculations, complaining that the value of money had increased significantly since 1786 and that by 1827 “there was but one share held by an original subscriber.”⁴⁴ Public perception, however, was that the corporation’s monopoly over passage between Boston and Charlestown and its environs had radically enriched the company’s shareholders.

As a result, by the mid-1820s public sentiment towards the Charles River Bridge had shifted considerably. The monopoly power of the Charles River Bridge Corporation over travel between Charlestown and the metropolis threatened democracy by creating a new aristocratic class, free bridge supporters argued. The bridge conflict pitted “an odious monopoly acquired by misrepresentation and deception” against “the sovereignty of the state and the equal rights of the people.”⁴⁵ This anti-republican combination of the monied interest and chartered monopolists,” it was claimed, had influenced Lincoln’s decision to veto the Warren Bridge Bill against the wishes of the people as expressed through the Legislature.⁴⁶ In a satirical obituary, the *Boston Commercial Gazette* noted that “*Federalism and Democracy*, two personages most noted in the political history of Massachusetts since the commencement of the nineteenth century,” had “*drowned in Charles River on the 4th of March*,” the date of the veto.⁴⁷ The company’s monopoly over access to the city center was an “odious mischief” that “pervert[ed] the true spirit of our republican institutions” and “introduce[d] all the deplorable effects of the oppressive monopolies founded under arbitrary governments.”⁴⁸ It reduced the citizens to “vassalage.”⁴⁹ It was up to the people to “value the inheritance of our fathers, our self

⁴³ Nathaniel Austin, Chairman, Report of the Committee on Roads and Bridges, Senate Doc. 39 (Boston: Dutton and Wentworth, State Printers, 1833), 15.

⁴⁴ Charles Warren, “The Charles River Bridge Case,” *The Green Bag*, Volume 20 No. 6: 284-296 (June 1908) (quoting letter from Peter C. Brooks to Josiah Quincy), 286-87.

⁴⁵ “The Warren Bridge,” *American Traveller* (Boston, Massachusetts) • 08-08-1828 • Page [2] (quoting *The Statesman*).

⁴⁶ “Free Bridge Nomination,” *American Traveller*, Boston, March 27, 1827; “Great Meeting at Charlestown,” *American Traveller*, Boston, March 27, 1827.

⁴⁷ “Obituary Notice Extra,” *Boston Commercial Gazette* (Boston, Massachusetts) • 04-02-1827 • Page [2] (internal quotes omitted).

⁴⁸ “The Traveller: Free Bridge Meeting,” *American Traveller*, Boston, May 8, 1827; “The Traveller: The Governor condemned in the house of his friends,” *American Traveller*, Boston, Tuesday March 27, 1827.

⁴⁹ T., “Free Bridge,” *American Traveller*, Boston, April 17, 1827.

respect, and our self preservation” by “throw[ing] off the yoke of their common oppressors.”⁵⁰ The “only sovereign acknowledged among us,” proclaimed a local paper, is “the will of the people, expressed by the votes of the majority” – and the majority had voted for the Warren Bridge.⁵¹

The threat that the Charles River Bridge’s monopoly would create an aristocratic class was posed most clearly in the taking of the tolls. Proponents of a free bridge argued that in fact the extension of the charter in 1792 “was obtained by the fraudulent representation which were made of the amount of their dividends,” and that the corporation had long since received “an ample and even exorbitant compensation” for its investment.⁵² By continuing to take toll on passengers, the wealthy proprietors were now forcing poor citizens to “pay[] tribute to a corporation... for the express object of filling its already deeply loaded coffers.”⁵³ A meeting of free bridge supporters in Boston in May 1827 resolved that “the pretensions, that the people are bound to submit to exactions, against their consent, and that they have no right to relieve themselves, by the erection of a FREE BRIDGE,” were “absurd, calculated to impose burdens upon the many, for the ‘EXCLUSIVE ADVANTAGE’ of the few.”⁵⁴ It was “a public injustice to subject the citizens of the Commonwealth to the further burthen of the payment of tolls.”⁵⁵

Rhetoric around the free bridge debates emphasized the fragility of the democratic project on which the Founders had embarked and the need for ordinary citizens to vigilantly protect this nascent form of government. References to the Founders, the Revolution, and the Constitution were rife. “[C]hartered monopolies,” which privileged a class of elite shareholders over the needs of the “independent yeomanry of Massachusetts,” were an undemocratic “inherit[ance] from the mother country.”⁵⁶ Free

⁵⁰ “Great Meeting at Charlestown,” *American Traveller*, Boston, March 27, 1827; “Free Bridge Nomination,” *American Traveller*, Boston, March 27, 1827.

⁵¹ “Charlestown Bridge,” *National Aegis* (Worcester, Massachusetts) • 04-25-1827 • Page 2.

⁵² “Charlestown Free Bridge,” *Salem Observer* (Salem, Massachusetts) • 02-24-1827 • Page [2]; “Free Bridge to Charlestown,” *Boston Commercial Gazette* (Boston, Massachusetts) • 02-26-1827 • Page [2].

⁵³ T., “Free Bridge,” *American Traveller*, Boston, April 17, 1827.

⁵⁴ “The Traveller: Free Bridge Meeting,” *American Traveller*, Boston, May 8, 1827.

⁵⁵ “Free Bridge to Charlestown,” *Boston Commercial Gazette* (Boston, Massachusetts) • 02-26-1827 • Page [2].

⁵⁶ Investigator, Letter to Editor, *American Traveller*, Boston, April 20, 1827; “The Traveller: Representative Election,” *American Traveller*, Boston, April 27, 1827; “The Traveller: The Basis of the

bridge proponents commonly compared bridge tolls to British taxation, which furthered the establishment of monopoly and an aristocratic class. One citizen, signing himself “’76”, asked, “What was the principle of the opposition, even to blood, of our renowned forefathers, to the tea tax? It was this, *they would not be taxed, without their own consent.*” The opposition of their descendants, the people of this Commonwealth to the monopoly of their old Bridge, rests upon the same principle.”⁵⁷ *The American Traveller*, exhorting citizens of Boston to vote Governor Lincoln out of office, asked, “shall the people live freemen, or become slaves and *pay tribute* to an aristocratic band of monopolists... *the would be nobility...*?”⁵⁸ As William Austin, a Warren Bridge petitioner and lawyer for the corporation, explained in an open letter to Governor Lincoln, in the case of British taxation “there was no *necessity* to drink tea; yet, as it was a question of principle, the people resisted. The egg itself, as a simple egg, was not so terrible; but the people feared the cockatrice within, and they crushed the egg.”⁵⁹ The case of the free bridge was “still more alarming; for there is a *necessity* for passing Charles River.”⁶⁰

By exacting a toll for access to the market, supporters of the Warren Bridge argued, the proprietors of Charles River Bridge threatened a central right of a democratic citizen – the right to trade. “[T]rade and commerce... for the benefit of all,” was “essential for the attainment of the great objects of civil society.”⁶¹ “[F]ree communication to the city” and the protection of “FREE TRADE AND TRAVELLER’S RIGHTS” were the patrimony of the inheritors of the Revolution.⁶² As an op-ed in the *Salem Gazette* emphasized, the purpose of government was to “legislate for the good of the public,” which included promoting “free trade which is interested in no small degree in cheapness of transportation.”⁶³ Just as the early advocates of Charles River Bridge in 1785 had touted the economic benefits sure to arise from improved communication

Senate,” *American Traveller*, Boston, March 27, 1827; A Citizen, *An Appeal to the Good Sense of the Legislature and the Community, in Favor of a New Bridge to South Boston* (Boston: True & Green, 1825).

⁵⁷ ’76, “The tea tax and the Charles River Bridge tax!,” *American Traveller*, Boston, April 3, 1827.

⁵⁸ *The Traveller: Representative Election*,” *American Traveller*, Boston, April 27, 1827.

⁵⁹ William Austin, “Free Bridge,” *American Traveller*, Boston, June 1, 1827.

⁶⁰ William Austin, “Free Bridge,” *American Traveller*, Boston, June 1, 1827.

⁶¹ Warren Bridge,” *American Traveller* (Boston, Massachusetts) • 03-12-1833 • Page [1].

⁶² One of the People, “Free Bridge,” *American Traveller*, Boston, April 27, 1827; “The Traveller: Hale and Emmons,” *American Traveller*, Boston, March 27, 1827.

⁶³ “Warren Free Bridge, No. II,” *Salem Gazette* (Salem, Massachusetts) • 02-26-1828 • Page [2].

between Boston and the hinterland, Warren Bridge supporters emphasized the economic well-being that would follow the creation of a bridge with more convenient access to the metropolitan market. That the free bridge movement was motivated by the goal of promoting market access was made clear in its opening day celebration. In the Warren Bridge's inaugural Christmas Day parade, "[a] heavy wagon, over which a flag was hoisted, loaded with granite, and drawn by nine white horses, led the way," followed by between two and four hundred "trucks, carts, and other vehicles, in procession," laden with cotton, coal, iron, molasses, rum, and other goods.⁶⁴ The fact that the parade featured the crossing of "merchandize" illustrates the popular perception that the bridge's purpose was primarily to promote commerce between Charlestown and Boston.⁶⁵ After its completion, newspapers regularly reported on the immense quantities of goods passing over the Warren Bridge.⁶⁶ The threat posed by the aristocratic Charles River Bridge shareholders, therefore, was primarily a threat to the right of democratic citizens to engage in trade and commerce.

In addition to constricting the economic well-being of local citizens, the power of the Charles River Bridge proprietors also threatened the commonwealth's democracy by attempting to control the government. The failure of the free bridge bill in the 1826 legislative session was attributed to the proprietor's "undue influence over the Legislature."⁶⁷ Free bridge proponents accused the stockholders of the Charles River Bridge Company of pulling "every string" to gain influence over individual representatives, including offering bribes.⁶⁸ "How many shares of stock," one letter to the editor asked, "will bribe an impartial magistrate to become the advocate of a chartered monopoly?"⁶⁹ The American Traveller urged the public to elect "firm and independent men" to office "who will not be seduced by the smiles and attentions of a

⁶⁴ "Warren Bridge," American Traveller (Boston, Massachusetts) • 12-26-1828 • Page [2]; "Free Bridge," Massachusetts Spy (Worcester, Massachusetts) • 12-31-1828 • Page 2; Untitled, Newburyport Herald (Newburyport, Massachusetts) • 12-30-1828 • Page 2; "Warren Bridge," National Aegis (Worcester, Massachusetts) • 12-31-1828 • Page 2.

⁶⁵ "Free Bridge," Massachusetts Spy (Worcester, Massachusetts) • 12-31-1828 • Page 2.

⁶⁶ See, e.g., Untitled, Boston Courier (Boston, Massachusetts) • 09-08-1831 • Page [4] ("a Mr. Sheldon lately drew across Warren bridge with [sic] one yoke of oxen, on two wagons chained together, forty-three bales of cotton, weighing 350 lbs. each, making a total of 15,050 lbs.").

⁶⁷ Untitled, Haverhill Gazette & Essex Patriot (Haverhill, Massachusetts) • 02-25-1826 • Page [2].

⁶⁸ "The Traveller: Legislature," American Traveller, Boston, March 13, 1827.

⁶⁹ Investigator, Letter to Editor, American Traveller, Boston, April 20, 1827.

luxurious aristocracy” or “betray their constituents for *a slice of plumb cake or a glass of champaign* [sic].”⁷⁰ The solution to this perversion of the democratic process, Warren Bridge supporters claimed, was more democratic participation. Only with mass popular turnout in elections, the *American Traveller* emphasized, would the legislature truly “act in compliance with the wishes of their constituents.”⁷¹

Advocates also argued that the press as well as the legislature had been corrupted by the power of the Charles River Bridge proprietors. The pro-free bridge *American Traveller* emphasized that “the spirits of our institutions teach us, and the conceived opinions of mankind instruct us, that the sovereignty in fact resides in the people,” as expressed through “the public press, which should be unshackled.”⁷² Yet, the newspaper complained, “by the machinery and subtle management of party” – namely, the Federalist Party, composed of more established merchants and politicians who tended to side with the Charles River Bridge – “most of the newspaper presses in this city are muzzled with respect to the Bridge Question.”⁷³ By controlling the press, a citizen signing himself “One of the People” argued, “the Charles River Bridge proprietors attempt covertly to control the opinions of the whole community.”⁷⁴ The Charles River Bridge Company, in other words, threatened to crack the very foundations of democracy by creating an elite class of wealthy shareholders who usurped the legislature and the press from popular control.

In the theory of popular sovereignty articulated by the free bridge movement, the people via the legislature had the right to act to promote the public welfare by preventing the formation of aristocratic monopolies that threatened the foundations of democratic government. This theory of popular sovereignty was not local to the conflict but was rather part of a larger reconceptualization of the meaning of democracy sweeping the nation in the 1830s, exemplified by the rise of the Jacksonian democratic party. Jackson’s supporters endorsed a vision of popular democracy that was based on an

⁷⁰ “The Traveller: Representative Election,” *American Traveller*, Boston, April 27, 1827.

⁷¹ “The Traveller - Legislature,” *Boston Traveler*, published as *American Traveller* (Boston, Massachusetts) • 03-13-1827 • Page [2].

⁷² “The Traveller: The Governor condemned in the house of his friends,” *American Traveller*, Boston, Tuesday March 27, 1827.

⁷³ “The Traveller: The Governor condemned in the house of his friends,” *American Traveller*, Boston, Tuesday March 27, 1827; Charles Warren, “The Charles River Bridge Case,” *The Green Bag*, Volume 20 No. 6: 284-296 (June 1908), 288.

⁷⁴ One of the People, “Free Bridge,” *American Traveller*, Boston, April 27, 1827.

idealized vision of “the Republican simplicity of Jefferson’s time,” in which each white man had the right to participate in government regardless of wealth or social standing.⁷⁵ They favored a federal system of powerful states and a weak central government, including the idea that states could “nullify” federal laws they disagreed with.⁷⁶ Their main target at a national level was the Bank of the United States, which they accused of being an aristocratic monopoly that threatened to erode popular sovereignty.⁷⁷ As a convention of Massachusetts Republican legislators asserted when endorsing Jackson, “It is evidently in contemplation by those who favor a ‘*National*’ or consolidated government, to annihilate, with State sovereignties, all the State Banks.”⁷⁸ Without state banks, the Bank of the United States alone could exercise banking privileges, which “would then swell the overgrown dividends of a few thousand or a few hundred stockholders who would have possessed themselves, perhaps, by their own votes in Congress, of this enormous bank monopoly.”⁷⁹ The Bank of the United States, therefore, evoked a similar danger as that of the Charles River Bridge Corporation – both threatened democratic government by creating an aristocratic class protected by the federal government and unaccountable to the majority of the people.⁸⁰

As a result of the similarity of the concerns expressed locally in the free bridge movement and nationally in the Jacksonian democratic platform, the Charles River Bridge controversy became increasingly politicized. Whereas in the early years of the conflict proponents of the free bridge had argued that the movement was divorced from any political party, by the mid-to-late 1820s supporters of Andrew Jackson began to adopt the free bridge cause as part of their platform.

The association with Jacksonianism posed a problem for free bridge advocates, as Massachusetts was far from a Jacksonian stronghold. Abolitionism and anti-Masonry

⁷⁵ “Address,” *The Pittsfield Sun*. (Pittsfield, Massachusetts) • 02-03-1831 • Page [2]. See Daniel Walker Howe, *What Hath God Wrought* (2007), 380 for discussion of Jacksonian idea of popular sovereignty

⁷⁶ ALISON

⁷⁷ Brian P. Luskey, “The Ambiguities of Class in Antebellum America” in *A companion to the era of Andrew Jackson* (New York : Blackwell Pub., 2013), 194-95; Daniel Walker Howe, *What Hath God Wrought* (2007), 376.

⁷⁸ “Address,” *The Pittsfield Sun*. (Pittsfield, Massachusetts) • 02-03-1831 • Page [1, 2].

⁷⁹ “Address,” *The Pittsfield Sun*. (Pittsfield, Massachusetts) • 02-03-1831 • Page [2].

⁸⁰ Untitled, *The Gloucester Democrat* (Gloucester, Massachusetts) • 10-30-1835 • Page [2]; See Brian P. Luskey, “The Ambiguities of Class in Antebellum America” in *A companion to the era of Andrew Jackson* (New York : Blackwell Pub., 2013), 194-95.

had taken hold in the commonwealth, and Jackson was both a slaveholder and a Mason.⁸¹ Supporters of Jackson were derided as uneducated masses who wanted to seize private property. By associating the Warren Bridge advocates with Jacksonites, supporters of the Charles River Bridge hoped to tar and feather the free bridge movement. One pro-Charles River Bridge paper alleged that as the Warren Bridge's inaugural parade passed by, "[t]hrong[s] of men and boys" shouted "hurra [sic] for Jackson!"⁸² Even illustrious personages like William Lloyd Garrison weighed in on the conflict; Garrison criticized the "*Free Bridge* ticket" formed in the election of 1827 as an instrument of "the little, insignificant Jackson cabal" that managed to "turn every variance to their account," and who were "almost to a man, the blustering champions of a free bridge."⁸³ He claimed that the Jacksonites "wickedly" appealed to the "sordid feelings, and selfishness, and prejudices" of the people by railing against "Aristocrats," "Trading Politicians," and "Base Monopolists."⁸⁴ As the local paper of the small town of Worcester opined, "It is unfortunate for the free bridge interest that they have the Jackson party for allies, as, whatever might otherwise be their chance of success, that must insure their defeat."⁸⁵

Some free bridge advocates insisted that the movement was apolitical and that the need to protect democracy transcended party lines. As the *American Traveller* exhorted its readers during the 1827 gubernatorial election, "At such a time as this, all local and party feeling should be thrown aside; and the great question of *Bridge or no Bridge*, freedom from restriction, determine your votes."⁸⁶ Other proponents of the free bridge explicitly attempted to distinguish themselves from the Jacksonian party and its connotations of popular unrest. In warring letters to the editor over the free bridge controversy after the Governor's veto in 1827, a pro-Charles River Bridge supporter was accused of unduly leveling the charge of Jacksonism against a Warren Bridge advocate: he "outright calleth him a Jacksonite, where with he meaneth to hit him a grievous smite,

⁸¹ Frank Towers, "The Rise of the Whig Party," in *A companion to the era of Andrew Jackson* (New York : Blackwell Pub., 2013), 336.

⁸² Untitled, *Newburyport Herald* (Newburyport, Massachusetts) • 12-30-1828 • Page 2.

⁸³ *The Letters of William Lloyd Garrison: I will be heard, 1822-1835*, 41.

⁸⁴ *The Letters of William Lloyd Garrison: I will be heard, 1822-1835*, 42.

⁸⁵ "State Politics," *Massachusetts Spy* (Worcester, Massachusetts) • 02-13-1828 • Page 3.

⁸⁶ "The Traveller: Free Bridge and Equal Rights," *American Traveller*, Boston, March 30, 1827 (emphasis in original).

under the fifth rib.”⁸⁷ Yet, the pro-Warren Bridge writer claimed, he “always has been an advocate for John Q. Adams, and not of and belonging to the ‘unprincipled opposition.’”⁸⁸ The *Lowell Mercury* pleaded in 1832, on the eve of Jackson’s re-election, “Let not the Middlesex people be alarmed by the cry of Jacksonism. *You have got to have Jackson at all events*, and you had better also have a FREE BRIDGE.”⁸⁹ State legislator Robert Rantoul derided as “stale trash” the charges of “agrarianism, leveling, Jacobinism, war of the poor against the rich” that were leveled against those who opposed large corporations.⁹⁰ The *Boston Courier* even argued that the policy of Jacksonian Democrats in Congress operated to the detriment of the free bridge movement, decrying the opposition of “a small Jackson majority in the House” to a Senate bill that would have apportioned the proceeds of public land sales among states for education and internal improvements.⁹¹ This bill, the paper argued, would have enabled the state legislature “to buy up all the ‘vested rights’ in toll bridges and turnpikes,” including the franchise of the Charles River Bridge, and make them all free.⁹² Instead, the “Jackson policy... has deprived the people of this State of the means of buying up these corporations, and extinguishing forever their right to demand toll.”⁹³

The accusation of Jacksonianism was levied against the Warren Bridge’s lawyers as well. In his Supreme Court argument for the Charles River Bridge Corporation, Daniel Webster claimed that the Warren Bridge controversy had begun “in a clamor about monopoly – that all bridges were held by the people - & that what the State wanted it might take.”⁹⁴ This, he disdained, was “bad eno[ugh] in taverns & bar rooms of Garettes [sic] in Essex Co - & was very little better when dressed with more decorum of appearance, & advanced in this Court.”⁹⁵ The Charles River Bridge company, he

⁸⁷ Free Bridge and Travellers’ Rights, Letter to the Editor, *American Traveller*, Boston, April 3, 1827.

⁸⁸ Free Bridge and Travellers’ Rights, Letter to the Editor, *American Traveller*, Boston, April 3, 1827.

⁸⁹ “The Warren Bridge,” *Lowell Mercury* (Lowell, Massachusetts) • 11-09-1832 • Page [2] (reprinted from the *Boston Statesman*).

⁹⁰ Robert Rantoul Memoirs, *Speeches and Writings of Robert Rantoul, Jr.*: Ed. by Luther Hamilton (Boston: John P. Jewett & Co., 1854), 318.

⁹¹ “Materials for Thinking,” *Boston Courier* (Boston, Massachusetts) • 11-26-1832 • Page [3].

⁹² “Materials for Thinking,” *Boston Courier* (Boston, Massachusetts) • 11-26-1832 • Page [3].

⁹³ “Materials for Thinking,” *Boston Courier* (Boston, Massachusetts) • 11-26-1832 • Page [3].

⁹⁴ HLS Archives, Greenleaf Papers, Charles River Bridge vs. Warren Bridge, Arguments of Counsel, Greenleaf’s Memoranda. (emphasis Greenleaf’s)

⁹⁵ HLS Archives, Greenleaf Papers, Charles River Bridge vs. Warren Bridge, Arguments of Counsel, Greenleaf’s Memoranda. (emphasis Greenleaf’s)

explained, contrary to the claims of the opposition, did not mean to arrest the “progress of improve[men]t,” but merely to “arrest the progress of revolution – not in forms of gov[ernmen]t – but one ag[ains]t right of property - & against corporate franchises.”⁹⁶ By portraying the advocates of Warren Bridge as revolutionaries who conspired in taverns and garrets to overthrow private property rights, Webster attempted to reinforce the presentation of the case as a conflict between established property holders and Jacksonian lower-class radicals. In a similar vein, after the case had concluded, Warren Bridge’s lawyer Simon Greenleaf was accused of making a “radical” argument that was “agrarian in its character, & tended to the destruction of vested rights.”⁹⁷ In response, Greenleaf, a professor at Harvard Law School, deposited his original notes from the case with the Harvard Law Library, explaining that he did so in order that “my pupils, at least, & any others, may see that the argument was not of that character; & that in this case I advanced no such doctrine as has been unjustly imputed to me; but that, on the contrary, I placed the defence [sic] on the acknowledged principles of constitutional & common law.”⁹⁸

Yet other free bridge supporters embraced the movement’s association with the Jacksonian platform. In so doing, they emphasized the belief in popular sovereignty and the opposition to aristocratic monopolies that underlay both. In January 1831, a convention of Republican members of the Massachusetts Legislature met to nominate candidates for the upcoming gubernatorial and presidential election.⁹⁹ Distinguishing themselves from the “‘National’ Republican party,” which the convention excoriated as “the legitimate successors of the Monarchy party of 1787” who promoted “a strong, consolidated, if not monarchical government,” the convention endorsed Jackson for president. The convention also endorsed Marcus Morton, the Massachusetts Supreme Judicial Court justice who had held in favor of Warren Bridge at the state level, for governor.¹⁰⁰ As will be discussed below, Morton had centered his opinion on the supreme power of the people, via the legislature, to act in the public interest. “It is an axiom in our

⁹⁶ HLS Archives, Greenleaf Papers, Charles River Bridge vs. Warren Bridge, Arguments of Counsel, Greenleaf’s Memoranda. (emphasis Greenleaf’s)

⁹⁷ HLS Archives, Greenleaf Papers, Charles River Bridge vs. Warren Bridge, Arguments of Counsel, Greenleaf’s Memoranda

⁹⁸ HLS Archives, Greenleaf Papers, Charles River Bridge vs. Warren Bridge, Arguments of Counsel, Greenleaf’s Memoranda.

⁹⁹ “Address,” The Pittsfield Sun. (Pittsfield, Massachusetts) • 02-03-1831 • Page [1].

¹⁰⁰ “Address,” The Pittsfield Sun. (Pittsfield, Massachusetts) • 02-03-1831 • Page [1].

government, that all legitimate power emanates from the people,” his opinion explained.¹⁰¹ As far as the Charles River Bridge Corporation’s claim of exclusive rights was concerned, Morton emphasized that where an exclusive grant would “impede the march of public improvement, and... interrupt... fair and equal competition,” it was counter to the public interest and could not be presumed.¹⁰² Both Morton and Jackson, the convention resolved, represented the “the people of the United States” rather than those “in favor of an elective monarchy.”¹⁰³ Morton, like Jackson, was “not nursed in the lap of wealth. He sprung from the people – he is one of them.”¹⁰⁴ Because he was “the architect of his own fortune,” he was “not bound to the Aristocracy” but would promote the interests of the public.¹⁰⁵ Endorsing Morton in his subsequent campaign for governor in 1833, the *Boston Statesman*, edited by state senator and Jackson supporter David Henshaw, emphasized that Morton was “against the exclusive privileges [sic] given to corporations, by which public improvement is checked, and one class of men can riot in opulence on wealth unjustly drawn from the humble and poor.”¹⁰⁶ For proof, the paper offered, one need only “witness his judicial opinion in the Warren Bridge case.”¹⁰⁷

The free bridge movement, therefore, had much in common with the larger Jacksonian democratic platform, but the movements were not one and the same. Although the free bridge movement was embraced by Jackson’s supporters in Massachusetts state politics, many supported the Warren Bridge who did not identify with Jacksonianism. What is important to note is that the driving concern in both was a shared theory of popular sovereignty, the belief that the public via the state had the right to act in the public interest to stymie the threat of aggregations of wealth and power posed by large corporations like the Charles River Bridge Corporation and the Bank of the United States.

¹⁰¹ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 452 (1829)

¹⁰² *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 470 (1829)

¹⁰³ “Address,” *The Pittsfield Sun*. (Pittsfield, Massachusetts) • 02-03-1831 • Page [2, 1].

¹⁰⁴ “Address,” *The Pittsfield Sun*. (Pittsfield, Massachusetts) • 02-03-1831 • Page [2].

¹⁰⁵ “Address,” *The Pittsfield Sun*. (Pittsfield, Massachusetts) • 02-03-1831 • Page [2].

¹⁰⁶ “State Election,” *Hampden Whig* (Springfield, Massachusetts) • 10-16-1833 • Page 2. See Wilentz, *The Rise of American Democracy* (2005), 294.

¹⁰⁷ “State Election,” *Hampden Whig* (Springfield, Massachusetts) • 10-16-1833 • Page 2.

The framing of the free bridge controversy as a battle between “the people” and aristocratic shareholders was supported by the backgrounds of its individual proprietors. Charles River Bridge supporters argued that a number of “widows and orphans” owned stock in the bridge; Daniel Webster, in his argument before the Supreme Court in 1836, claimed that Charles River Bridge stock was “diffused every where, thru the community – holden by the public charities, widows – one son took his whole share of the patrimony in this bridge, & has lost it all.”¹⁰⁸ In fact, however, the largest shareholders were wealthy, well-established members of the community.¹⁰⁹ A letter to the editor of the *American Traveller*, signed “One of the People,” claimed that of the Charles River Bridge stock, “the richest individual in Boston owns above a fifteenth part of the whole, and a great portion of the rest is divided in shares of four, five and six, among the most wealthy individuals in the city and towns adjoining.”¹¹⁰ Although this claim appears to have been exaggerated, the stockholders of the company were indeed primarily wealthy Bostonians. For instance, the family of Thomas Russell, who had been an original petitioner of the Charles River Bridge and “one of the most eminent merchants in Boston,” continued to hold eight of the 150 shares in 1827.¹¹¹ Peter C. Brooks, who owned 11 shares, served as Director of the New England Marine Insurance Company and Vice President of the Massachusetts Hospital Life Insurance Company; in 1851 his net worth was valued at \$500,000.¹¹² Charles R. Codman was a wealthy merchant who owned seven shares, while Samuel A. Eliot, six shares, was from a longstanding Boston banking family who over the course of his career served in the Massachusetts legislature, as mayor of Boston, and in the House of Representatives in Congress.¹¹³ Even many smaller shareholders were wealthy Bostonians. Boston Mayor Josiah Quincy and his wife Ann, three shares, were of “an ancient family”; Henry and Elizabeth Cabot (four

¹⁰⁸ Greenleaf’s notes, emphasis Greenleaf’s.

¹⁰⁹ “Charlestown Bridge,” *American Traveller*, Boston, March 20, 1827; An Act to Establish the Warren Bridge Corporation (1828[]), 21.

¹¹⁰ One of the People, “Free Bridge,” *American Traveller*, Boston, April 27, 1827.

¹¹¹ House Committee Report (1827) in Act to Establish the Warren Bridge Corporation p. 21 <https://books.google.com/books?id=iggXAAAAYAAJ> ; Alden Bradford, “Thomas Russell,” *Hunt’s Merchant’s Magazine* (Boston, 1839) Vol.1 Issue 1, 347.

¹¹² A. Forbes and J.W. Greene, *The Rich Men of Massachusetts* (Boston: W.V. Spencer, 1851), 18.

¹¹³ A. Forbes and J.W. Greene, *The Rich Men of Massachusetts* (Boston: W.V. Spencer, 1851), 21; “Eliot, Samuel Atkins,” *Appletons’ Cyclopædia of American Biography*, Volume 2 (New York: D. Appleton & Co., 1888), 324.

shares) likewise hailed from the “old Cabot stock, which has been distinguished in New England for the last two centuries.”¹¹⁴ The class status of shareholders belied the company’s claim that destroying its revenue would destroy the livelihoods of widows and orphans. Rather, in light of the “superabundance of wealth” of the Charles River Bridge shareholders, one commentator smirked, would it not be well “for the Legislature to turn the attention of said corporators to the relief of the aforesaid widows and orphans”?¹¹⁵

In contrast, the proprietors of the Warren Bridge did not represent the city’s monied elite, but its small-scale merchants and financiers, those most interested in the creation of a new, free bridge that would promote trade between the outlying towns and the metropolis.¹¹⁶ Indeed, William Ellery Channing blamed the passage of the Warren Bridge bill on middling merchants, “men of business, who were anxious to push a more lucrative trade” at the expense of what he considered an “assault on property.”¹¹⁷ They also had strong ties to the local community. Isaac Warren, one of the main petitioners for the Warren Bridge, had earned his fortune as a cloth merchant in Boston; by the time the bridge petition was introduced he was a widely-respected philanthropist and “an active and useful citizen.”¹¹⁸ His involvement in local religious organizations was particularly noteworthy. A deacon of the First Church of Charlestown, he was also the President of the “Middlesex Auxiliary Society for Educating pious youth for the Gospel Ministry,” a trustee of Massachusetts Missionary Society, and a major donor to a local youth religious academy.¹¹⁹ In addition, he served as President of the American Education Society,

¹¹⁴ A. Forbes and J.W. Greene, *The Rich Men of Massachusetts* (Boston: W.V. Spencer, 1851), 81.

¹¹⁵ A Guardian, Letter to Editor, *American Traveller*, Boston, March 30, 1827.

¹¹⁶ In their advocacy for popular democracy to promote the public good, the advocates of the free bridge movement bear similarities to the “middling merchants and artisans” discussed by Sean Wilentz. Sean Wilentz, *Chants Democratic: New York City and the Rise of the American Working Class, 1788-1850* (UK: Oxford University Press, 2004), 14.

¹¹⁷ William Ellery Channing, *Self Culture* (Boston: James Munroe & Co., 1839), 41. Sean Wilentz uses the term “middling merchants” to refer to merchants conducting a modest trade who were interested in democratic politics in New York in the early 19th century. Sean Wilentz, *Chants Democratic : New York City and the Rise of the American Working Class, 1788-1850* (UK: Oxford University Press, 2004), 14.

¹¹⁸ Advertisement, *Columbian Centinel*. *Massachusetts Federalist*. (Boston, Massachusetts) • 04-02-1800 • Page [4]; Advertisement, *Columbian Centinel*. (Boston, Massachusetts) • 01-16-1805 • Page [4]; (“Massachusetts Mutual Fire Insurance Company,” *American Federalist Columbian Centinel* (Boston, Massachusetts) • 06-05-1822 • Page [2]; “Obituary,” *New-Bedford Mercury*. (New Bedford, Massachusetts) • 03-28-1834 • Page [4].

¹¹⁹ “Second Council,” *Boston Recorder* (Boston, Massachusetts) • 06-25-1829 • Page 102; “Massachusetts Missionary Society,” *Boston Recorder* (Boston, Massachusetts) • 05-31-1823 • Page 87; “Middlesex Education Society,” *Boston Recorder* (Boston, Massachusetts) • 06-29-1827 • Page 102; “Woburn Academy,” *Trumpet and Universalist Magazine* (Boston, Massachusetts).

treasurer of the Massachusetts Agricultural College, and a contributing member of the Prison Discipline Society.¹²⁰ Upon his death in 1834, he was praised in newspapers throughout the region and even as far away as New York City for his extensive “liberality,” as he had left \$3,000 of his estate to Middlebury College, as well as significant bequests to the American Education Society, the Massachusetts Missionary Society, the American Bible Society, the American Board of Foreign Missions, the American Tract Society, and the “excellent, benevolent, and charitable Society, the Eye and Ear Infirmary.”¹²¹ Wrote the *New-Bedford Mercury*, “The church and society of which he was for so long a time a member, will mourn his loss, and bear in affectionate remembrance his liberal purposes and deeds.”¹²²

John Skinner, the other lead petitioner of the Warren Bridge and its first director, was likewise a small-scale merchant, an importer of such diverse goods as beef, pork, butter, lard, candles, linseed oil, cotton, rice, and merino sheep.¹²³ Skinner was also the hayward – the officer in charge of looking after the cows on the common – for the city of Boston, and the director of a local Charlestown bank.¹²⁴ Other Warren Bridge incorporators included small-scale merchants, lawyers, and legislators.

In petitioning for a bridge, the Warren Bridge corporators swore they were acting solely in the public interest. They assured the public that the bridge was not “the private speculation of a few individuals,” and took pains to “dissipate such an impression” by “invit[ing] every man in the community to become a subscriber.”¹²⁵ On its initial public offering in March 1828, 500 shares in Warren Bridge, worth \$50,000, were sold to 290

¹²⁰ “American Education Society,” *Boston Recorder* (Boston, Massachusetts) • 06-18-1829 • Page 98; *Columbian Centinel American Federalist* (Boston, Massachusetts) • 11-26-1825 • Page [2]; “Prison Discipline Society,” *Boston Recorder* (Boston, Massachusetts) • 07-14-1830 • Page 112.

¹²¹ Untitled, *American Traveller* (Boston, Massachusetts) • 08-12-1834 • Page [2]; “Middlebury College,” *Boston Recorder* (Boston, Massachusetts) • 06-14-1834 • Page 95; “Obituary,” *New-Bedford Mercury*. (New Bedford, Massachusetts) • 03-28-1834 • Page [4]; “Liberality,” *New-York Spectator* (New York, New York) • 08-14-1834 • Page [3].

¹²² “Obituary,” *New-Bedford Mercury*. (New Bedford, Massachusetts) • 03-28-1834 • Page [4].

¹²³ “For Sale by John Skinner & Co.,” *The Repertory* (Boston, Massachusetts) • 02-28-1815 • Page [3]; “Port of Boston,” *BOSTON GAZETTE*. (Boston, Massachusetts) • 05-29-1815 • Page [2]; “Merino Sheep,” *Independent Chronicle* (Boston, Massachusetts) • 08-24-1815 • Page [3].

¹²⁴ “Town Meeting,” *Independent Chronicle & Boston Patriot* (Boston, Massachusetts) • 06-02-1819 • Page [1]; “Bank Directors,” *Boston Commercial Gazette* (Boston, Massachusetts) • 02-03-1823 • Page [2].

¹²⁵ “The New proposed Bridge over Charles River to Boston,” *Columbian Centinel American Federalist* (Boston, Massachusetts) • 06-02-1824 • Page [4].

subscribers.¹²⁶ The Warren Bridge proprietors emphasized that they advocated for the bridge “not for our own interest distinct from that of the public,” but were rather “willing to accept of a charter on terms most liberal to the community.”¹²⁷ They simply asked for a small return on their investment – five percent or no more than \$60,000 – before they turned the bridge over to the state. Although some noted that some of the proprietors owned land at the foot of the bridge that would benefit from its construction, [find cite] for the most part there was little talk in local papers and town halls about the proprietors of the Warren Bridge themselves, as compared to the significant focus on the monied status of the Charles River Bridge’s proprietors. As a Senate Report on the Warren Bridge in 1833 emphasized, “The proprietors in erecting the bridge, have rendered to the public a great and important service, and it deserves to be remembered to their credit, that from the first they have had no other object than the public convenience and accommodation.”¹²⁸ The House Joint Committee on Roads and Bridges, which happened to be chaired by Nathaniel Austin, an original petitioner of the Warren Bridge, claimed that “[w]hile others engaged in similar enterprises have been actuated by motives of private gain, the Proprietors of this Bridge have devotedly served the public without the hope or prospect of any private emolument.”¹²⁹ Rather than a private enterprise, the Warren Bridge was rather presented as an opportunity for public investment in an internal improvement project that would in short order become the property of the public at large.

The *Charles River Bridge* case, therefore, was not simply a battle between two competing corporations. Rather, it was a contest over the nature of the corporation itself. Popular feelings about corporations were complex, and the case reflects this complexity; on the one hand, internal improvement corporations were necessary to the development of infrastructure on which the public depended, yet on the other, aggregations of wealth in the hands of a few shareholders stoked fears of aristocracy. These conflicting feelings about corporations are best exemplified in Governor Levi Lincoln’s vetoes of two different corporate charters in 1827. One was the infamous veto of the Warren Bridge

¹²⁶ Untitled, *Essex Gazette* (Haverhill, Massachusetts) • 04-26-1828 • Page [3]; *Salem Gazette* (Salem, Massachusetts) • 04-22-1828 • Page [2].

¹²⁷ “To the Hon. Senate and House of Representatives,” *Columbian Centinel American Federalist* (Boston, Massachusetts) • 11-05-1825 • Page [3].

¹²⁸ Nathaniel Austin, Chairman, Report of the Committee on Roads and Bridges, Senate Doc. 39 (Boston: Dutton and Wentworth, State Printers, 1833).

¹²⁹ “Warren Bridge,” *American Traveller* (Boston, Massachusetts) • 03-12-1833 • Page [1].

Bill, which as has been shown caused great public uproar during the free bridge debates. Yet Lincoln was not the puppet of the bridge proprietors that free bridge supporters accused him of being. In fact, his reasons for vetoing the bill reflect larger concerns about the nature of corporations that actually mirrored those of the free bridge movement, as is revealed in the veto of a charter of incorporation that he issued less than a month before his Warren Bridge veto – that of the Salem Mozart Society.

Citizens of Salem had successfully petitioned the Legislature to incorporate as the Salem Mozart Society for the purposes of “improving the performance of Church Music.”¹³⁰ Although the Legislature passed the bill of incorporation, Lincoln vetoed it. Although the intention of the Society was “entirely commendable,” Lincoln wrote in his veto message, he saw “no possible necessity for an act of incorporation” to accomplish this purpose.¹³¹ On the contrary, incorporating such a society posed a danger to the democracy. The Society’s charter provided that it could own \$10,000 in real estate and \$10,000 in personal property, which would pass in perpetual succession to future members. This, Lincoln warned, “locked up” \$20,000 worth of property “from the mass of transmissible wealth.”¹³² Already, he pointed out, in five year’s time corporations formed for “local and minor purposes” had been granted charter rights to hold more than \$30 million dollars, “an amount equal to one fifth... of the taxable property of the Commonwealth.”¹³³ This threatened to lead to “an unlimited and infinite accumulation” of wealth in the hands of a small number of people, which would promote the “worst evils of a monopoly of wealth and possessions in corporations” and the “consequent poverty and dependence in individuals.”¹³⁴ If this continued, the Governor warned, “at no far distant period, a humble and dependent tenantry will take the place of that high minded and independent yeomanry” of the democracy, and possibly lead to “popular excitement and revolution.”¹³⁵ It was the job of the legislature to prevent this from

¹³⁰ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 474.

¹³¹ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 474.

¹³² Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 475.

¹³³ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 477, 475. Lincoln excepted Banking, Insurance, Turnpike, or Canal Companies from this calculation.

¹³⁴ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 476.

¹³⁵ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 475-476.

happening by only “sparingly and cautiously” chartering such corporations.¹³⁶ [cite Blankenship for proliferation of non-economic corporations in this period]

Notably, Lincoln exempted from his objections corporations “created to facilitate important business operations, and for the general improvement of country,” such as banking, insurance, and transportation companies.¹³⁷ He explained that such corporations involved “high objects of public interest” and so “the facilities of acts of incorporation, with the power to hold and manage the necessary funds, should be granted.”¹³⁸ Yet even here, he suggested, “there should be some limitation of time, when the Legislature might exercise the power of revision and revocation” of the corporate charter.¹³⁹ He explained, “In a free government, nothing of artificial arrangement should be perpetual, but the great charter of the people’s rights. All else should be subject to an occasional conformity to the public weal.”¹⁴⁰ The public weal in this case required the “preservation of political freedom” and “equality of personal condition” guaranteed by limitations on the perpetual succession of property through the hands of a small group of individuals.¹⁴¹ In other words, Lincoln was concerned that the multiplication of corporations would create groups of wealthy persons – an aristocracy – that would undermine the political liberty and equality of individuals. In this, his concerns about corporations echoed that of the opponents of the Charles River Bridge.

Yet less than a month later, in March 1827, Lincoln vetoed the charter of the Warren Bridge Corporation. He vowed that he had “neither concern nor sympathy of feeling” with either corporation involved, stating, “Of their past or present proprietors, their profits or losses, their condition or prospects, I neither know, nor do I care to know any thing.”¹⁴² His veto was based on his understanding that the right to take toll was essential to the existence of the Charles River Bridge Corporation and that destroying the ability to toll, which the creation of a free bridge would unquestionably do, would not

¹³⁶ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 477.

¹³⁷ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 476, 475.

¹³⁸ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 476-77.

¹³⁹ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 477.

¹⁴⁰ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message, 477.

¹⁴¹ Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message on Salem Mozart Society Bill, 477.

¹⁴² Resolves of the Massachusetts Legislature 1824-28, Lincoln’s Veto Message on Warren Bridge Bill, 520.

only violate the state's compact with the proprietors but would stymie future works of private enterprise.¹⁴³ Importantly, Lincoln acknowledged the legislature had the power to charter a free bridge, but only "*whenever the public necessity may require it*" – and here the bill had not indicated that such was the case.¹⁴⁴ To the contrary, he noted that the 1827 bill provided that if the Charles River Bridge Corporation were willing to surrender its bridge to the state by December 1831, the Warren Bridge would not be built before then, showing that there was no immediate need for a second bridge.¹⁴⁵ Echoing his Mozart Society veto, Lincoln admonished the Legislature not to "unsparingly and with an unguarded hand... multiply private corporations, and grant privileges without limitation, until only the form and very shadow of sovereignty remains."¹⁴⁶ As noted above, his veto was criticized by free bridge supporters as "high-toned," "anti-republican," and friendly to "a few aristocratic personages."¹⁴⁷ Yet other commentators appreciated his attempt to stem the "dangerous tendency" of the legislature toward the "multiplication of corporate bodies on trivial pretences."¹⁴⁸ Taking Lincoln's public necessity requirement to heart, the legislature's Warren Bridge Bill of the following year emphasized that the public necessity and convenience demanded a new bridge immediately [find cite from bill], and Lincoln signed the bill into law.¹⁴⁹

Lincoln's veto of the Warren Bridge Bill has been unduly maligned, both at the time and by modern scholarship. [cite Kutler] In fact, reading both veto messages together reveals that the Governor's primary concern was that the proliferation of corporations would create a class of aristocratic shareholders by concentrating property in the hands of a few individuals. Although Lincoln acknowledged the right of the Charles River Bridge proprietors to take toll, as his veto of the Mozart Society makes clear, he nonetheless believed that even public works corporations should be limited in duration to

¹⁴³ Resolves of the Massachusetts Legislature 1824-28, Lincoln's Veto Message on Warren Bridge Bill, 515, 517.

¹⁴⁴ Resolves of the Massachusetts Legislature 1824-28, Lincoln's Veto Message on Warren Bridge Bill, 519.

¹⁴⁵ Resolves of the Massachusetts Legislature 1824-28, Lincoln's Veto Message on Warren Bridge Bill, 518.

¹⁴⁶ Resolves of the Massachusetts Legislature 1824-28, Lincoln's Veto Message on Warren Bridge Bill, 520.

¹⁴⁷ "The Traveller - Legislature," Boston Traveler, published as American Traveller (Boston, Massachusetts) • 03-13-1827 • Page [2].

¹⁴⁸ "General Intelligence," National Aegis (Worcester, Massachusetts) • 03-21-1827 • Page 2.

¹⁴⁹ "Charlestown Free Bridge," Salem Observer (Salem, Massachusetts) • 03-15-1828 • Page [2].

avoid massive accumulations of wealth. The fact that this latter characterization so accurately described the Charles River Bridge company was likely behind his insistence that his veto had nothing to do with the “proprietors,... condition or prospects” of the Charles River Bridge corporation, and his subsequent lack of objections to the revamped 1828 Warren Bridge Bill. As long as the Legislature clearly showed that the public necessity demanded it, Lincoln was comfortable overriding the vested charter rights of a corporation.

As can be seen in Lincoln’s veto messages and in the popular discourse surrounding the bridge controversy, free bridge proponents and the Charles River Bridge proprietors expounded two different theories of the nature of the public works corporation. For Warren Bridge supporters, the corporation was a creation of the public, via the legislature, which was intended to achieve a public good. Although it was conceded that shareholders in the corporation were entitled to some profit, this pecuniary gain was to be limited; furthermore, membership in the corporation was available to anyone who could afford to purchase stock.¹⁵⁰ Belief in popular sovereignty was central to this view of corporations. Privileges granted to corporations, emphasized Warren Bridge’s lawyer William Austin, “depend entirely on the will and pleasure of the sovereign power.”¹⁵¹ The purpose of corporations was to promote the public welfare by encouraging the construction internal improvements in which the public had an ownership stake – either immediately through purchase of stock or eventually through reversion to the state. Governor Lincoln likewise believed that although corporations had rights under their charters, these rights were subordinate to the public interest.

In contrast, proprietors and supporters of the Charles River Bridge presented a competing vision of the corporation as a private enterprise designed to promote the financial gain of its shareholders, with limited accountability to the public. As the renowned Daniel Webster, who served as lead counsel for the Charles River Bridge Corporation, argued before the Massachusetts Supreme Judicial Court, the Charles River Bridge Corporation was “a private civil corporation,” not “a public corporation over

¹⁵⁰ “The Traveller: Legislature,” *American Traveller*, Boston, March 13, 1827.

¹⁵¹ William Austin, “Free Bridge,” *American Traveller*, Boston, June 1, 1827.

which the legislature have a control.”¹⁵² As a result, “[a]ny notion, therefore, which may be entertained, that the grant of our bridge is connected with the public benefit, is of no consequence.”¹⁵³ Rather than a servant of the public, the corporation was a private enterprise, the owners of which possessed “rights of property” in their franchise that that the legislature was bound to protect and respect.¹⁵⁴ The corporation’s charter, Charles River Bridge supporters argued, was “a compact between them and the Public,” and any change to its terms – here, the allegedly implied right to an exclusive “line of travel” over the Charles River – was “an infringement of the rights already vested.”¹⁵⁵ Such a violation of the “the Constitutional rights” of the proprietors would “unsettle the security of private property.”¹⁵⁶ The Warren Bridge bill was derided as “an act of violence, against the constitution, and laws of the state.”¹⁵⁷ In this view, corporations were private enterprises with property rights upon which the public depended, but over which the public had no right to control.

In their endorsement of the Warren Bridge Corporation and opposition to the Charles River Bridge Corporation, free bridge supporters also presented an alternative vision of capitalism. Supporters of the Charles River Bridge contended that the incorporators had the right to make as much money as they could off their investment. Announced the *Salem Gazette*, “Whether the bridge has been productive or unproductive is immaterial.”¹⁵⁸ In their brief to the Massachusetts Supreme Judicial Court, Charles River Bridge’s lawyers likewise argued that “the question how much they have received is rendered wholly immaterial” to the question of whether their vested rights had been violated.¹⁵⁹ In contrast, the Warren Bridge proprietors proposed a form of capitalism in which limited private profit was consideration granted in exchange for the construction of public works. Shares in the enterprise were, ostensibly, open to the public – at least every member of the public who could afford the purchase price. The shareholders’

¹⁵² *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 443 (1829).

¹⁵³ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 443 (1829).

¹⁵⁴ “Charlestown Free Bridge,” *Salem Gazette* (Salem, Massachusetts) • 03-09-1827 • Page [2].

¹⁵⁵ Civis, Letter to the Editor, *Essex Register* (Salem, Massachusetts) • 03-29-1827 • Page [2].

¹⁵⁶ “State Legislature,” *Boston Traveler*, published as *American Traveller* (Boston, Massachusetts) • 03-13-1827 • Page [2].

¹⁵⁷ “Massachusetts Legislature,” *Gloucester Telegraph* (Gloucester, Massachusetts) • 03-17-1827 • Page [2].

¹⁵⁸ “Warren Free Bridge – No. 1,” *Salem Gazette* (Salem, Massachusetts) • 02-22-1828 • Page [3].

¹⁵⁹ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 362 (1829)

pecuniary gain was limited to a specific amount - \$60,000 in total, or \$120 per share – and the bridge would become free and accessible to all within a short period.

This vision of the public works corporation as a democratic enterprise that was primarily a vehicle for the public good, and only secondarily a profit-making entity, was common in this period. Pauline Maier notes that in early Republic Massachusetts, corporations in the late eighteenth century were universally seen as “agencies of government... for the furtherance of community purposes.”¹⁶⁰ The primary purpose of corporations was to benefit the public welfare, and the private profit to be made was considered simply an attendant bonus.¹⁶¹ John Majewski has discussed how in Pennsylvania in the early Republic, internal improvements were seen as public-spirited investments in community welfare, with stock ownership open to a broad democratic base.¹⁶² Similarly, Colleen Dunlavy has revealed that in the late eighteenth and early nineteenth century, shareholders were commonly considered to be equal members of a “democratic” corporation; in about one-third of the corporations chartered between 1825-1835 that she examines, including in Massachusetts, shareholders were entitled to one vote per person, rather than one vote per share.¹⁶³

Yet in the 1830s-40s this view of the public works corporation as primarily a public, democratic enterprise was beginning to be challenged in the legal realm by a vision of the corporation as primarily or even purely a private, profit-making entity.¹⁶⁴ Reflecting the traditional view of corporations, in 1832, the influential *Treatise of the*

¹⁶⁰ Pauline Maier, “The Revolutionary Origins of the American Corporation,” *The William and Mary Quarterly*, Vol. 50 (Jan 1993), 55 (internal quotes omitted).

¹⁶¹ Pauline Maier, “The Revolutionary Origins of the American Corporation,” *The William and Mary Quarterly*, Vol. 50 (Jan 1993), 56.

¹⁶² See John Majewski, “Toward a Social History of the Corporation: Shareholding in Pennsylvania, 1800-1840,” in *The Economy of Early America Historical Perspectives and New Directions* (Pennsylvania State University Press, University Park, Pa, 2006), 297. For Majewski, however, the democratic view of the corporation has a darker cast; he claims it was propounded by the state in order to “tap the savings of ordinary households” and “undermine[] political resistance to the corporation.” Majewski, 296. In the case of the Warren Bridge, the belief in popular ownership of the bridge corporation seems to have arisen from the grassroots and been part of a larger theory of popular sovereignty, rather than a strategic move by the state to shape popular opinion.

¹⁶³ Colleen Dunlavy “From Citizens to Plutocrats: Nineteenth-Century Shareholder Voting Rights,” in *Constructing corporate America: history, politics, culture* (ed. Lipartito & Sicilia) (Oxford: Oxford University Press, 2003), 73.

¹⁶⁴ See Colleen Dunlavy “From Citizens to Plutocrats: Nineteenth-Century Shareholder Voting Rights,” in *Constructing corporate America: history, politics, culture* (ed. Lipartito & Sicilia) (Oxford: Oxford University Press, 2003), 79.

Law of Private Corporations Aggregate by Joseph Angell and Samuel Ames explained that the purpose of incorporation was “the successful promotion of some design of general utility,” although it acknowledged that “the corporation may, at the same time be established for the advantage of those who are members of it.”¹⁶⁵ Yet by 1846, the second edition of the *Treatise* announced with confidence that with regards to bridges, canals, and banks, among other “like corporations,” “the acts done by them are done with a view to their own interest, and if thereby they incidentally promote that of the public, it cannot reasonably be supposed they do it from any spirit of liberality.”¹⁶⁶ The “sole object” of these “essentially [sic] private” corporations, according to Angell and Ames, was “to derive profit.”¹⁶⁷ The Charles River Bridge Corporation was at the vanguard of this shifting conception about the nature and purpose of the public works corporation, and the Supreme Court case that resulted from its decision to bring suit helped entrench this competing understanding of the nature of the corporation in American law.

The Free Bridge Movement and the Law

By the early 1830s, the *Charles River Bridge* case had become thoroughly politicized. Yet contrary to much scholarship on the period, the decision itself was not simply a political endorsement of state-sponsored economic development over common law property rights. Rather, it was a fundamental contestation over the nature of democratic government and the relationship between corporations and the state.

As soon as the bill chartering the Warren Bridge had passed, the Charles River Bridge Corporation brought suit, alleging that the new bridge violated its charter rights to a “line of travel” across the Charles River, in violation of the Contract Clause of the federal Constitution.¹⁶⁸ The Massachusetts Supreme Judicial Court, evenly divided, in 1829 denied the claim so that the case could be appealed to the United States Supreme

¹⁶⁵ Joseph K. Angell & Samuel Ames, *Treatise of the Law of Private Corporations Aggregate* (Boston: Hilliard, Gray, Little & Wilkins, 1832), 7-8.

¹⁶⁶ Joseph K. Angell & Samuel Ames, *Treatise of the Law of Private Corporations Aggregate* (Boston: Little & Brown, 1846) (3rd ed.), 28.

¹⁶⁷ Joseph K. Angell & Samuel Ames, *Treatise of the Law of Private Corporations Aggregate* (Boston: Little & Brown, 1846) (3rd ed.), 29.

¹⁶⁸ “Warren Bridge,” *American Traveller* (Boston, Massachusetts) • 03-12-1833 • Page [1].

Court.¹⁶⁹ The case languished on the Supreme Court's docket for eight years, as the makeup of the Court underwent significant change.¹⁷⁰ Finally, in 1837, Chief Justice Taney, in one of his first major decisions as Chief Justice, found for the Warren Bridge Corporation, and the legal controversy was at last ended.¹⁷¹

In their legal arguments and in Chief Justice Taney's opinion, the dominant concerns about popular sovereignty and monopoly that motivated the free bridge movement figured heavily. Yet although the Warren Bridge, and the people of Charlestown and Boston, prevailed in the short term, the decision had lasting positive effects for corporations. Firstly, the case solidified the ability of corporations to claim the protection of the federal Constitution against state action via the Contract Clause. Secondly, it endorsed the newer vision of the corporation propounded by the Charles River Bridge Corporation as an entity separate from and potentially at odds with the public. No longer was an internal improvement corporation an agent of the public chartered to fulfill a public purpose; it was an organization whose goals and priorities potentially differed from those of the broader public and whose shareholders were protected by the federal Constitution against unjustified state infringement of their rights.

The nature of the corporate charter was the central issue of the case. The Charles River Bridge Corporation argued that the Contract Clause of Constitution applied to their charter, and that this clause should be read broadly to protect their implied exclusive right to control bridge travel between Charlestown and Boston. Article I, Section 10 of the Constitution stated in pertinent part that no state shall "pass any... Law impairing the Obligation of Contracts." *Fletcher v. Peck* (1810) had held that state contracts with individuals were contracts under this provision; *Dartmouth College v. Woodward* (1819) extended this holding to state corporate charters as well.¹⁷² The reasoning of Justice Story

¹⁶⁹ "Charles River Bridge Vs. Warren Bridge," *New-Bedford Mercury*. (New Bedford, Massachusetts) • 01-15-1830 • Page [2].

¹⁷⁰ Chief Justice John Marshall and Justice William Johnson died, and Justice Gabriel Duvall retired. They were replaced by Jackson appointees Roger Taney, James Wayne, and Philip Barbour. Stanley I. Kutler, *Privilege and Creative Destruction: The Charles River Bridge Case* (Philadelphia: J.B. Lippincott Co., 1971), 55-61.

¹⁷¹ Daniel Feller calls the Charles River Bridge decision Taney's first major decision on the court. Feller, Daniel, *The Jacksonian promise : America, 1815-1840* (Baltimore : Johns Hopkins University Press, 1995).

¹⁷² *Fletcher v. Peck*, 10 U.S. 87 (1810), *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 682-83 (1819). *Providence Bank v. Billings* (1830) solidified this reading. *Providence Bank v. Billings*, 29 U.S. 514, 560 (1830).

in *Dartmouth College* in applying the Contract Clause to corporate charters reveals an important facet in the nature of the corporation as perceived in this period – namely, that the corporation was a conglomerate of individuals, not a discrete unitary entity. Yet Story’s opinion in *Dartmouth* took this conception of the corporation as an aggregation of private persons one step further, to craft a new category of the “private corporation.” This novel conception of the corporation as a private entity became central to the Charles River Bridge Corporation’s argument in the case.

This view that corporations were an aggregate of private persons, each with their own constitutional rights, helped justify the extension of the Contract Clause to corporate charters. As the *Dartmouth College* decision explained, the corporation was not a single, monolithic entity, but as “a collection of individuals, united into one collective body.”¹⁷³ These individuals did not forsake their constitutional rights when they incorporated; rather, they continued to have “vested rights, in their character, as corporators.”¹⁷⁴ As a result, the charter was a contract between the state and individuals, and was protected by the Contract Clause just as were other contracts entered into by the state.

This legal view of the corporation as an aggregate of individuals mirrored the popular view of corporations at the time, as illustrated by the public discourse around the Charles River Bridge controversy. The charter between the state and the Charles River Bridge Corporation, a sympathetic newspaper explained, was indeed “a contract, between the State on the one hand, and the members of the corporation on the other.”¹⁷⁵ Reflecting this conception, “the corporation” was routinely discussed in the plural – the “Charles River Bridge Corporation *are*.”¹⁷⁶ For instance, in the legislative debates, one representative stated that “the corporation should be protected in *their* rights” until “the corporation [had] been remunerated for *their* risk.”¹⁷⁷ If “the Corporation claim equity at

¹⁷³ *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 667 (1819).

¹⁷⁴ *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 701 (1819).

¹⁷⁵ “Charlestown Free Bridge,” *Boston Weekly Messenger* (Boston, Massachusetts) • 04-05-1827 • Page [4] (emphasis added).

¹⁷⁶ See “Free Bridge to Charlestown,” *Boston Commercial Gazette* (Boston, Massachusetts) • 02-26-1827 • Page [2] (emphasis added); A Guardian, Letter to Editor, *American Traveller*, Boston, March 30, 1827.

¹⁷⁷ “Charlestown Free Bridge,” *Salem Gazette* (Salem, Massachusetts) • 03-02-1827 • Page [2] (emphasis added). See also “Warren Bridge,” *National Aegis* (Worcester, Massachusetts) • 04-16-1828 • Page 2 (“The Corporation have many things to encourage them...”); “Lowell Rail-Road,” *Boston Courier* (Boston, Massachusetts) • 06-07-1830 • Page [4] (“he could not see that any guarantee was necessary to secure to the corporation a fair profit on their investment.”).

our hands,” the Speaker of the House announced, “*they* must most assuredly show that they themselves have behaved with equity and good conscience in relation to the Commonwealth.”¹⁷⁸ Regarding the Supreme Court decision, one paper likewise reported that the Warren Bridge Corporation “*have* expressed great anxiety to hasten this decision as much as possible.”¹⁷⁹ These and many other examples reveal that “the corporation” in this period was not seen as a single entity but as a group of persons whose collective rights and interests formed that of the corporation as a whole. *Dartmouth College’s* formulation that the individual rights of the incorporators as laid out in the charter were protected by the Contract Clause, was therefore not out of sync with the popular conception of corporations at the time.

Where Justice Story’s reasoning in *Dartmouth College* differed from public opinion, however, was in his distinction between public and private corporations. Drawing on the theory of the corporation as an aggregate of individuals, Story argued that the character of the corporation depended on the character of its stockholders. According to Story’s formulation, public corporations were owned wholly by the state; where a corporation’s stock was held by private persons, however, it was “a private corporation, although it is erected by the government, and its objects and operations partake of a public nature.”¹⁸⁰ In other words, Story defined “public” corporation very narrowly – only a corporation owned by the state was public, whereas corporations like the Charles River Bridge Corporation that acted in the public interest but were privately owned were exclusively private. Corporate charters of private corporations, he concluded, were protected from state impairment the same as private contracts would be. As the lawyers for Charles River Bridge made clear, private contracts were to be construed in favor of the grantee.¹⁸¹ [check to make sure this is generally the law...] By separating corporations into these narrow categories, Story significantly limited the public’s ability to exert control over corporations, including public works corporations like the Charles River Bridge company.

¹⁷⁸ “Charlestown Bridge,” *American Traveller*, Boston, March 20, 1827. (emphasis added)

¹⁷⁹ “Governor’s Speech,” *Newburyport Herald* (Newburyport, Massachusetts) • 01-16-1835 • Page 2. (emphasis added)

¹⁸⁰ *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 669 (1819).

¹⁸¹ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 525 (1837).

Yet Story's conclusion that a corporate charter was equivalent to a private contract under the federal Constitution was contrary to popular perceptions of the nature of internal improvement corporations, as revealed by the debates over the Charles River Bridge Corporation and other internal improvement corporations of the time. Some free bridge proponents insisted that a corporate charter was not protected by the Contract Clause at all. As the *American Traveller* explained, the original purpose of the Contract Clause had been "to impose a restriction upon the passing by the state of tender laws, stop laws, and laws of that nature, to defeat or delay creditors in the recovery of their debts."¹⁸² Early claims that corporate charters were protected by this clause were "treated with ridicule" – "the notion of a contract between the government, and the Corporation" was "*too fanciful, to need any observation.*"¹⁸³ It was not until the *Dartmouth College* decision, the paper pointed out, that this claim was treated with any seriousness.¹⁸⁴ Yet faced with the *Dartmouth College* and *Providence Bank* precedent, both the lawyers for Warren Bridge and Justice Taney were compelled to concede that corporate charters were contracts covered by the Contract Clause.¹⁸⁵

¹⁸² "Free Bridge," *American Traveller*, Boston, March 27, 1827.

¹⁸³ "Free Bridge," *American Traveller*, Boston, March 27, 1827.

¹⁸⁴ "Free Bridge," *American Traveller*, Boston, March 27, 1827.

¹⁸⁵ The Warren Bridge's lawyer admitted, "That the act of incorporation is a contract, we do not deny; and if the recent act violates that contract, and so is repugnant to the constitution of the United States, we concede that it is in the power of the Court to declare the recent act to be void." *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 422 (1829). In 1833, in an opinion as Attorney General on the question of a monopoly claimed by several New Jersey transportation companies, Taney admitted, "It is now too well settled to be disputed, that a charter granted by a state to a company incorporated to make a road or canal, where the funds for the work are provided by individuals, is a contract on the part of the state, and the public cannot by subsequent legislation, alter the terms of the charter." R. B. Taney, "The Opinion of Mr. Taney," *Niles Weekly Register*, Vol. 45, 151 (Baltimore, 1833). Justice Henry Baldwin, however, devoted the entirety of his concurrence to the "all-important" question of "whether a charter to a corporation, is a contract within the tenth section of the first article of the constitution." Concurrence (Baldwin) (published separately in *Baldwin's Constitutional Views*, p. 134-169), 136. Ultimately, Baldwin concluded, the Contract Clause did apply to corporate charters, and the reason again was the aggregate nature of the corporation: "The persons of the members of corporations are on the same footing of protection as other persons, and their corporate property secured by the same laws which protect that of individuals." *Baldwin's Constitutional Views*, 137. Baldwin, however, was primarily concerned with the effect of a contrary holding on corporations of a non-business character; if a state could revoke one aspect of its charter with a corporation, "there is no principle of law, or provision of the constitution, that can save the charter of a borough, a city, a church, or a college, that will not equally save any other." *Baldwin's Constitutional Views*, 138. Baldwin therefore declined to distinguish between the allegedly "public" purpose of corporations chartered to effect internal improvements versus the purposes of other corporations.

¹⁸⁵ William Austin, "Free Bridge," *American Traveller*, Boston, June 1, 1827; "The Traveller: Free Bridge," *American Traveller*, Boston, March 27, 1827.

Regardless of whether the Contract Clause applied, however, supporters of the Warren Bridge argued that because corporations like bridge and other transportation companies were created to promote internal improvements, their charters should not be treated as the equivalent of private contracts, but rather should be subject to public oversight. Governor Lincoln's conclusion in his veto message that the public had the right to override granted rights to public works corporations when the public necessity demanded it is a key example of this line of thinking. Corporate charters, supporters of the free bridge argued, depended "entirely on the will and pleasure of the sovereign power" and although the legislature could not "*repeal or alter* the original act of incorporation," they were free to charter competing industries if in the public's interest.¹⁸⁶ According to the Joint Legislative Committee's 1827 Report on the free bridge, the Legislature possessed the "equitable right... to interfere *indirectly*" with the corporation's charter "for the relief of the public" from the inconvenience of the Charles River Bridge.¹⁸⁷ As a free bridge pamphleteer wrote, "A charter is granted, for erecting a bridge or building a turnpike, to advance the public interest, and serve the public conveniences, not to secure a monopoly to individuals at the expense and inconvenience of the public."¹⁸⁸ All such charters, the author claimed, were granted with the "implied understanding" that "if other persons can find a shorter or more eligible route, that will accommodate the public more in the same way, they have an equal, if not a greater claim, for their grants."¹⁸⁹ David Henshaw, a Massachusetts state legislator and Warren Bridge advocate, wrote that it was "a principle well established" that any grant authorizing the creation of a public improvement "is always done under the implied condition... that when individuals will propose a greater improvement, either by saving distance or saving money, that the public not only have the right to adopt, but that they will sooner or later adopt, that which most promotes the public interest."¹⁹⁰ The Charles River Bridge

¹⁸⁶ William Austin, "Free Bridge," *American Traveller*, Boston, June 1, 1827; "The Traveller: Free Bridge," *American Traveller*, Boston, March 27, 1827.

¹⁸⁷ "Free Bridge to Charlestown," *Boston Commercial Gazette* (Boston, Massachusetts) • 02-26-1827 • Page [2].

¹⁸⁸ A Citizen, *An Appeal to the Good Sense of the Legislature and the Community, in Favor of a New Bridge to South Boston* (Boston: True & Green, 1825), 7.

¹⁸⁹ A Citizen, *An Appeal to the Good Sense of the Legislature and the Community, in Favor of a New Bridge to South Boston* (Boston: True & Green, 1825), 7.

¹⁹⁰ Suffolk [David Henshaw], "Free Bridge," *American Traveller*, Boston, March 30, 1827

Corporation's charter, one Massachusetts state representative argued, "was granted to accommodate the public in their travel to and from Boston," not to "fill to overflowing the coffers of the corporation."¹⁹¹ The nature of the corporation as a state creation for a public purpose therefore gave the public the ultimate right to control the corporation's destiny; where the corporation had begun to "prey... on the public," it was the legislature's "duty to prevent the corporation from receiving another dollar."¹⁹² As William Wirt, representing Warren Bridge, argued, a corporate charter must "be construed most favorably to people – private must yield to public."¹⁹³ In other words, the legislature had the right, as the representative of the people, to pass laws for the public good even when those laws impacted previously granted corporate charters.

Embracing Justice Story's categorization, however, the Charles River Bridge Corporation's lawyers claimed that the company was private and that any state action that impaired its private charter rights was unconstitutional. As Daniel Webster argued before the Massachusetts Supreme Judicial Court, "The franchise now in question is granted to a private civil corporation; not to a public corporation over which the legislature have a control... Any notion, therefore, which may be entertained, that the grant of our bridge is connected with the public benefit, is of no consequence."¹⁹⁴ The Charles River Bridge company's lawyers emphasized the "private," "exclusive," "chartered rights" of the individual stockholders to remuneration from their investment in the bridge.¹⁹⁵ The only public duties of the bridge company, they claimed, was to adhere to the terms set forth in the charter, such as regarding the "place where the bridge is to be built; its dimensions, materials, lights, draws and other details."¹⁹⁶ Outside of the charter terms, the legislature had no power to interfere with the "rights and property" of the shareholders.¹⁹⁷ Furthermore, the corporation's lawyers argued, because "as reason and experience will warrant," legislatures were "not the safest guardians of private rights," it was the

¹⁹¹ "Charlestown Free Bridge," Salem Gazette (Salem, Massachusetts) • 03-02-1827 • Page [2].

¹⁹² "Charlestown Free Bridge," Salem Gazette (Salem, Massachusetts) • 03-02-1827 • Page [2].

¹⁹³ Greenleaf Papers, HLS archives.

¹⁹⁴ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 434, 436, 461 (1829).

¹⁹⁵ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 438 (1837).

¹⁹⁶ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 438 (1837).

¹⁹⁷ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 452, 454 (1837).

responsibility of the courts to ensure the state did not impair the charter rights of the shareholders.¹⁹⁸

Importantly, Justice Taney did not challenge the Charles River Bridge Corporation's claim that its nature was essentially private. He was, however, sympathetic to the argument that corporate charters must be read narrowly where the public welfare was concerned. "While the rights of private property are sacredly guarded," he explained, "we must not forget, that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation."¹⁹⁹ The proper rule of construction was more than just a dry legal point – it posed heavy consequences "not only to the individuals who are concerned in the corporate franchises, but to the communities in which they exist."²⁰⁰ To construe ambiguous charter terms against the interests of the public would be to constrain "the object and end of all government," which was "to promote the happiness and prosperity of the community by which it is established."²⁰¹

Justice Taney's opinion in the *Charles River Bridge* case has sometimes been dismissed as the product of his Jacksonian political ties and his partiality towards entrepreneurs.²⁰² It has also been characterized as shifting legal doctrine "from the strictest protection of contract property rights towards a new emphasis on the welfare of the community."²⁰³ Yet Taney's approach to the questions presented in the case in fact stemmed from a consistent political philosophy based on a robust understanding of popular sovereignty, as well as a commitment to an older order that prioritized public welfare over newer claims of vested private rights – the same arguments made in the public sphere by supporters of the free bridge movement.²⁰⁴ Taney's previous writings as an official in the Jackson administration reveal the basis of this political philosophy and

¹⁹⁸ Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420, 461 (1837).

¹⁹⁹ Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420, 548 (1837)

²⁰⁰ Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420, 536 (1837)

²⁰¹ Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420, 547 (1837)

²⁰² See Herbert Hovenkamp, *Enterprise and American Law, 1836-1937* (), 110.

²⁰³ Charles W. Smith, Jr., *Roger B. Taney: Jacksonian Jurist* (Chapel Hill: Univ of North Carolina Press, 1936), 110; (more recent?)***

²⁰⁴ See Daniel Walker Howe, *What Hath God Wrought* (2007), 443. Even Howe however sees Taney's opinion as equally "a vindication" of economic development.

explain his willingness to limit the charter rights of corporations when they conflicted with the public interest.²⁰⁵

In one example, as Jackson's Attorney General in 1833, Taney wrote an advisory opinion for a New Jersey case involving the state's chartering of a competing railroad company. Taney concluded that the provision of the preexisting canal company's charter, which explicitly prohibited the legislature from incorporating any railroad company to pass between Philadelphia and New York or to compete with the extant canal and railroad companies without their consent, was void.²⁰⁶ Taney concluded that this provision of the charter overstepped the delegated power of the legislature. The legislature was "the agent of the sovereign power," the people, "and when it steps beyond the limits of its authority, its acts are void and do not bind the people by whom it was chosen."²⁰⁷ Such a non-competition agreement was clearly opposed to the public welfare, as it would deprive the people of New Jersey "of the power of prosecuting such works of internal improvements as they may deem necessary to advance their interest and promote the prosperity of the state."²⁰⁸ Just as with the free bridge supporters, Taney saw the economic advancement of the people as central to the public welfare.

Taney's message to Congress as Secretary of Treasury regarding withdrawal of the federal deposits from the Bank of the United States reflects a similar understanding of state charters and highlights concerns about the threat aggregations of wealth, particularly in the form of large corporations, posed to American democracy. Taney's argument about the danger of the Bank echoes that employed by opponents of the Charles River Bridge throughout the previous decade. Taney argued that the Bank "was created to be the agent of the public; to be employed for the benefit of the people," and that "the peculiar privileges and means of private emolument, given to it by the act of incorporation, were intended as rewards for the services it was expected to perform."²⁰⁹ Yet the Bank had superseded this mandate and become a private, political force. Small bank corporations, Taney emphasized, did not pose this risk; they were "managed by

²⁰⁵ Charles W. Smith, Jr., *Roger B. Taney: Jacksonian Jurist* (Chapel Hill: Univ of North Carolina Press, 1936), [cite], Kutler?

²⁰⁶ R. B. Taney, "The Opinion of Mr. Taney," *Niles Weekly Register*, Vol. 45, 151 (Baltimore, 1833).

²⁰⁷ R. B. Taney, "The Opinion of Mr. Taney," *Niles Weekly Register*, Vol. 45, 151 (Baltimore, 1833).

²⁰⁸ R. B. Taney, "The Opinion of Mr. Taney," *Niles Weekly Register*, Vol. 45, 151 (Baltimore, 1833).

²⁰⁹ "Removal of Public Deposites [sic], Letter from the Secretary of the Treasury," Dec. 4, 1833, 12.

persons who reside in the midst of the people who are to be immediately affected by their measures; and they cannot be insensible of indifferent to the opinions and peculiar interests of those by whom they are daily surrounded, and with whom they are constantly associated.”²¹⁰ On the other hand, a corporation as large as the Bank of the United States, owned by an elite group of wealthy American and foreign shareholders, did not possess this community accountability. This was the same distinction employed by free bridge proponents when voicing their support of the Warren Bridge over the elite, wealthy Charles River Bridge Corporation. The existence of “such a powerful moneyed monopoly” was “dangerous to the liberties of the people, and to the purity of our political institutions.”²¹¹ As Treasury Secretary, Taney emphasized, he had a statutory right to act in the public interest, and the public interest demanded that federal funds not go to aid a corporation that benefited a small class of wealthy people at the expense of the public.²¹²

These same concerns are present in Taney’s *Charles River Bridge* opinion. Emphasizing the threat corporate monopolies posed to popular sovereignty, Taney cited an English case, *Proprietors of the Stourbridge Canal v. Wheely*, to support the claim that corporate charters should be read narrowly. The charter, that decision held, was “a bargain between a company of adventurers and the public,” and “any ambiguity in the terms of the contract, must operate against the adventurers, and in favor of the public.”²¹³ It “would present a singular spectacle,” Taney wrote, “if, while the courts in England are restraining, within the strictest limits, the spirit of monopoly, and exclusive privileges in nature of monopolies,” the Supreme Court of the United States “should be found enlarging these privileges by implication; and construing a statute more unfavorably to the public, and to the rights of community, than would be done in a like case in an English court of justice.”²¹⁴ The United States, after all, was a democracy, and it would destroy popular government “if, by implications and presumptions, it was disarmed of the

²¹⁰ “Removal of Public Deposites [sic], Letter from the Secretary of the Treasury,” Dec. 4, 1833, 20.

²¹¹ “Removal of Public Deposites [sic], Letter from the Secretary of the Treasury,” Dec. 4, 1833, 4.

²¹² “Removal of Public Deposites [sic], Letter from the Secretary of the Treasury,” Dec. 4, 1833, 2.

²¹³ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 544 (1837) (quoting *Proprietors of the Stourbridge Canal v. Wheely*, []).

²¹⁴ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 545-46 (1837)

powers necessary to accomplish the ends of its creation,” and those powers “transferred to the hands of privileged corporations.”²¹⁵

Taney also expressed consternation about the audacity of the Charles River Bridge Corporation in claiming an implied right to monopoly power. Warren Bridge’s argument that the legislature had the power to override corporate charter rights in the public interest was grounded in historical practice. Prior to this case, Warren Bridge’s lawyers pointed out, states routinely chartered new corporations that competed with and even effectively destroyed previously chartered companies or franchises.²¹⁶ As the Massachusetts Senate Report on Roads and Bridges noted, commenting on the case in 1833, “until the charter of the Warren Bridge, the right of the Legislature to make such grants has been deemed too clear to be made the ground of controversy before any judicial tribunal.”²¹⁷ The *American Traveller* derided the Charles River Bridge Corporation’s claim to exclusive rights: “The spectre of *vested rights* which the legal necromancers have raised from the Tombs of the dark ages, provoke more ridicule than they occasion terror.”²¹⁸ In his oral argument, Warren Bridge’s lawyer Samuel Greenleaf offered a list of ferries and turnpikes whose businesses had been impaired or even destroyed by the subsequent chartering of competing bridges, canals, turnpikes, and railroads.²¹⁹ Furthermore, the question of the Legislature’s ability to charter competing corporations had been routinely affirmed. For instance, in 1807, when the West Boston Bridge petitioned against the construction of the Canal Bridge, the Joint Legislative Committee reported that after examining the charters of the extant bridges, and reflecting on “the pretended conflicting rights,” the Committee “can discern nothing in the said grants or the supposed rights of other Corporations, or in the principles of Justice and

²¹⁵ Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420, 548 (1837).

²¹⁶ Charles River Bridge vs. Warren Bridge, Arguments of Counsel, Greenleaf’s Memoranda, Other Papers; Harvard Law Library Special Collections.

²¹⁷ Nathaniel Austin, Chairman, Report of the Committee on Roads and Bridges, Senate Doc. 39 (Boston: Dutton and Wentworth, State Printers, 1833), 15.

²¹⁸ Equal Rights, “Free Bridge,” *American Traveller*, Boston, March 23, 1827.

²¹⁹ Charles River Bridge vs. Warren Bridge, Arguments of Counsel, Greenleaf’s Memoranda, Other Papers; Harvard Law Library Special Collections.

equity, that can be construed into an abridgement of the power of the Legislature to authorize the erection of any other Bridge.”²²⁰

Although the right of the Legislature to authorize competing bridges was widely accepted, the payment of some form of formal or informal compensation by the competing company does not appear to have been unusual. The record in the Charles River Bridge case reveals numerous instances of such transactions. The Charles River Bridge itself received an extension of its charter to seventy years as an indemnity when the West Boston Bridge was built. And when the West Boston Bridge was challenged by the newly-chartered Canal Bridge, the Legislature included a provision that the Canal Bridge proprietors should pay the West Boston Bridge \$333.33 per annum.²²¹ Similarly, when the Chelsea Bridge, which competed with the Malden Bridge, was constructed, “the Proprietors of Chelsea Bridge agreed to let the Proprietors of Malden Bridge become part owners in Chelsea Bridge.”²²² The Malden Bridge proprietors “received this interest in Chelsea Bridge as an indemnity for the injury which the[y] might sustain by it.”²²³ The South Boston Free Bridge, although it reduced the profits of the nearby South Boston Bridge, did not face the same objections by the older bridge’s proprietors, as “it so happened, that many of the Proprietors of the old bridge, were large owners of lands, situate [sic] near the new bridge, and would probably gain more by the rise of their lands, than they would lose by the lessened value of their shares in the old bridge.”²²⁴ Yet in other instances businesses were ruined by newly-chartered corporations and no compensation was made. The Massachusetts Supreme Judicial Court noted several such instances; most of these involved ferries that were put out of business by the construction of new bridges.²²⁵ Notably, in none of these cases was indemnification legally required. As the Massachusetts House Committee pointed out in its 1792 Report, the extension of

²²⁰ Report by Joint Committee on petition by Andrew Craigie, Christopher Gore and others to build Canal Bridge (February 1807), *Charles River Bridge v. Warren Bridge*. Records, 1828, Harvard Law Library Special Collections (emphasis in original).

²²¹ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 389 (1829).

²²² Deposition of Jacob Forster, *Charles River Bridge v. Warren Bridge*. Records, 1828, Harvard Law Library Special Collections

²²³ Deposition of Thomas Williams, *Charles River Bridge v. Warren Bridge*. Records, 1828, Harvard Law Library Special Collections.

²²⁴ Review of the Case of the Free Bridge Between Boston and Charlestown (Boston: Dutton & Wentworth, Printers, 1827), 46.

²²⁵ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 7 Pick. 344, 396-97 (1829). [more examples]

the Charles River Bridge's charter in response to the chartering of the West Boston Bridge was given purely out of acknowledgment of the "magnitude and hazard" of the original enterprise, not because the Charles River Bridge company had any "exclusive grant of the right to build over the waters of that river."²²⁶

Pointing to this long history of legislative action to charter competing corporations, Taney commented that "corporations have, in some instances, been utterly ruined by the introduction of newer and better modes of transportation and travelling," yet "in none of these cases have the corporation supposed that their privileges were invaded, or any contract violated on the part of the state."²²⁷ Yet contrary to the age-old "practice and usage of almost every state in the Union," this case presented "the first instance in which such an implied contract has been contended for."²²⁸ The Court, he held, was not willing to veer from historical practice so drastically.²²⁹

Taney's opinion, along with the arguments made by the lawyers in the case, reveals that the concerns that motivated the free bridge movement played a key role in shaping how the conflict was framed. In contrast to contemporary legal scholarship on the *Charles River Bridge* case, this was not simply a fight between two corporations in which the Court for political and policy reasons denied the protection of traditional common law rights in favor of economic advancement. Rather, the case was a fundamental contestation over the nature of democratic governance – did the people have the right to determine their economic destiny, when to do so threatened the alleged rights of public works corporations? The issue was whether the people were sovereign over the corporations that they, via the legislature, had created for the purpose of achieving internal improvements, or whether such corporations could defy the public by claiming constitutional rights. Furthermore, the case did not pit common law rights against economic development – the rights claimed by the Charles River Bridge Corporation were not age-old common law rights, but novel claims of protection from state action that appealed to the federal Constitution as a shield, which challenged the historical practice of chartering competing corporations when necessary for the public welfare.

²²⁶ Report of the Committee of the House in consideration of the Petition of Francis Dana and Oliver Wendel to charter the West Boston Bridge, Greenleaf Papers, HLS Archives

²²⁷ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 551-52 (1837).

²²⁸ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 552, 551 (1837).

²²⁹ *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 552-53 (1837).

In the short term, the *Charles River Bridge* decision was seen as a victory for the people of Massachusetts and supporters of the free bridge movement. The *Boston Advocate*, a pro-Warren Bridge paper, crowed that the decision was “a glorious triumph of free principles over monopoly; of enlightened liberality over bigoted exclusiveness; of the rights of the many over the usurpations of the few.”²³⁰ It “burst asunder the cords that bound this giant people, tying down their progress on to the highest developement [sic] of social and material resources of greatness.”²³¹ In the years in which the case was pending, the Massachusetts Legislature had continually extended Warren Bridge’s right to take tolls, the result of political contestations and in order to store up funds for a potential damages payment in case the Warren Bridge Corporation lost the suit.²³² On March 2, 1836, however, it allowed the bridge to become free.²³³ At midnight “the toll-sign was removed and a hundred guns fired, which salute was answered from Cambridge, Medford and West Cambridge.”²³⁴ A “numerous procession, consisting of all sorts of vehicles, filled with passengers from Charlestown, Medford, and other towns in the vicinity, passed up and down State street, making the welkin ring with their obstreperous huzzas.”²³⁵ The full benefit of a free bridge on the economic life of the community could finally be realized; as the *Boston Commercial Gazette* extolled, “It cannot but be obvious to everyone, that the opening of Warren Bridge, as a free avenue... will have a most beneficial influence, not only upon the business and prospects of this city – but upon every town in the neighborhood, particularly Charlestown.”²³⁶

The passage into freedom of the Warren Bridge was celebrated as a victory of the people over corporations and aristocracy. The triumph of the free bridge movement, the *Boston Advocate* proclaimed, heralded “a glorious *era* in the history of equal rights,” for

²³⁰ “Warren Bridge Declared Free by the Supreme Court,” *New Bedford Gazette and Courier* (New Bedford, Massachusetts) • 02-20-1837 • Page [2]

²³¹ “Warren Bridge Declared Free by the Supreme Court,” *New Bedford Gazette and Courier* (New Bedford, Massachusetts) • 02-20-1837 • Page [2]

²³² “General Court,” *Essex Gazette* (Haverhill, Massachusetts) • 03-08-1834 • Page [2]; “There was a great hubbub,” *Gloucester Democrat* (Gloucester, Massachusetts) • 03-31-1835 • Page [4]; George A Tufts, Chairman, *Report of the Special Joint Committee on the Subject of the Warren Bridge* (March 18, 1835), 12; “Warren Bridge Not Free,” *American Traveller* (Boston, Massachusetts) • 11-06-1835 • Page Copy of [2].

²³³ “Warren Bridge is Free!” *Boston Courier* (Boston, Massachusetts) • 03-03-1836 • Page [2].

²³⁴ “Warren Bridge,” *American Traveller* (Boston, Massachusetts) • 03-04-1836 • Page [3].

²³⁵ “Freedom of Warren Bridge,” *Norfolk Advertiser* (Dedham, Massachusetts) • 03-05-1836 • Page [2].

²³⁶ “Improvements in the Vicinity,” *Boston Commercial Gazette* (Boston, Massachusetts) • 03-24-1836 • Page [1].

it had “proved that corporations are not immortal or invincible” and struck a “first great blow... at the doctrine of everlasting vested wrongs.”²³⁷ Announced the *Gloucester Democrat*, “The many have triumphed over the few” who had attempted “to hold in bondage a large portion of the community, as tributary slaves.”²³⁸ The paper reported a celebration in Charlestown in which toasts were given to Warren Bridge Corporation President John Skinner and others: “God bless them, and may all the people say, Amen!”²³⁹ D. Bryant, a representative from Bridgewater, applauded the “Warren Bridge Corporation – the only *corporation* that ever died without a struggle.”²⁴⁰ Warren Bridge’s lawyer and free bridge activist William Austin even went so far as to pen a fictional story about the fight between a “poor widow” and the Charles River Bridge Corporation, in which the widow is plagued to death by the Corporation’s attempt to seize her property to construct their bridge; before she dies, the widow prophesies: “The time is coming when there shall be no more passing over that bridge... And it shall be desolate... The voice of prosperity shall echo and re-echo across the river from all the hills of Boston, even to the heights of Charlestown...; but that spot shall become a solitude.”²⁴¹ Indeed, Austin’s vision was accurate; the Charles River Bridge ceased operation in 1836, and in 1841 was purchased by the state for \$25,000.²⁴²

Yet although the Warren Bridge Corporation prevailed, the decision in the long term proved a boon for corporate litigants claiming constitutional rights. *Charles River Bridge v. Warren Bridge* solidified the holding of *Dartmouth College* that corporate charters were contracts protected by the Contract Clause of the Constitution. Because corporations were perceived as aggregates of individuals rather than unique unitary entities, the extension of constitutional rights to their shareholders was not robustly challenged. This proved to be the entering wedge for corporations to claim additional constitutional rights as the century progressed, as future chapters will show.

Importantly, the decision also put forth a new legal vision of the corporation. Free bridge supporters and the Warren Bridge’s lawyers had embraced a conception of

²³⁷ Untitled, *The Gloucester Democrat* (Gloucester, Massachusetts) • 03-04-1836 • Page [3].

²³⁸ “Warren Bridge,” *The Gloucester Democrat* (Gloucester, Massachusetts) • 03-14-1836 • Page [2].

²³⁹ “Warren Bridge,” *The Gloucester Democrat* (Gloucester, Massachusetts) • 03-14-1836 • Page [2].

²⁴⁰ “Warren Bridge,” *The Gloucester Democrat* (Gloucester, Massachusetts) • 03-14-1836 • Page [2].

²⁴¹ *Id.* at 74.

²⁴² “The Ferry, The Charles-River Bridge and The Charlestown Bridge, Historical Statement Prepared for the Boston Transit Commission By Its Chairman” (Boston: Rockwell and Churchill Press, 1899), 9-10.

the corporation as an agent of the public, owned by members of the public, whose purpose was to fulfill some public interest. Charles River Bridge advocates, on the other hand, presented an alternative vision – the corporation as a private entity that owed no particular duty to the public aside from those specifically laid out in the charter, the pecuniary interests of whose shareholders took precedence over concerns about public welfare. By holding that public works corporations did have constitutionally-protected contract rights, but that these rights should be interpreted narrowly where they conflicted with the public interest, the Supreme Court attempted to split the baby between these competing conceptions of the corporation. Yet by allowing corporations to claim constitutional rights at all, the Court endorsed a vision of the corporation not as an agent of the public but as a private, rights-bearing entity whose interests were potentially in conflict with the public welfare. In other words, the rights of the public (via the state) were now pitted against the rights of the corporation, and the Supreme Court was the arbiter of whose rights trumped in any given conflict. As a lawyer for the state in *Providence Bank v. Billings*, a previous case involving state regulation of corporations, had warned, “It is not wholesome doctrine for private corporations to imbibe, that they are independent of the power that creates them; and that they shall be protected in setting it at defiance.”²⁴³ Yet the *Charles River Bridge* decision opened the door to such independence; corporations were not presumed to be public servants, but private actors whose interests must be weighed against those of the public.

²⁴³ *Providence Bank v. Billings*, 29 U.S. 514, 547 (1830).