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# The Development of the Corporation in New Hampshire From 1760 to 1820

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The Development of the Corporation in New Hampshire From 1760 to 1820

By

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A Thesis submitted to the Department of History of the State University of New York

College at Brockport in partial fulfillment of the requirements for the degree of

Master of Arts

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The Development of the Corporation in New Hampshire From 1760 to 1820

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## **Abstract**

This essay argues the American corporations formed in the 1790s were a direct outgrowth of the positive experience the people had with colonial corporations. Due to restrictions placed by the king on the types of corporations permissible in the colonies, the corporations that were created were town-based, that is they were created to perform the responsibilities the province gave to the towns. In the 1760s and 1770s the far-flung, poor towns of New Hampshire could not provide for themselves the type of infrastructure the province demanded: roads, causeways, and bridges. The people, recognizing the value the colonial corporations provided to their towns, expanded their use after independence and the 1780s economic depression. This essay uses New Hampshire as the basis for study. Primary source materials include: petitions, corporate charters (laws), town inventories, and journals of the legislature. The corporations studied are colonial era towns, ferries, and lotteries; Confederation era toll bridges; and Constitutional era canals, social libraries, turnpikes, and manufacturing.

The proliferation in the number and types of corporations in late eighteenth- and early nineteenth-century America has long been of interest to historians of the Early Republic. The interest is easy to understand. Nothing like the 1790s proliferation in corporations had ever happened before. American corporation proliferation occurred in spite of arguments from important contemporary economic theorists like Adam Smith and did not occur in Britain until the 1720 Bubble Act—a law prohibiting corporations without a royal charter and extended to Britain’s colonies in 1741—was repealed in 1825. Historians have taken many approaches in their arguments for the cause of corporate proliferation. The earliest historians took a largely quantitative approach by counting and categorizing corporation charters granted by the states during the Early Republic.<sup>1</sup> Later, historians argued the ratification of the Constitution was a motivating factor for this proliferation. More recently, historians have argued that the chartered New England colonies were perceived to be favorable to corporations due to the colonies’ struggle with the crown to keep their charters. Historians Oscar and Mary Flug Handlin determined that the inception of the state was the appropriate starting point for their study. The Revolution was an occasion when the people reconsidered the nature of their government and formulated “explicitly the assumptions on which they wished state power, including that over the economy, to rest.”<sup>2</sup> But if the historical lens is allowed to focus deeper into the

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<sup>1</sup> Joseph Stancliffe Davis, *Essays in the Earlier History of American Corporation: Eighteenth Century Business Corporations in the United States* (Cambridge: Harvard University Press, 1917); and William C. Kessler, “Incorporation in New England: A Statistical Study, 1800–1875,” *The Journal of Economic History*, Vol. 8, No. 1 (May 1948).

<sup>2</sup> Oscar Handlin and Mary Flug Handlin, *Commonwealth: A Study of the Role of Government in the American Economy, Massachusetts, 1774–1861* (Cambridge, MA: Belknap Press, 1947, 1969), xii.

American past, into its colonial era, a different image forms. This image may not rebut the corporate histories that start with the Revolution. It does, however, put them into a fuller context.<sup>3</sup>

In New Hampshire government-granted corporations were regular features of colonial and Confederation-era life. During these eras, adults regularly interacted with corporations as town residents and officers, when they traveled on ferries and over bridges, if they went to the province's only college, and when they played lotteries to support local infrastructure projects. The king ordered New Hampshire's royal governor to encourage settlement and create towns. The resulting far-flung New Hampshire towns did not possess the population density or wealth to provide for their infrastructure. Some other method was needed to supply it. When the province and state declined to assist with funding, the towns' people accepted that they must provide those things that the government could not. Corporate charters were familiar to colonial Britons who petitioned their government for town-centric private corporations. In New Hampshire's case this included ferries and lotteries during the colonial era, bridges during the Confederation era, and libraries, canals, and turnpikes during the Constitutional era. In this manner the people created public service companies to serve the public good.

As the Handlins noted, the prolific corporate growth after 1790 was partly due to the post-Revolution self-governing state. Additionally, corporations proliferated to

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<sup>3</sup> This essay means simply to argue that only by going deeper into the American history than the Revolution can American corporate history be fully understood. In fact, that history no doubt becomes even more fascinating the deeper into English history one goes.

serve the acute need for expensive post-colonial infrastructure and the loss of British merchandise during the 1807 Embargo. The state's emergence around 1790 from a post-Revolution depression must also be considered in the timing of the start of any corporate type. Thus, a beneficial style of government, public need, and economic forces in New Hampshire triggered the corporation proliferation of the 1790s. But that proliferation did not appear out of thin air. To this list must be added British North Americans-turned-Americans' familiarity with corporate entities and structures.

This essay focuses on New Hampshire from 1760, when the French and Indian War effectively ended, to 1820, by which time new, more commercial (for-profit) private corporations emerged that no were longer chartered specifically to fulfill a pressing public (town) interest.<sup>4</sup> During this period the character and distribution of corporations changed as the state transitioned from the colonial era, through Confederation, to the Constitutional era. It also includes enough of the Constitutional era to observe the transition from town-based, public-interest corporations to the private corporations that one person argued, "cannot be presumed to have any object in view but [for] their [owners'] private or personal gains."<sup>5</sup> This essay is concerned, therefore, with the growth and evolution of corporate charters as a solution to early American problems, from the time when New Hampshirites in voluntary associations bore the responsibilities legally delegated to their towns to

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<sup>4</sup> During this period charters were all manually crafted. The first general incorporation law in New Hampshire did not enter the statutes until 1837 (*New Hampshire Laws*, henceforth *Laws*, Chapter CCCXXII, 6 July 1837).

<sup>5</sup> *Franklin Glass Co. v. White*, 1817 (14 Mass. 285–288, 286–7)

when the towns could afford their infrastructure and the people chartered and funded arguably still public-spirited, but more commercial objectives.

Until recently scholars have largely overlooked the colonial-era non-town corporations. Economic historians of the early national period who have focused on “business” generally focused on banks, manufacturers, turnpike, canal, and insurance companies rather than corporate entities that were less commercial and more “public spirited,” such as towns, ferries, bridges, and lottery corporations. In the early twentieth century, economic scholar Joseph Stancliffe Davis admitted that the term “business corporation” had “no precise technical significance,” only that it excluded “not only public corporations, such as municipalities, and cooperative associations, but also financial corporations...and public service companies.” By his definition the “business corporation” did not include the colonial era corporations as they were exclusively public service companies. While Davis acknowledged that colonial charters were granted, he did not include in his counting the colonial lotteries or ferry charters in New Hampshire.<sup>6</sup> Several decades later, William C. Kessler counted nineteenth-century business charters and classified them in four categories: manufacturing and mining; public utilities (transportation, communication, gas and water); financial institutions (banking, insurance, and real-estate enterprises); and miscellaneous (commercial, hotels, agriculture, building construction).<sup>7</sup> The true mix of colonial charters does not fit into these categories. So, like Davis, he did not contend with colonial and Confederation era corporate charters.

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<sup>6</sup> Davis, *Essays in the Earlier History of American Corporation*, 3, 21, 22.

<sup>7</sup> Kessler, “Incorporation in New England,” 43–62.

Some historians suggest a causal relationship between the US Constitution's ratification and the corporate charter growth of the 1790s. Pauline Maier, for instance, stated that "The constitution-like character of charters may even have contributed to the corporation's popularity in the United States. The corporate form, defined in written charters, seemed at home in a nation whose 'governments, political and municipal, are founded on corporate principles.'" The title of the essay from which her quote is taken, "The Revolutionary Origins of the American Corporation," itself argues for a political source of the American corporation.<sup>8</sup> Writing about turnpikes, Daniel Klein and John Majewski claim that the crown had been loath to grant corporate charters but that, "the ratification of the US Constitution was like the bang of a starting gun. The Constitution resolved...regime uncertainty, by building an interstate framework for financial, legal, and political affairs. The race was afoot—to capture the trade of the Interior...to build the leading entrepôt."<sup>9</sup> From a purely temporal perspective the ratification and start of the petitioning and granting of turnpike charters (among others) suggest a cause and effect relationship. But there is a deeper history of roads in New Hampshire that suggests New Hampshire turnpike charters were requested and granted only after the people and towns of the province and state tried every possible alternative.

Ronald Seavoy, using legal theory, connected pre-Revolution "quasi-corporation" towns to post-Revolution business corporations via English Common

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<sup>8</sup> Pauline Maier, "The Revolutionary Origins of the American Corporation," *The William and Mary Quarterly*, Third Series, Vol. 50, No. 1 (January 1993): 79–80.

<sup>9</sup> Daniel Klein and John Majewski, "America's Toll Road Heritage: The Achievements of Private Initiative in the Nineteenth Century," in *Street Smart: Competition, Entrepreneurship, and the Future of Roads*, ed. Gabriel Roth (New Jersey: Transaction Publishers, 2006): 278.

Law.<sup>10</sup> Jason Kaufman used a sociological approach to argue that the chartered New England colonies, as a result of their fights with the crown for their corporate rights under their charters, became predisposed to revere and honor corporations upon their independence, ushering in the corporate age in America. This may be true, but it does not apply to New Hampshire because it did not possess a royal charter and hence no history of charter struggles with the crown.<sup>11</sup>

The historiography of early corporations is thus varied but speaks little to the colonial era and specifically to colonial New Hampshire. Colonial and Confederation-era corporations provide insight into the 1790s corporation proliferation. The colonial corporations were the forebears of the early national corporations and familiarized the people with corporations in a town-centric (municipal or public-spirited) manner that eased the acceptance of corporate privatization outside the town during the Constitutional era.<sup>12</sup>

### **The Intellectual Origins of the American Corporation**

Corporations were known, and known by that name, to the American colonists. English business corporations created the first permanent settlements in North America. The Virginia Company settled Jamestown, the London Company settled Plymouth, and the Massachusetts Bay Company settled Boston. Each colonial town was incorporated with privileges and responsibilities: to hold annual meetings, elect

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<sup>10</sup> Ronald E. Seavoy, "The Public Service Origins of the American Business Corporation," *The Business History Review*, Vol. 52, No. 1 (Spring 1978): 30–60; 32 and 33.

<sup>11</sup> Jason Kaufman, "Corporate Law and the Sovereignty of States," *American Sociological Review* Vol. 73, No. 3 (June 2008): 402–425.

<sup>12</sup> New Hampshire provides some valuable characteristics for a study like this one. The first general incorporation law wasn't passed until 1837, meaning that all charters for the period under study may be found within the state laws and journals of the house and senate.

officers, sue and be sued, raise taxes, and pay creditors. The colonists read about corporations. Newspapers identified corporations as corporations (see Fig. 1). Guilds were called corporations (“The corporation of merchants in Dublin,” “The corporation of merchants”), as were cities (“The corporation of the City of Philadelphia,” “Corporation of New-York”), colleges (“The corporation of Yale college”), religious orders (“Right Rev. Dr. Thomas Secker...chosen President of the Corporation of the Sons of the Clergy”), lotteries (“Bailiff of the [lottery] corporation”), and even the 1765 Stamp Act identified corporations as legitimate colonial entities (“For all grants of corporation privileges and franchises, six pounds”).<sup>13</sup> In addition to the practical applications of corporations, the colonists also read about the intellectual construction of the corporation.

Samuel Johnson’s 1755 *Dictionary* defines a corporation as “A body politick, authorized by the king’s charter...to grant or receive, in law, any thing within the compass of their charter...and bindeth the successors, as a single man binds his executor or heir.”<sup>14</sup> While contemporary commentators agreed that a corporation was a legal entity created by a royal charter or act of a legislature, not all agreed that the corporate legal entity possessed (or should possess) perpetual succession—“bindeth the successors, as a single man binds his executor or heir”—as Johnson’s definition implied.

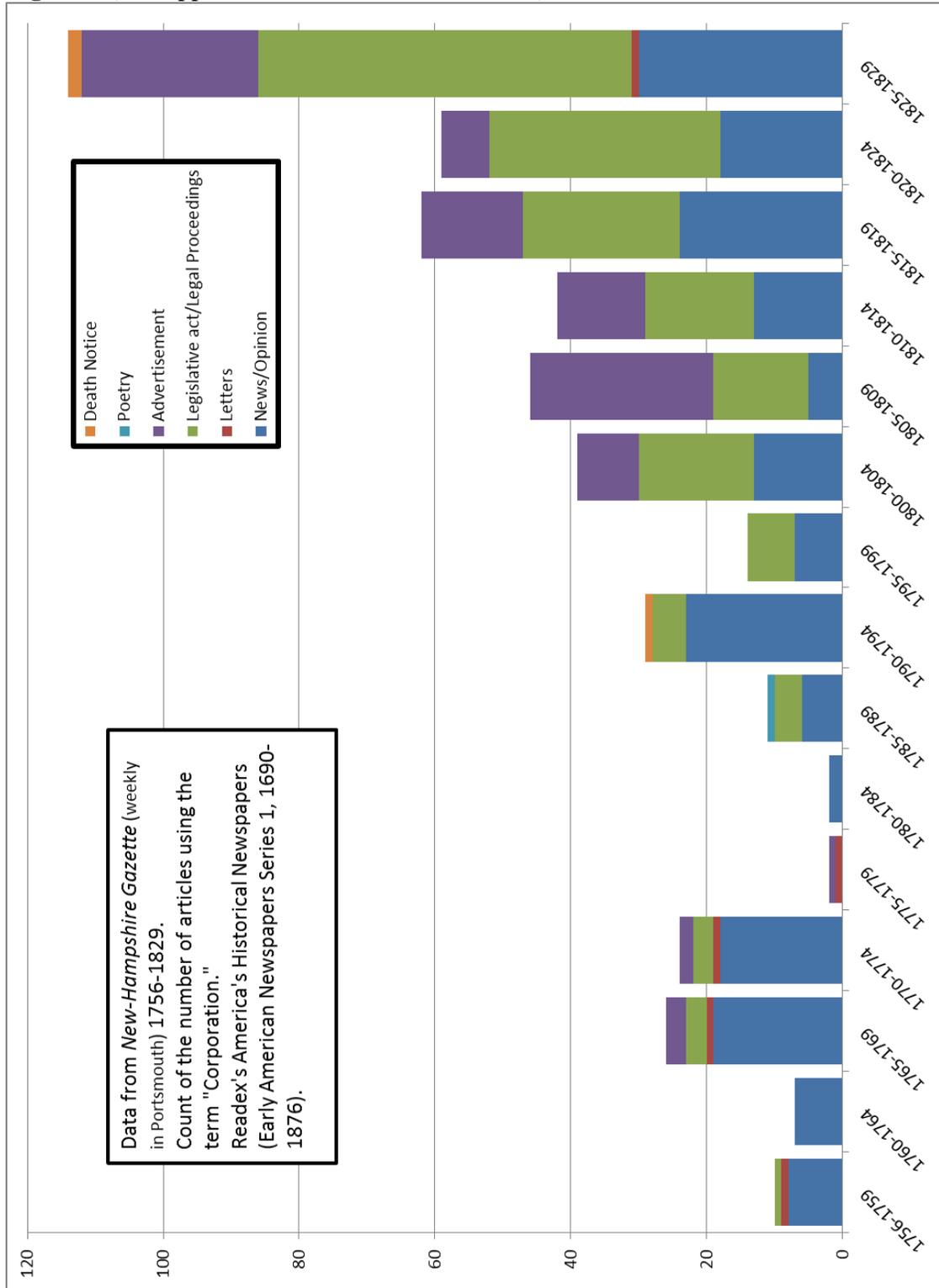
In his mid-1760s *Commentaries on the Laws of England*, written as a legal

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<sup>13</sup> *New Hampshire Gazette*, 27 April 1764, 18 Nov. 1756, 11 March 1757, 23 Feb. 1770, 3 Oct. 1766, 23 June 1758, 11 Jan. 1765, and 12 April 1765.

<sup>14</sup> Samuel Johnson, *A Dictionary of the English Language*, 2 Vols. (London: W. Strahan, 1755), I:480.

**Figure 1** (see Appendix A for source information)



treatise of positive and common law, William Blackstone articulated eight corporate attributes. In addition to being 1) granted by a sovereign (i.e., from the state), he added that the corporation: 2) had perpetual life; 3) acted as a single individual even though it may be made up of a group of people; 4) acted in the public good (i.e., it provided a public benefit); 5) was bound by rules with the force of law on corporate members and clients so long as those rules were not repugnant to the laws of the kingdom or state; 6) could hold property, both real and personal; 7) was known only by the corporate name; and 8) could sue and be sued by individuals and other corporations. Economic theorist Adam Smith commented on Blackstone's list of corporate attributes about a decade later.<sup>15</sup>

In his 1776 *Wealth of Nations* Adam Smith acknowledged Blackstone's list of corporate attributes almost exactly. The one Blackstone attribute Smith expounded upon greatly, and the reason he opposed corporations, was Blackstone's corporate "public benefit" attribute. Smith argued corporations did not perform public benefits. Instead, corporations were monopolies that clamored for special treatment, crowding out individuals and partnerships that might want to provide the same goods and services but could not due to the special treatment afforded corporations. In short, Smith felt that corporations diminished competition.<sup>16</sup>

Smith was not a proponent of corporations, or specifically of perpetual-life corporations. Smith argued that these types of corporation "have in the long-run

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<sup>15</sup> William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1765–1769), Book 1, Chapter 18.

<sup>16</sup> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776 reprint, Edinburgh: Thomas Nelson and Peter Brown, 1827), Book V, Chapter 1, Part III, Article I (pages 303–318)

proved, universally, either burdensome or useless, and have either mismanaged or confined the trade.” However, Smith saw the value of limited-life monopoly corporations to open trade “with some remote and barbarous nation” as recompense “for hazarding a dangerous and expensive experiment, of which the public is afterwards to reap the benefit” by having new goods on the market. Smith felt a limited-duration corporate monopoly should be granted to those businesses that had to invest significant sums into trading posts, fortifications, and armed forces to protect their trade and trade routes. These types of businesses could not quickly recoup their outlays in these areas and needed some time, protected from free-riding competitors, to recover them. Smith viewed a time-limited corporate monopoly akin to the time-limited monopoly granted to the inventor of a new machine via a patent or author of a book via a copyright. Smith only found value in perpetual monopoly corporations in those areas that required significant concentrations of wealth and that could be “reduced to what is called a routine, or to such a uniformity of method as admits of little or no variation.” These areas included banking, insurance, canals, and aqueducts. These four trades were the only ones Smith credited with having the three criteria necessary for the creation of a perpetual corporation: 1) “that the undertaking is of greater and more general utility than the greater part of common trades,” 2) that “it requires a greater capital than can easily be collected into a private copartnery,” and 3) the running of it is “reducible to strict rule and method.” That is not to say that

the four trades must be corporations. Smith cited instances where that was not the case.<sup>17</sup>

Smith's admonitions on the appropriate corporate attributes must be tempered by the time and place he was writing. Smith wrote in 1770s Britain, a place of immense wealth and after the bursting of the East India Company bubble. There were many Britons who could put their great wealth to work in partnerships and there was already a one-hundred-year history of trusts creating and maintaining turnpikes.<sup>18</sup> Smith's comments, therefore, must be viewed as an economic commentary for the Houses of Europe and not necessarily for the poor colonies of the New World to follow for their infrastructure and early businesses. Smith's view of the corporation was informed by his place and time, a Britain that had much of its infrastructure in place and was wealthy relative to places like the American colonies.<sup>19</sup>

Corporations were familiar to colonial British North Americans through the actions of the crown, their newspaper reading, and the writings of British theorists like Samuel Johnson, William Blackstone, and Adam Smith. The various charters—colony, town, and British corporate (e.g., East India Company)—granted by the crown provided colonists with practical and intellectual experience with corporate structures. The newspapers kept the term in front of them. Three great eighteenth-century theorists developed their ideas about corporations at length and their writings were widely available. Any colonial or Confederation era New Hampshire petitioner

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<sup>17</sup> Smith, *Wealth of Nations*, 307, 317, 318.

<sup>18</sup> Turnpike Trusts operated on debt (bonds) rather than shares.

<sup>19</sup> Smith, *Wealth of Nations*, 316, 317

for a corporate charter would have been familiar with the term and with corporations through experience.

### **Corporate Petitions and Grants**

New Hampshire citizens had petitioned their government since the 1650s to bring attention to issues that the people thought required action.<sup>20</sup> Petitioning was not an American invention; it had deep roots in England. Historian Raymond C. Bailey found that “The right of English subjects to petition the government for redress of grievances originated at some indeterminate point deep in the medieval past.”<sup>21</sup>

Petitioning and the people’s right to petition was ancient by the time it landed on New World shores.

In England all social classes of subjects could petition Parliament. Parliament spent considerable time considering these petitions and saw as its primary function the redressing of grievances. The right of Englishmen in America to petition the king was made explicit in the royal charters creating the corporations that established the American colonies. Bailey cites the Virginia Company charter of 1606 as typical. “In it James I pledged, for himself and his successors, that all his subjects in the colony

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<sup>20</sup> The earliest dated petition physically in the New Hampshire Archives and Records Management (henceforth NHARM) collection today is a March 1681 petition from Henry Dow of Hampton. The earliest petition in the Petition Index is from the Strawberry Banke (Portsmouth) residents in 1653 seeking official town standing. As colonial government legislation was driven largely by petitioning, it is safe to conclude that there were petitions prior to 1653. There are two petition indices at NHARM: the Petitions Index which lists all proper names, subjects, and towns in alphabetical order (therefor there are multiple entries per petition); and the Petitions List which lists all petitions by date (only one listing per petition). The Petitions Index (through 1819) is available from the NHARM website (<http://sos.nh.gov/Holdings.aspx>). The Petitions List is not available online. Ask the archives clerk for the then-current file. Dr. Frank Mevers, the retired state archivist, continues adding to the Petition Index and List. At last word he was working on 1821.

<sup>21</sup> Raymond C. Bailey, *Popular Influence upon Public Policy: Petitioning in Eighteenth-Century Virginia* (Westport, CT: Greenwood Press, 1979), 9.

‘shall have and enjoy all liberties, franchises and immunities...to all intents and purposes as if they had been abiding and borne within this our realme of England or anie other of our saide dominions.’” While New Hampshire did not possess a charter, it also benefitted from this right.<sup>22</sup>

Would-be New Hampshire charter grantees petitioned the government for their desired ends. The petition stated their grievance, how the petitioners proposed to rectify the grievance to the public’s benefit, and requested the state grant them and anyone they could persuade to join them the privilege of rectifying the situation with the possibility of recovering any outlay of resources, including a small return. The state reacted in one of two ways depending upon the amount of state power the petitioners were requesting. If the petitioners requested an action that did not require meaningful state power, such as monopoly or eminent domain request, and it met the royal governor’s instructions from the crown, say, enabling a ferry across a river, the legislature typically approved the petitioner’s request without additional input. Granting the right to run a ferry across a river did not preclude granting another ferry across the same river should that be desired, and the power the state gave the ferry proprietor was minimal. During the colonial period the New Hampshire General Assembly may have provided the ferry owner town or province tax relief or the right to sell spirituous drinks free of tax. The right to collect tolls was uniformly granted. The royal governor was under orders to prevent corporate competition with English interests. Whether due to this barrier or the lack of desire on the people’s part to

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<sup>22</sup> Bailey, *Popular Influence upon Public Policy*, 9–13.

compete with England, no petitions for corporations that could be perceived to compete with English commercial interests were even submitted to the legislature prior to the 1807 Embargo.<sup>23</sup>

During the Confederation and Constitutional eras all requests for government-bestowed charters were sent to mostly ad hoc legislative committees for their review and consent. The charters that were not controversial or desirous of state power (eminent domain or monopoly), such as libraries, and were approved by these committees were usually granted by the full legislature without issue. Charters that called for the sharing of meaningful state power or were contentious in any way (e.g., competing groups for a bridge in the same location), however, ran a longer and more consultative gauntlet. When two or more petitioners requested competing grants (most often for a ferry or bridge), the House of Representatives sometimes sent committees into the field to examine the facts on the ground and make a report.<sup>24</sup> Petitions that required hearings included the imposition or increase of a land tax, a ferry, toll bridge, turnpike, “or thing wherein it is usual for a day of hearing.”<sup>25</sup>

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<sup>23</sup> The Second Commission of Governor Benning Wentworth from King George III, June 30, 1761, 32d order (*Wholesome Trade Encouraged and Hurtful Trade and Manufacture Discouraged*). During the colonial era the New Hampshire Petition List does not contain any petitions for businesses that could be perceived to compete with English interests.

<sup>24</sup> See *Journal of the House of Representatives* (Portsmouth, NH: John Melcher, 1795), 57 (Dec. 31, 1794) for a committee report on “the most direct route” for a turnpike, and p. 86 (Jan. 7, 1795) for a committee report on competing bridges. Also see NHARM petition dated 15 June 1795 from the selectmen of Haverhill to the legislature berating the legislative committee “examining the places proposed for Bridges in this place” for not meeting with the townspeople. The local people “knew nothing of the business till the Committee had returned [to the capital].”

<sup>25</sup> *Journal of the House of Representatives* (Portsmouth, NH: John Melcher, 1801), 41. Hearings gave the local communities the opportunity to comment on the petitioners’ request and provided a check on shady characters being granted charters.

Legislative hearings were reserved for petitions requesting a meaningful portion of state power or cost to the townspeople. When petitions had an impact on neighboring towns, states, or existing corporations (e.g., turnpikes, canals, ferries, bridges, land tax, etc.), they attracted greater legislative scrutiny. If these petitions survived initial review, the legislative committee elicited input from anyone whom resulting legislation might affect. In such cases the committee recommended to the Speaker that a hearing be held. When the Speaker requested a hearing, he instructed the petitioners to place advertisements in the newspapers that served the affected area and post handbills at public houses such as meetinghouses and taverns to encourage public comment and awareness of the impending hearing.<sup>26</sup> The committee reviewed the comments and made a recommendation to the full legislature on the value to the state of the petitioners' request. If the full legislature agreed that there was a public benefit the legislature gave the petitioners the right to bring a bill for the legislature's consideration.

In Confederation and Constitutional-era New Hampshire the petitioner and the legislature crafted the charter together. Legislative acceptance of the petitioners' request simply meant the legislature saw a public benefit in the request, it did not

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<sup>26</sup> The wording calling for hearings was "The committee on the petition of...reported in favor of a day of hearing, whereon voted, that the petitioner be heard thereon before the General Court on...of the next session, and that the petitioner cause that the substance of the petition and order of the Court thereon, be posted up in the several towns through which road may run, six weeks prior to said day of hearing, that any person or persons may then appear and show cause (if they have any) why the prayer thereof may not be granted." *Journal of the House of Representatives*, (Portsmouth: Peirce, Hill and Peirce, 1805), 61 (6 Dec. 1804). Much the same wording may be found on the petitions subject to hearings (for example see petition of Elisha Payne, et al, for a turnpike road. June 1800 (6), Folder "Petitions, June 1800—Numbered," Box "Petitions 1797–1800.") Some of the petitions are filed with documents that had obviously been posted to warn the population of the hearing. See petition "June 1800 (7)," Folder "Petitions June 1800 Numbered," Box "Petitions 1797–1800" as an example.

result directly in the granting of a charter. To realize their goal (a legislature-approved bill), the petitioners were authorized to create a draft of the bill they desired. That the petitioners started the law-making process helps explain why laws for the same type of corporation were often different from one another, sometimes significantly so.<sup>27</sup> With permission to bring a bill, the petitioners drafted and submitted their proposed charter to the legislature for its modification and approval. The legislature read, debated, and modified the submitted bill to fit any guidelines it might have and to ensure that the state power being bought to bear on the resulting corporation was proportional to the request and to the benefit of the people of the state. It was during this stage of the bill's development that the legislature considered the duration of the charter and the conditions under which it would be forfeited or returned to the state.<sup>28</sup> With their charters in hand, the new corporation grantees were politically empowered to bring their ideas to life.

### **The Rise of Town-based Corporations in New Hampshire**

English business corporations created the first permanent settlements in North America. These included the Virginia Company in Jamestown, Virginia, the London Company in Plymouth, Massachusetts, and the Massachusetts Bay Company in

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<sup>27</sup> For example see turnpike charters for the New Hampshire Turnpike (*Laws*, Chapter 13, 14 June 1796) and Fourth New Hampshire Turnpike (*Laws*, Chapter 15, 8 Dec. 1800). They have different durations (40 years and “when the capital plus 12 percent per annum is returned to the owners” it reverts to the state, respectively) and decision authorities on rates of toll (court and legislature, respectively).

<sup>28</sup> The New Hampshire Fire and Marine Insurance Company serves as an example. The petition for this company is dated 3 Feb. 1803. On 7 June 1803 the state senate sent a message to the house that they “were willing to concur [with the house bill], provided the time of continuance of said corporation should be limited to twenty years instead of eighty years.” The house apparently did not object as the resulting charter was for twenty years. *Journal of the Senate*, (Concord: George Hough, 1803), 26; *Laws*, Chapter 10, 10 June 1803.

Boston. Chartered by the crown, these private corporations in turn created municipal corporations, the towns.<sup>29</sup> The earliest New Hampshire non-municipal corporations (ferries, lotteries for infrastructure, toll bridges, aqueducts, and libraries) were created to provide necessary or desired services for the town's populations. Even turnpikes (through roads) were a service that, by law, towns were obligated to provide, but that the lightly populated and poor towns struggled to afford. It seems reasonable, then, to consider these early corporations as creatures of the towns. Only later, during the corporate charter proliferation of the 1790s, when canals and manufacturing corporations commenced did regional interests (more than one town) or state benefit become important (and manufacturing and canals were not responsibilities that the province or state delegated to the towns). The poor and lightly populated towns that incorporated after the French and Indian War drove the creation of other corporations, namely ferries and toll bridges. The widely scattered towns also drove the demand for roads and ways to pay for them that would not be satiated until the turnpike proliferation of the early 1800s.

The towns of New Hampshire were the province's first chartered corporations.<sup>30</sup> In addition to the right to own the land and manage their own affairs, the proprietors and selectmen were responsible for maintaining order, creating town

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<sup>29</sup> And got into trouble for it. Massachusetts lost its charter in 1684, at least in part, due to the creation of towns. The crown considered municipal creation its prerogative only.

<sup>30</sup> The Council for New England (itself a chartered company) granted the land that was to become New Hampshire and Maine to Capt. John Mason and Fernando Gorges in the 1620s. The portion that fell into New Hampshire was known as Mason's Grant and roiled property ownership disputes and questions well into the 1800s.

and province infrastructure, creating and supporting churches and schools, assisting the poor, and providing militiamen and taxes to the province, among a host of other responsibilities.<sup>31</sup> Prior to 1760 the small number of New Hampshire towns were clustered close to the seacoast and the seat of province power, the royal governor in Portsmouth. The early towns had little difficulty meeting their responsibilities. They possessed sufficient population and wealth to build and maintain the physical infrastructure, the roads, causeways, and bridges mandated by the provincial government.<sup>32</sup> Short distances to their contiguous and similarly well-populated and wealthy neighboring towns meant that these responsibilities were not onerous.

The towns of New Hampshire were corporate incubators. To receive their town charters, the would-be proprietors petitioned the royal governor for a charter and entered into whatever negotiation was needed to obtain it. With charter in hand the new proprietors created a survey of the granted land (usually thirty-six square miles), submitted the survey to the General Assembly for approval, laid out the various types of lots (home, wood, planting, meadow, and swamp), and roughed out roads and river crossings. This was expensive and complicated work requiring funding and organization. The proprietors provided the money to accomplish this, or raised it from interested parties in return for land in the grant. By creating a political town the proprietors received an education in corporation creation, if they had not

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<sup>31</sup> See *Laws*, Chapter 9, 19 May 1719; Chapter 12, 2 May 1719; Chapter 18, 14 May 1719; Chapter 4, 2 May 1719; Chapter 8, 10 Jan. 1766; and Chapter 9, 10 Jan. 1766, for the many responsibilities the province imposed upon the towns.

<sup>32</sup> The “roads, causeways, and bridges” were town responsibilities as outlined in *Laws*, Chapter 9, 19 May 1719.

been through the town-creation process previously.<sup>33</sup> Once the political town was created their education continued by building and running it.

Town charters detailed the responsibilities, privileges, and obligations of the proprietors (the political entity created by the charter) inhabiting the township (the land granted by the charter). It spelled out the crown taxes and when they came due, the requirements for how much land was to be under cultivation and by when, and that mast trees belonged to the king. In addition to equal shares for each of the named proprietors, one share went for the Incorporated Society for the Propagation of the Gospel in Foreign Parts, one share for a “glebe for the Church of England as by law established,” one share “for the first settled minister of the Gospel,” and one share “for the benefit of a school.”<sup>34</sup> With one document the royal governor incorporated the town and, under the town’s aegis, the church and the school. In addition to conditions in the charter, the General Assembly created laws that applied to all the towns in the province, providing details on what was expected from the proprietors and other inhabitants.<sup>35</sup>

The towns were and remain corporate in nature and deed. The towns hold annual meetings, raise revenue through taxes, disburse funds to suppliers of goods and services, and provide their governing officers via elections. The towns were granted perpetual life and were responsible for essentially everything the people and

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<sup>33</sup> John Frederick Martin, *Profits in the Wilderness: Entrepreneurship and the Founding of New England Towns in the Seventeenth Century* (Chapel Hill and London: University of North Carolina Press, 1991), 9. And some were serial town fathers.

<sup>34</sup> Lancaster Charter, 6 July 1763. The royal governor and others allied with him also received shares in Lancaster and other towns.

<sup>35</sup> For example, see *Laws*, Chapter 12, 2 May 1719; Chapter 18, 14 May 1719; Chapter 4, 2 May 1719; Chapter 8, 10 Jan. 1766; and Chapter 9, 10 Jan. 1766.

town needed. This included the transportation network. While the towns were specifically responsible for bridges, they were not explicitly responsible for ferries.

New Hampshire's first non-municipal charter was for a ferry granted in 1696 when there were only six towns in the province. Ultimately there were six colonial ferry charters, all located near Portsmouth, the epicenter of the province's population until at least 1740. Three of the six colonial ferries, in addition to being "constantly attended" and providing ferriage for a toll, were granted their license for a fixed period of time. John Partridge was granted twenty-one years minimum, Richard Hilton was granted fifty years minimum, and Jonathan Wiggan was granted twenty-nine-and-a-half years privilege to provide ferriage across the various rivers. While each received their charter from the provincial legislature, none of their charters mentioned a monopoly on their section of the river. The six colonial era ferries were all chartered early (1696–1721) and included additional provisions. Five received the right to sell beer and cider free of excise tax. John Knight received a provincial "patent" (rather than a charter) for his ferry. Knight received only the right to collect a toll on his ferry.<sup>36</sup>

Two of the colonial ferries did not receive permission to collect tolls. Rather, they received the privilege of selling liquor free from excise tax and freedom from all province and town taxes. Clearly the provincial authorities determined ferries proved a benefit to the people to exempt them from taxes. They codified this idea in two 1718 acts: "An Act for Regulating the Militia" and an "Act for Regulating Ferries."

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<sup>36</sup> *Laws*, Chapter 580, 23 July 1696 (John Partridge); Chapter 3, 12 June 1700 (Richard Hilton); no Chapter, 13 July 1721 (Jonathan Wiggan); no Chapter, 18 Dec. 1705 (John Knight).

These acts stated that “constant Ferry-men” were exempt from all military training and enumerated penalties for those ferrymen who failed to perform their function.<sup>37</sup>

There were numerous other colonial ferries.<sup>38</sup> Some of them requested charters in the post-colonial era. The six colonial ferry charters nonetheless demonstrate that the provincial government granted special privileges (duration of privilege, exemption from taxes, and right to collect tolls) to those ferrymen requesting them in return for the service they provided their towns and neighbors. The townspeople serviced by these ferries would certainly have been aware of the special privileges the ferry proprietors possessed. Some of the townspeople probably testified either for or against the charters or the need for a ferry at those locations.

Where the pre-1760 growth along New Hampshire’s short seacoast and Merrimack River placed new townships next to established townships, the explosive growth that took place after 1760 challenged the province and towns alike. With the surrender of Montreal in the fall of 1760 the French and Indian troubles on the New Hampshire frontier reduced significantly. Colonists were eager to expand towns into the fertile Connecticut River valley and the crown was keen to grant them, indeed it was incumbent upon the royal governor to do so. Between 1760 and the mid-1770s, twenty thousand people from Connecticut and Massachusetts migrated up the Connecticut River into New Hampshire and what became Vermont. Royal Governor Benning Wentworth, under instructions from the crown to charter towns in the

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<sup>37</sup> *Laws*, no Chapter, 3 July 1703 (Phillip Lambert); no Chapter, 19 May 1704 (John Bickford); Chapter 21, 14 May 1718; Chapter 26, 14 May 1718.

<sup>38</sup> They will come up later, during the post-colonial era, when they petition for (and receive) charters.

colony, happily granted towns as they aligned with his instructions from the king.<sup>39</sup> From 1760 through 1765 fifty-four new towns received charters in New Hampshire, nearly doubling the total number of towns in the province and spreading its population the length of the Connecticut River nearly to Canada. The settlers' interest in the Connecticut River intervalles—fertile river bottomland—was simple. Outside of such intervalles, New Hampshire is at best hilly and at worst mountainous. The state's current nickname, the Granite State, is well deserved, as granite is the predominant geological feature and number one crop. The farmers of the late colonial era were well advised to avoid this rocky land and to gravitate to the rich alluvial soil of the river intervalles.

While the granting of towns up the Connecticut River provided the new proprietors with fertile land and the governor with new towns, the settling pattern created significant gaps between them and the established population center of southeastern New Hampshire, making travel and communication difficult.<sup>40</sup> This pattern of settlement—town settlement jumping from major river system to major river system—fractured the hinterland for the province's leading town and only seaport, Portsmouth. Jeremy Belknap, writing in the early 1790s, noted that this town settling pattern broke the province into three distinct sections, the trade of the southeast drained into Portsmouth, the trade of the Merrimack River valley drained

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<sup>39</sup> In 1759 there were 59 granted towns in NH. By 1765 this number nearly doubled to 113, and by 1775, just 15 years later, there were 146. In 1790 there were 174 towns. Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Vintage Books, 1991), 127. The Second Commission of Governor Benning Wentworth from King George III, June 30, 1761, 51st order (*Town Settlements to be Encouraged*).

<sup>40</sup> W. R. Waterman, "The Fourth New Hampshire Turnpike," *Historical New Hampshire* Vol. XV (Nov. 1960): 2.

down that river into Boston, and the trade of the Connecticut River valley drained down that river into central Massachusetts and Connecticut.<sup>41</sup> Portsmouth merchants wanted the trade of the New Hampshire hinterland to flow only into Portsmouth and the new towns needed assistance bridging the gaps between them and the coast. Provincial laws for the provision of roads to close those gaps were not helpful.

The New Hampshire colonial government delegated the entire responsibility for travel infrastructure to the towns. The towns were responsible for building and maintaining their own highways, causeways, and bridges.<sup>42</sup> There were two options for the towns to provide the labor for roads and bridges, paid for via taxes, or taxpayers could work off their taxes by providing their manual labor on the roads.<sup>43</sup> While this may have provided relief for town (or what the laws called “private”) roads, it did little to provide for through roads in lightly settled towns or ungranted locations, roads needed to stitch the far-flung province together. Rather than confront this issue directly the provincial government took a different tack to assist the struggling towns, it authorized lotteries.

When towns could not gather the money necessary to provide a necessary piece of town-provided infrastructure, petitioning for a lottery was an option. Lotteries offered the opportunity to spread the cost of the item beyond the town’s borders. The 1767 act for a pier and harbor improvements in Gasport (on the Isle of Shoals) stated that a lottery was chosen to enable non-inhabitants as well as “well-

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<sup>41</sup> Jeremy Belknap, *The History of New Hampshire*, 3 Vols. (Boston: Belknap and Young, 1792), III:206-7.

<sup>42</sup> *Laws*, Chapter 9, 19 May 1719.

<sup>43</sup> *Laws*, Chapter 2, 21 Feb. 1754.

wishers” to contribute, two groups that did not fall under the town’s taxing authority.<sup>44</sup> Lotteries were a popular way to raise funds because taxpayers viewed them as voluntary forms of taxation. By enticing “willing adventurers” with a cash or merchandise prize, lotteries extracted revenue from citizens “for carrying on the necessary functions of government.”<sup>45</sup> Under those circumstances, the New Hampshire legislature (and during the period studied the legislature by law authorized all lotteries) enabled an enjoyable experience for the citizens while accumulating revenue for the public good.<sup>46</sup>

Lotteries were private corporations chartered for the public good. Twelve of the sixteen authorized lotteries supported town-provided infrastructure (primarily supporting the building or maintenance of bridges, but also a pier, and the clearing of the Merrimack River for the conveyance of timber). Lotteries, however, were no panacea. In 1787, after three years trying, the Dartmouth College lottery could not sell sufficient tickets to plan its drawing. The directors blamed this failure on the “great scarcity of cash” in the economy. The legislative response was to authorize an additional two years to the original lottery’s duration.<sup>47</sup> By passing lottery acts, the provincial and state governments demonstrated that they were not deaf to the towns’ pleas for assistance when it came to infrastructure projects. Allowing town selectmen,

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<sup>44</sup> *Laws*, Chapter 12, 24 Sept. 1767.

<sup>45</sup> Neal Elizabeth Millikan, “‘Willing to be in Fortune’s Way’: Lotteries in the Eighteenth Century British North American Empire,” (Ph.D. diss., University of South Carolina, 2008), 16, 58; and Ernest E. Blanche, “Lotteries Yesterday, Today, and Tomorrow,” *Annals of the American Academy of Political and Social Science*, Vol. 269 (May 1950): 72.

<sup>46</sup> The provincial, and later state, government suppressed non-authorized lotteries via various acts starting in 1754. See *Laws*, Chapter 14, 2 May 1754; and Chapter 23, 12 June 1807, for examples.

<sup>47</sup> *Laws*, Chapter 9, 28 Sept. 1787.

proprietors, or trustees to rattle the tin cup with the local or regional populace was a no-cost, no-lose method to support local infrastructure and education. The lotteries preyed upon the greed of the citizenry to accomplish a public good.<sup>48</sup>

All the authorized lotteries were time and amount limited. The durations ranged from one to five years and the maximum amounts to be realized by the benefiting organization ranged from £150 to \$15,000 (in 2013 money these amounts are £218k [or \$327k] and \$4.2M, respectively).<sup>49</sup> Interestingly, none of the lotteries' proceeds were destined for roads. New Hampshire's poor and lightly populated towns petitioned endlessly for provincial and state assistance for roads, but never petitioned for a lottery to accomplish that task. It would not be until after the Revolution that the state made positive strides towards assisting the towns with roads. In the meantime the provincial government continued to muddle.

The colonial towns and provincial government both desired good through roads. Starting in 1763 the provincial government created laws for so-called "Province Roads." These roads were provincial in nature—they crossed many town lines—and as such required the province define their scope and locations and the towns to construct them.<sup>50</sup> The first of the four proposed province roads was the Durham to Cohass Highway in 1763. This road was to span from the seacoast to the

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<sup>48</sup> It has been suggested, "it was not until the multiplication of stocks and bonds provided and outlet for speculative desire that it was possible to eliminate lotteries." Whether this is based on the correlation of the rise of stocks and bonds, or is a true cause and effect relationship is not known. "Lotteries," *Bulletin of the Business Historical Society*, Vol. 7, No. 4 (June 1933): 4.

<sup>49</sup> Samuel H. Williamson, "Seven Ways to Compute the Relative Value of a US Dollar Amount, 1774 to present," and "Six Ways to Compute the Relative Value of a U.K. Dollar Amount, 1270 to present," *MeasuringWorth*, 2015. <http://www.measuringworth.com/ukcompare/>

<sup>50</sup> There were four of these roads proposed between 1763 and 1771. *Laws*, Chapter 12, 17 Dec. 1763; Chapter 3, 11 March 1769; Chapter 4, 16 March 1769; and Chapter 21, 13 April 1771.

current town of Haverhill on the Connecticut River (about 100 miles from Durham). In defining this road the legislature acknowledged the value of internal trade to the colony, but betrayed its lack of geographical knowledge. The law anticipated the crops to be obtained from the fertile river valley with, “Whereas a Settlement is now carried on at the place called Cohass [Haverhill]...where great Quantities of Corn, Grain & other sorts of Provision will soon be raised.” It then recognized that these great quantities of crops were not destined for the New Hampshire coast when it stated, “which will be Transported down [the] Connecticut River for Sale, unless a good High Way can be made to transport the same into this Province.” With this act, the legislature directed the proprietors or selectmen of each town between Durham and Haverhill to convene, determine how to lay out the road, and then build that portion of the road through their towns at their expense. What they did not understand was that there was no direct way to travel from Durham to Haverhill via contiguous New Hampshire towns in 1763.<sup>51</sup> The government realized, however, that to keep trade within the widely dispersed province, actions were required to accommodate overland travel.

The towns continued to petition for assistance and the state was consistent in its response that the towns were responsible for roads. If a road was to traverse ungranted land the state determined the adjoining towns were responsible. In 1772 and 1777 the legislature authorized the town of Lancaster to pay for the maintenance of a road through ungranted lands, promising that future grantees of the lands would

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<sup>51</sup> *Laws*, Chapter 12, 17 Dec. 1763.

pay their “fair share” when they took possession. Given the roughness of the terrain the road passed through, the Lancastrians and their neighbors could be forgiven if they thought the land would remain ungranted into perpetuity. The 1777 act also threatened inhabitants who did not repair the road or pay to repair it with forced sales of their land.<sup>52</sup> During the war for independence, the state authorized Joseph Whipple to sell at auction 1000 acres of Loyalist William Stark’s former real estate holdings adjoining Conway. Whipple was instructed to use the proceeds to make needed repairs to the road through ungranted lands.<sup>53</sup> The provincial government failed miserably to provide needed roads in the growing colony. The subjects of the crown were hard working, willing and able to pull their weight, and patient. But the responsibility of constructing a road system to span significant gaps was too much for the small population. With the war for independence over and a new government in place, the citizens of New Hampshire looked forward to better days and to better roads.

Operating under the new State Constitution (1784), in 1786 the state repealed all laws pertaining to highways and passed a new law authorizing the towns to raise taxes for the repair and construction of the highways and bridges within their borders. To take advantage of this law the towns were required to petition the state with the amount of the tax they needed to support that infrastructure.<sup>54</sup> The towns started petitioning for increased taxes that same year. Between 1786 and 1800 the state’s 194

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<sup>52</sup> *Laws*, Chapter 6, 12 June 1772; Chapter 7, 12 April 1777.

<sup>53</sup> *Laws*, Chapter 5, 17 June 1780. William Stark was the brother of New Hampshire Revolutionary hero John Stark.

<sup>54</sup> *Laws*, Chapter 14, 27 Feb. 1786.

towns sent ninety-two petitions for increased road and bridge taxes to the legislature. They requested taxes on all land, including that owned by non-residents, to make and repair roads to enable commerce.<sup>55</sup> This was a major change and improvement for the inhabitants of the towns. Whether the change was due to a more representative government, a realization that the towns' inhabitants as the sole source of resources for the roads were insufficient, or something else, it was a turn for the better. This law placed the burden upon all the landowners in the town rather than just the inhabitants. The towns could now compel absentee landowners or land speculators to pay for the creation and maintenance of the town's infrastructure. Failure to pay could result in a sale of the delinquent taxpayer's land.<sup>56</sup> This change broadened the tax base and reduced the burden on the inhabitants of the lightly populated towns. This was a good thing too. Roads were a large expense for the towns. It has been argued that during the Confederation period the interior frontier towns "appropriated more money for road construction than for all other municipal budget items combined."<sup>57</sup> While the tax burden was spread over a larger base, that base was still relatively small. The ungranted areas were still without people or tax money, and nothing more "hinder[ed] emigration of inhabitants to the [interior] part of the state, than the badness of [the] roads," in the 1780s and 1790s.<sup>58</sup> Crossing rivers could be a challenge too.

Twenty years after the explosive growth of towns started in the 1760s,

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<sup>55</sup> Petitions List 1786–1800; Lancaster, Isaac W. Hammond, *Town Papers: Documents Relating to the Towns in New Hampshire*, Vol. XII (Concord: Parson B. Cogswell, 1883), 354; Stratford petition, 9 Dec. 1794, Petition Collection, NHARM.

<sup>56</sup> Selling the land required the permission of the state, making it difficult to actually enforce.

<sup>57</sup> John H. Flannagan, Jr., "Trying Times: Economic Depression in New Hampshire, 1781–1789" (Ph.D. diss., Georgetown University, 1972), 4.

<sup>58</sup> Hammond, *Town Papers*, 354. The lament was from Lancaster.

chartered ferries followed suit. With the preferred location for new towns on or near rivers, settlers needed ways to cross those rivers. While the town was nominally responsible for bridges, poor, lightly settled towns could not build many bridges due to their cost. With their lower capital costs, ferries could be placed quickly in response to local demand. By 1780 both new and existing ferries requested charters. These charters usually granted a monopoly to a portion of the river and the ferry proprietor could pass this monopoly to others by the “grantee, his heirs and assigns” clause of the charter.

The ferry charters’ durations were extremely variable. Only eight ferry charters were explicitly stated to last “forever.” These were granted between 1783 and 1796.<sup>59</sup> In 1792 Eliezer Rosebrook received the charter for a ferry across the Connecticut River in Lancaster for forty years.<sup>60</sup> The next two ferries chartered were “forever,” followed by a charter for fifty years, followed by the last charter that explicitly stated “forever.” Recalling that the petitioner and legislature wrote the charter together, the legislature was about to abandon the idea of “forever,” or even fixed terms, in ferry charters forever. The next charter (1798) was granted for “the term of forty years, unless the legislature shall judge proper to grant liberty for building a bridge within said limits.” From this ferry charter forward the legislature reserved for itself the right to grant a bridge at the same location.<sup>61</sup> The timing of the change is well correlated with the rise of chartered bridges in the state (see Fig. 2).

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<sup>59</sup> *Laws*, Chapter 2, 20 Feb. 1783; Chapter 7, 14 April 1784; Chapter 32, 29 Jan. 1789; Chapter 35, 30 Jan. 1789; Chapter 14, 30 June 1792; Chapter 24, 19 Dec. 1792; Chapter 12, 19 June 1793; Chapter 4, 6 Dec. 1796.

<sup>60</sup> *Laws*, Chapter 5, 7 Dec. 1792.

<sup>61</sup> *Laws*, Chapter 21, 18 Dec. 1798.

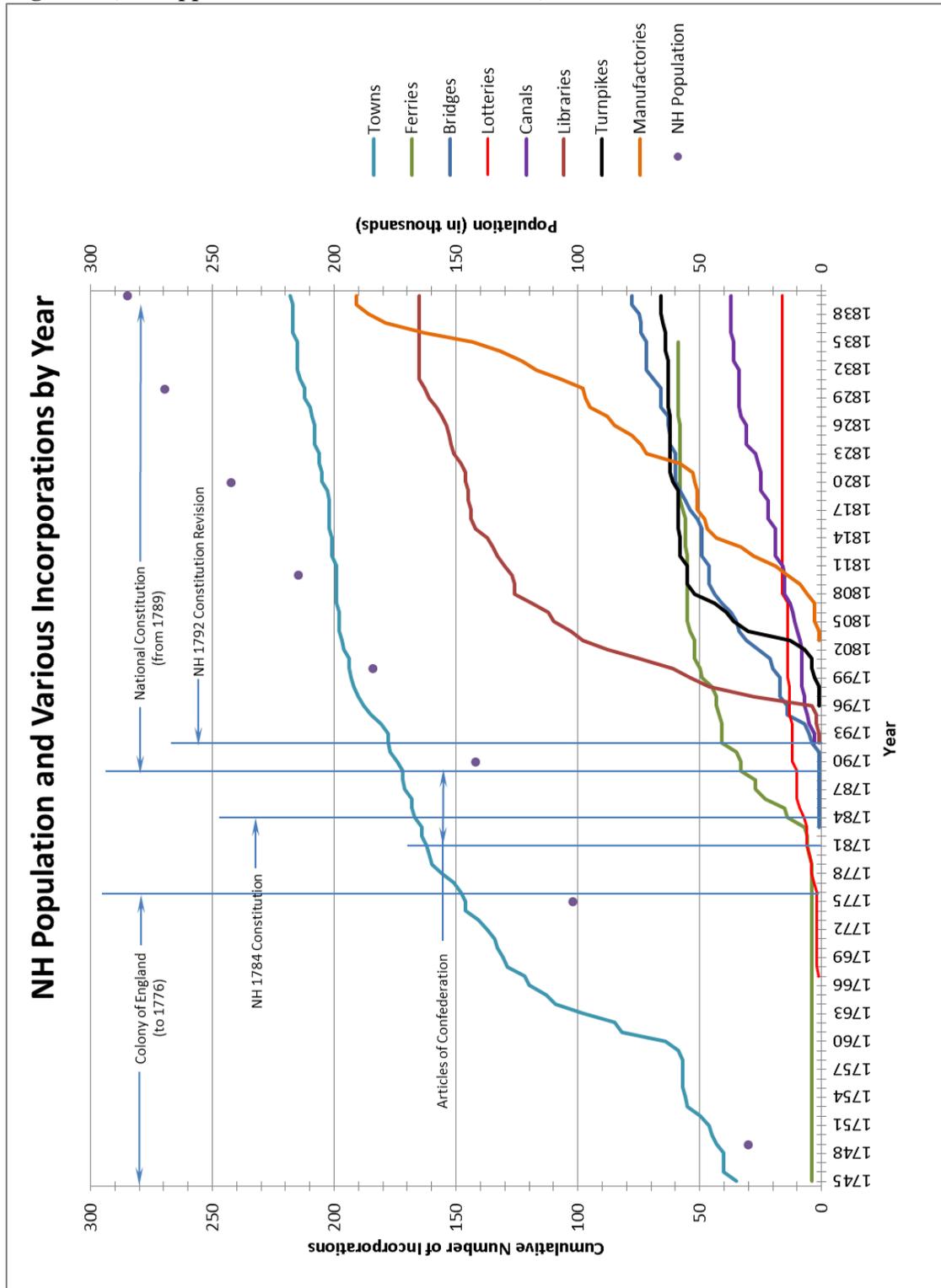
Some number of colonial era ferries were granted charters during the Confederation or Constitutional eras. Between 1783 and 1813 thirteen ferries in existence for more than a few years before they requested charters were chartered. At least four of these ferries were extant during the colonial era.<sup>62</sup> It is difficult to determine what prompted the increase in ferry charters around 1780, or why the extant non-chartered ferries joined the legions of chartered ferries. But thirteen proprietors, some with ferries fifty years in business, felt there was a benefit to incorporate themselves after some number of years without a charter. Perhaps they were just joining the rush to charter ferries sweeping the state. Of the thirteen extant ferries obtaining their charters after they were a going concern, eight were chartered in the 1780s, three in the 1790s, and two in the 1800s. Part of the reason for an increase in chartered ferries in the 1780s might have been the ferrymen's desire to stake out their portions of the rivers due to the post-Revolution economic depression—they wanted to protect their income from competitors.

With the end of the Revolutionary War's military phase in 1781, New Hampshire's wartime economic prosperity faded. For the next decade, New Hampshire found itself "trapped in the throes of total depression." External trade for the state's products dried up. The state's major industries—fishing, lumbering, commerce, agriculture, and shipbuilding—all suffered major reverses. By the mid-1780s, just 35 percent of the towns were able to make even partial payments of their

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<sup>62</sup> They were in existence "since 1764," "more than twenty years," "for fifty years last past," and "more than twenty-six years last past." *Laws*, Chapter 5, 23 June 1787; Chapter 10, 24 Jan. 1791; Chapter 69, 14 Feb. 1791; and Chapter 30, 22 June 1813. There may have been more than four. The wording in some charters is ambiguous.

Figure 2 (see Appendix A for source information)



state taxes. Rockingham County, the state's commercial center and home of the town of Portsmouth, in 1788 was in arrears to the state by 63 percent of what was owed. Grafton County, home of Lancaster, was delinquent by 82 percent. Every county was more than 50 percent in arrears. By 1791 John H. Flannagan argued, "The depression had passed its peak, though it had not yet run its course." He cites the 1790–91 ship clearances in Portsmouth as one indication that a large part of the New Hampshire economy was not back to pre-depression levels. In those two years the port entries and clearances were still down from their pre-war annual average by 25 and 27 percent respectively. The state corn exports by 1791 were only 28 percent of their pre-war average.<sup>63</sup> Both the seacoast and interior were still in technical depression in 1791 and money was scarce. But things were getting better.

The 1790s were a time of economic and political healing in New Hampshire. The preeminent New Hampshire historian Jere Daniell argued "[Since 1790] the citizens of New Hampshire had enjoyed a political tranquility unknown since the days of Benning Wentworth [in the early 1760s]." He identified an economic recovery as starting during the late 1780s federal constitutional ratification process and saw both the ratification and economic improvements as causal for the state's increasing political tranquility. Daniell saw the European wars of this time stimulating the demand for New Hampshire fish, lumber, and agricultural products. Such in demand were New Hampshire products that by 1792 farmers' produce "was reported to fetch 'the highest prices and quickest money ever known.'" Credit started flowing from

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<sup>63</sup> Flannagan, "Trying Times," 6, 16, 257–59, 42, 45, & 58.

merchants and others “on reasonable terms,” and continued immigration produced a new land boom.<sup>64</sup> In 1792 people also started petitioning the legislature for new types of corporate charters.

With political and economic stability, or what passed for it after the depression years, the people started petitioning for social libraries, canals, and turnpikes (see Fig. 2).<sup>65</sup> New Hampshites put directly onto their shoulders the responsibilities that were delegated to the towns—providing infrastructure for the towns and state. New Hampshire did not lead the chartering of these new types of corporations. Pennsylvania led the way with the canal charter in 1791 and turnpike in 1792. New Hampshire did not charter a canal until 1792 and its first turnpike until 1796. Connecticut led the New England states chartering the first social library in the 1730s, while New Hampshire did not follow suit in any appreciable numbers until 1792.<sup>66</sup> The people in ever increasing numbers also chartered toll bridges, long a town responsibility.

The first chartered toll bridge appeared in New Hampshire during the Confederation era and began their constant increase in 1792. Enoch Hale’s toll bridge over the Connecticut River in Rindge was chartered the last day of 1783. Between

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<sup>64</sup> Jere R. Daniell, *Experiment in Republicanism: New Hampshire Politics and the American Revolution, 1741–1794* (Cambridge: Harvard University Press, 1970), 206, 207, & 219.

<sup>65</sup> And banks. The first bank in New Hampshire was chartered in 1792. But chartered banks were few. There were only 8 chartered through 1810 and only 24 chartered through 1829. They were also politically oriented. Everett S. Stackpole claimed that the first bank was under the control of the Federalists, who “confined its loans to friends of the party.” The second chartered bank in New Hampshire was also in Portsmouth and chartered by Republicans who also loaned strictly to their political friends. Everett S. Stackpole, *History of New Hampshire* 5 Vols. (New York: The American Historical Society, 1916), II:383.

<sup>66</sup> Jesse H. Spera, *Foundations of the Public Library: The Origins of the Public Library Movement in New England, 1629–1855* (Chicago: University of Chicago Press, 1949), 51–55, claims a library was chartered in Dover in 1733. This library cannot be found in the Petition Index or laws.

that charter and the second state charter, to Robert Macgregore of Derryfield (Manchester) for a bridge across the Merrimack River, nearly a decade passed. Macgregore's bridge was the first in a decades-long increase in chartered bridges that continued at a steady rate through 1840. The demand for bridges during this period is highly correlated with both population growth and town creation.<sup>67</sup>

As the state grew, both in granted area and population, the number of bridges making economic sense to the people risking their capital increased. Both the populous seacoast region with its large number of estuaries and the interior with its major rivers such as the Connecticut, Saco, Androscoggin, Merrimack, and Pemigewasset provided many opportunities for beneficial bridges. The toll bridge was the first fixed-infrastructure charter granted by the state and had the lowest average cost to construct of the infrastructure corporations granted in New Hampshire: \$6,300. The low cost meant it had the lowest barrier to entry—the bridge proprietors did not need to invest as much money to build their bridge as did other forms of infrastructure projects. The most costly infrastructure corporation at \$34,800 was also the second type incorporated in 1792, the canal.<sup>68</sup>

Canals were not a town-based provision. The towns were not given any responsibility for water-borne transportation. That canals were chartered four years

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<sup>67</sup> *Laws*, Chapter 3, 31 Dec. 1783; Chapter 7, 16 June 1792; and Fig. 2.

<sup>68</sup> The Report of Ichabod Bartlett on infrastructure, contained in the *Journal of the New Hampshire House of Representatives* (Concord: Hill and Moore, 1819), 53–58, states the average cost of a bridge project in New Hampshire was \$6,300, the average cost of a canal or lock project was \$34,800, and the average cost of a turnpike project was \$31,000. Therefore, with some exceptions, canal and turnpike projects cost roughly the same and about 500 percent more than the average bridge. A notable exception was the Piscataqua Bridge, a nearly half-mile long bridge chartered in 1793 near Portsmouth with a cost of \$65,000.

before the first turnpike suggests more about the people's attitude about both rather than the relative value of either. The roads, bad as they were, already existed and were the towns' responsibilities. Canals, and the bulk shipping efficiencies of lumber they promised, did not exist and were not the towns' responsibilities.<sup>69</sup> While the cost of the "average" canal and the "average" turnpike were nearly the same (\$34,800 and \$31,000 respectively, up to 1819), the extant town-provided roads and the utility of the yet-to-be built canals, made the creation of the canals primary. What was valued, but not yet available, drew the capital, and roads were available. At the same time canals were chartered, so were libraries. Where canals were not a town-based good, social libraries were.

Social libraries were cultural in nature. The social library, a privately owned precursor to town-based public libraries, was "for the diffusion of useful knowledge, and for the cultivation and improvement of the mind in polite literature" and was meant to "promote useful knowledge among the present and rising generation."<sup>70</sup> Jesse H. Shera states that the social library in New England dates to the 1730s and that New Hampshire was between five and ten years behind Massachusetts and Connecticut in numbers of social libraries. Shera claims New Hampshire's first social library came into existence in the 1730s, and that it was the only one in the colony and state prior to 1780. He found one additional charter in the period 1786-90 and then eighteen, fifty-four, and fifty-one additional charters in the subsequent five-year

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<sup>69</sup> That the proprietors thought that lumber would be the primary good carried on the canals, see *Laws*, Chapter 11, 20 June 1792; and Chapter 24, 18 Feb. 1794.

<sup>70</sup> Dover Social Library petition, 26 Nov. 1792; Bedford Social Library petition, June 1797; Petition files, NHARM.

intervals. Every New Hampshire social library was named after the town in which it resided. The rise of social libraries in New Hampshire was the town's people in voluntary associations taking upon themselves what at a later date the people as towns would take upon themselves.<sup>71</sup> With the possible exception of the largest towns, the town's people in voluntary association could not improve the roads. Another way to pay for them was needed.

Roads still needed more than the state could provide in assistance. While the land sales of the 1770s and tax increases of the 1780s and 1790s were helpful to the towns, they provided nowhere near enough funds to satisfy the need for good through roads. It took turnpikes to fill the thirty-year void. The first New England turnpike was granted by Connecticut in 1792. The first New Hampshire turnpike was chartered in 1796 to run from the state's only seaport, Portsmouth, to Concord on the Merrimack River. Perhaps chartered in reaction to Massachusetts' Middlesex Canal Corporation (chartered 1793) threatening Portsmouth's claim on the goods of the Merrimack Valley, the turnpike's charter lay quiet for four years. By the time the first turnpike roused itself in 1800 there were three additional turnpikes chartered in the state, and by 1809 there were fifty-five turnpike charters. As seen in Figure 2, there was a fairly steep slope on turnpike charters between 1801 and 1808, suggesting a pent-up demand during that period.

The process used to charter turnpikes may be seen as a form of state

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<sup>71</sup> Shera, *Foundations of the Public Library*, 55–69. The *Index to the Laws of New Hampshire* contains approximately four pages of library charters, every one with a town name associated with it (both social and other types of libraries, usually public). Shera, *Foundations*, 161-170, found that what he considers the first public library in Peterborough, NH, in 1833. Interestingly, Shera points to its creation as an outgrowth of the Dartmouth College case (1819).

skepticism. The chartering process for the Tenth New Hampshire Turnpike consumed nearly two years and afforded all interested parties their opportunity to debate the proposed turnpike. One-hundred-eighty-five citizens from northern New Hampshire, northeastern Vermont, and southern Canada signed nearly identical petitions requesting a turnpike “through the Notch of the White hills” in the spring of 1802.<sup>72</sup> The legislature was presented with the petitions at the start of its June 1802 session. Satisfied that the petitions contained merit, the legislature authorized the petitioners to bring a bill for the turnpike at their next session in June 1803. Prior to that session, the petitioners were to print the petition “in the newspaper at Hanover [*Dartmouth Gazette*] for three consecutive weeks, the last to be ten weeks prior to the start of the next legislative session” to alert the state’s citizens of their intention and to invite them to take part in the legislature’s deliberation.<sup>73</sup> The legislature took up the matter again during their June 1803 session, culminating with the passing of the bill granting a charter to the Proprietors of the Tenth New Hampshire Turnpike on December 28, 1803.<sup>74</sup> The twenty-month-long process allowed all sides to be heard and tested the dedication and fortitude of the petitioners to their cause.

New Hampshire agreed with Adam Smith on the time-limited duration of a corporation. In New Hampshire not one turnpike was chartered for more than forty years. Several turnpike charters spoke directly to the causes (other than time) that

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<sup>72</sup> Six petitions from “Bartlett and elsewhere,” Jefferson, “Guildhall [Vermont] and other towns,” Lancaster, Cockburne, “Stewartson,” Canaan, and Canada for Turnpike Through White Mountain Notch, Petitions, 1800–1803 Petition Box, June 1802 Undated Petitions folder, NHARM.

<sup>73</sup> *Journal of the New Hampshire House of Representatives*, June 1802 Session, June 8, 1802 (Concord: George Hough, 1802), 38.

<sup>74</sup> *Laws*, Chapter 40, 28 Dec. 1803.

could preempt the charters. The charter of the Fourth New Hampshire Turnpike was valid for forty years, the towns it passed through were “associates” in the road, and when the invested capital plus twelve percent was returned to the proprietors the turnpike was to revert to the state. The Fifth New Hampshire Turnpike was also chartered for forty years and after that term the state could pay the proprietors to gain title to the turnpike.<sup>75</sup> Charters for other corporations were equally blunt in their time limitations. The first bank in the state was chartered for “fifty years only,” insurance companies were chartered for typically eighty years, and colonial ferries were chartered for fifty years or less.<sup>76</sup>

With the exception of the school and church, town-based corporations were a response to the inadequacy of town resources available to bring to bear on the towns’ province and state-given responsibilities. As settled towns filled the state’s boundaries and grew wealthier and more populous, the need for town-based corporations decreased. Town-based corporations did not disappear quickly. They still served a purpose, but with demands for other types of corporations on the rise due to the 1807 Embargo, the town-based corporation growth slowed (or stopped) while the other types of corporate charters took off. The state encouraged manufacturing with tax incentives.

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<sup>75</sup> *Laws*, Chapter 15, 8 Dec. 1800; Chapter 29, 17 June 1802. The charters leave out exactly how the non-temporal clauses were to work.

<sup>76</sup> *Laws*, (Bank) Chapter 47, 3 Jan. 1792; (Insurance) Chapter 10, 15 June 1799; (ferry) no Chapter, 13 July 1721. The first insurance company’s charter was revocable by the legislature at any time after eighty years had passed.

## **The Decline of Town-based Corporations in New Hampshire and Rise of Private Corporations**

Town-based corporations declined in New Hampshire for the same reasons they rose. As towns filled in the state's boundaries, became more densely populated, and grew wealthier, they reclaimed the responsibilities they had abrogated to private corporations. Each type of town-based corporation had a different path to obscurity. Toll bridges replaced ferries, public town libraries eventually supplanted the town social library, and the towns purchased the turnpikes, again making all the roads town provided. That other, perhaps more remunerative, needs were to show themselves—manufacturing businesses—along with a shift in people's attitudes, completed the town-based corporations' demise.

Based upon numbers of new charters granted, all, save one, town-based corporations were in decline by 1820. There were sixty-one turnpike charters granted by 1820 (92 percent of the 1838 number) and sixty-six by 1838. The turnpikes in New Hampshire chartered after 1838 tended to be “exploited in the interests of summer tourist travel,” and were of limited seasonal use.<sup>77</sup> The chartering of ferries also suffered a precipitous decline. By 1820 fifty-eight ferries had been chartered. In 1838 the total number chartered was fifty-nine, meaning that 98 percent of the total number of ferries chartered in New Hampshire had been created by 1820. The cumulative ferry graph of Figure 2 bears this out. Social libraries suffered too. One-hundred-forty-six social libraries were chartered by 1820 in New Hampshire. Eighteen years later the total was 165, and in 1887 the total was 167. By 1820,

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<sup>77</sup> Woods, *The Turnpikes of New England*, 215.

therefore, nearly 88 percent of the total number of social libraries chartered in New Hampshire had been created. As may be seen by the slope of cumulative social library charters in Figure 2, by 1820 the growth curve was well past its peak.<sup>78</sup> The only town-based corporation that increased in significant numbers after 1820 was the toll bridge. With sixty toll bridges in 1820 (77 percent of 1838 total), seventy-eight in 1838 (100 percent), and ninety-five in 1878 (122 percent of 1838 total), toll bridges showed staying power. This is not surprising. The legislature typically provided bridge proprietors with a two-mile monopoly—a mile above and a mile below the bridge. With hundreds of miles of rivers in New Hampshire and the towns not interested in providing bridges shoulder-to-shoulder across their rivers, there could always be opportunities for more bridges. Almost simultaneous with the decrease in charters granted to town-based corporations was the rise of the largely commercial corporation whose shareholders did not have “any object in view but their private or personal gains”—manufacturing companies.<sup>79</sup>

The rise in New Hampshire manufacturing charters is highly correlated with the 1807 Embargo and with “An Act for the Encouragement of Sundry Manufactures” passed by the legislature in 1808. The act’s preamble provides the state’s rationale for its implementation. The legislature determined that “Whereas, the

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<sup>78</sup> Shera, *Foundations of the Public Library*, 161, 185, 198, argues that the first public library—one supported by a municipal government with equal access available to all townspeople—was created in Peterborough, NH in 1833. New Hampshire created a law providing for the establishment of public libraries in 1849. The public library movement did not “take off” until the 1850s.

<sup>79</sup> *Franklin Glass Co. v. White*, 1817 (14 Mass. 285–288, 286–7). Also found in Joseph Kinnicut Angell and Samuel Ames, *A Treatise on the Law of Private Corporations Aggregate* (Boston: Charles C. Little and James Brown, 1843), 421-22.

manufacture of articles necessary for the comfort and convenience of life, by the citizens of this State, would be productive of advantages to the State in rendering us more independent of other countries, and enlarging the market of our surplus agricultural products,” therefore “all the manufactories which shall be established in this State for the manufacturing of cotton yarn and cotton, cloth, of woolen yarn and woolen cloth, of salt & glass, shall be exempted from taxation for their capital stock employed in each and every of said manufactories.” While the act did not specifically require that the manufactories be chartered, it did state the amount of capital that must be brought to bear. A capital stock between \$4,000 and \$20,000 “for and during the term of five years from and after the establishment of such manufactories” was required to obtain the tax exemption.<sup>80</sup> The entrepreneurs of New Hampshire responded to the embargo and the tax benefit by chartering forty-six manufactories between 1808 and 1820. As may be seen in Figure 2, once manufacturing corporations started in the state, their growth continued steadily throughout the period 1808–1838.<sup>81</sup> The data also correlates with changes in attitudes.

Attitudes about corporations were also changing during the early 1800s. James Sullivan, the Massachusetts attorney general, summed up the corporate situation nicely in his 1802 legal opinion on whether the Massachusetts Bank possessed a perpetual charter. After pages of tortured hand wringing on the subject he candidly stated “it is a pity that so great a variety of corporations have been formed

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<sup>80</sup> *Laws*, Chapter 58, 22 Dec. 1808. This law was repealed in 1814 (Chapter 42, 22 June 1814) and replaced with a less generous law in both duration and amount exempt from taxation in 1816 (Chapter 26, 26 June 1816).

<sup>81</sup> There were six chartered manufactories by the end of 1808. There were fifty-two at the end of 1820.

before general rules for their government had been agreed upon.”<sup>82</sup> That such a learned and experienced man would be stuck in 1802 to define corporate characteristics is a biting commentary about the rapidity of their assent and the list of open questions left hanging. Where Sullivan was torn, others were sure of corporate attributes and how they changed with the corporation type.

Contemporaries understood the difference between the purpose of a turnpike and a manufactory. In 1817 the Massachusetts Supreme Judicial Court heard a case concerning what actions a manufacturing company could bring to bear to compel its shareholders to pay assessments on their shares. The plaintiff’s attorney argued that:

The making and maintaining of a turnpike road is an affair of public concern and public convenience, seldom entered upon or prosecuted for the sake of the profit contemplated to arise to the undertakers; and they cannot lawfully effect their object without authority from the legislature. Whereas a company of manufacturers cannot be presumed to have any object in view but their private or personal gains. They could lawfully carry on their business without legislative interference; and they ask for an incorporation merely for the greater convenience in managing their affairs.<sup>83</sup>

This contemporary saw the post-1789 turnpikes as falling under the aegis of a public good that was not “prosecuted for the sake of the profit.” Chartered manufacturing concerns, however, he argued were something new and different. They were for the “private or personal gain” of the investors because they did not fill a public concern.

This attitude was probably more common in 1817 than it was at the dawn of the Embargo. That the state encouraged manufacturing via tax incentives in 1808 suggests that body felt manufacturing as at least partially a public convenience. In

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<sup>82</sup> Handlin, *Commonwealth*, 258. As a Democratic-Republican attorney general in a Federalist state Sullivan was walking a tightrope in his opinion.

<sup>83</sup> *Franklin Glass Co. v. White*, 1817 (14 Mass. 285–288, 286–7).

1816 there was still a tax incentive available for manufacturing, albeit at a lower level than the 1808 act. More than just the people were thinking about the changing face of corporations in the 1810s. Courts were too.

The New Hampshire General Court (legislature) inserted itself into charter and legal issues throughout the late eighteenth and early nineteenth centuries. As referred to earlier, the legislature incorporated into charters phrases that reserved for the legislature the right to limit the duration of most charters. The legislature also acted as a court of appeal within the state. In the late 1810s two court cases were brought challenging the legislature's authority in both of these areas, *Trustees of Dartmouth College v. Woodward* and *Merrill v. Sherburne*. The Merrill case pertained to the legislature's involvement in the judicial process. New Hampshire General Court Senior Researcher Richard Lambert found that, "In 1818 the state's laws were replete with examples of involvement by the legislature in individual court cases." Using their petitioning power, Lambert noted, "It was...common practice for litigants in civil cases to petition the legislature seeking new trials, or stays, appeals or reversals of decisions in the courts." This practice was, in theory, stopped when the New Hampshire Supreme Court ruled it unconstitutional in 1818.<sup>84</sup> It was "in theory" stopped because the New Hampshire legislature did not necessarily follow court decisions. The Dartmouth Case is a case in point.

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<sup>84</sup> Research Brief from Richard Lambert, Senior Researcher, NH General Court, to NH Legislative Ethics Committee, 4 April 2003. E-mailed to author 22 May 2014. The case was *Merrill v. Sherburne* (1 NH 199, 1818).

In the mid-1810s the New Hampshire General Court unilaterally changed the charter of Dartmouth College. The changes eviscerated the responsibilities and privileges of the then-current trustees and bestowed them instead upon a group of trustees appointed by the state. The existing trustees sued, arguing that the action violated the US Constitution's Article 1, Section 10 (No State shall enter into any...Law impairing the Obligation of Contracts). By a 5-1 vote the court sided with the trustees, invalidating the offending laws. While this case struck a blow for the sanctity of contracts and the legal claim that charters were contracts, the New Hampshire General Court failed to learn the lesson. As late as 1858 the legislature was adding clauses like "The legislature may at any time alter, amend, or repeal this act when ever they deem it necessary" to charters, theoretically granting them the right to continually define the conditions of any state-chartered entity.<sup>85</sup> But the courts had spoken. The legislature was to stop meddling in the legal affairs of the people and corporations. In addition to the courts, the people also spoke. They did not want privately owned turnpikes and did something about it.

Investigating how and when turnpike corporations dissolved helps illuminate why they were created. If chartering turnpikes was truly a response to the paucity of resources in the towns and ungranted areas that lay along their routes, it follows that the turnpikes might be purchased by the towns and maintained with town tax revenue, just as the early province law directed, when the towns achieved a level of wealth that

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<sup>85</sup> Trustees of Dartmouth College v. Woodward is more popularly known as the Dartmouth Case (17 U. S. 518, 1819). King George III chartered Dartmouth College in 1769. Much of Chief Justice Marshall's opinion was focused on whether the charter was perpetual or limited, as the charter did not explicitly state that it was to endure "forever." It was found to be perpetual. *Laws*, Chapter 2157, 25 June 1858. This example is from the charter for the Mount Washington Cog Railway.

allowed them to do so. The resources available in the towns at the creation and dissolution of three turnpikes are here considered via the periodic Town Inventories.<sup>86</sup>

The time and method of tollgate removal on the three turnpikes will be considered in the reverse order of their charters: Tenth New Hampshire Turnpike, Fourth New Hampshire Turnpike, and the New Hampshire Turnpike (the state's first turnpike).

The Tenth Turnpike was chartered to span a twenty-mile wilderness in 1803. In 1850 it still spanned a wilderness. Between 1800 and 1850, the population density of the towns the turnpike passed through increased from 0.3 to 4.3 people per square mile and the "wealth index" of \$0 did not change at all (to 1840, the last year of available data (see Appendix B)).<sup>87</sup> The shortage of men to work on the twenty miles of road or pay taxes to support it in 1840 argues that a turnpike corporation was a valid method of maintaining the road, short of its takeover by the state. The Tenth Turnpike was a going concern through 1855, the date of the last director's meeting, and state support for the road commenced in 1859 with a legislative maintenance appropriation of \$350.<sup>88</sup> Resources from outside the local area—toll payers from New Hampshire, Vermont, and Canada, and investors from all over (including Portland,

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<sup>86</sup> The Town Inventories were authorized by the legislature on generally a five-year schedule. The towns' selectmen were instructed to inventory all town improvement, livestock, produce, and monetary wealth to determine their town's share of the state tax. The Town Inventories reside in the NHARM collections.

<sup>87</sup> The population density is the appropriate census year count divided by the total square miles of the towns the turnpikes passed through. The "wealth index" is the total amount of money in cash, "at interest," and "in stocks" in the towns (from the appropriate town inventories) divided by the population. These metrics are admittedly crude. But they provide a quantitative way to understand the relative population density and wealth along the turnpikes, the two ingredients required to support a road. The wealth index omits all real property in the towns. See Appendix B for data.

<sup>88</sup> The turnpike directors held an annual meeting in October 1855 (Samuel A. Bemis Diary, 1855, Bemis Papers, Conway (NH) Public Library). After this the trail on the Tenth turns cold. The state voted its first support in 1859 ("Resolved...", *Laws*, Chapter 2278, 23 June 1859).

Maine, its primary beneficiary)—were required to construct and maintain it. When the tolls stopped, state aid was required to maintain it, the towns it passed through being too poor to maintain arguably the state’s most challenging road.

The Fourth Turnpike Corporation dissolved in stages. According to author Roger Carroll, “In the 1830s residents of many towns began to push for the Fourth New Hampshire Turnpike [Hanover on the Connecticut River to Boscawen on the Merrimack River] to become a free road. The westernmost end became free in 1839 and the section from West Lebanon to Enfield the year after, although the portion that ran through Springfield and Wilmot remained a toll road until 1844.”<sup>89</sup> In 1800, the year of the charter, the population density along the entire route was 16.9 people per square mile and the wealth index was \$2.91. Forty years later the population density increased just over 60 percent to 27.4 people per square mile and the wealth index increased 670 percent to \$22.38. Of the eight towns the Fourth Turnpike passed through in 1840, three of them—Lebanon and Hanover, the two Connecticut River towns, along with Boscawen, the Merrimack River town—contained 40 percent of the population and 63 percent of the wealth. In terms of population density and wealth, the order the towns enumerated by Carroll went free—Hanover and Lebanon, then Enfield, and finally Wilmot and Springfield—correlates perfectly with their resources. Hanover and Lebanon were the wealthiest and Wilmot and Springfield, the central towns (midway between the two rivers the turnpike joined), were last in wealth. The towns on the eastern end of the turnpike—Andover, Salisbury, and

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<sup>89</sup> Roger Carroll, *Lebanon 1761–1994: The Evolution of a Resilient New Hampshire City* (West Kennebunk, ME: Phoenix Publishing, 1994), 38.

Boscawen—were apparently outside the scope of Carroll’s effort. Turnpike antiquarian Frederic Wood stated that Andover, just east of Wilmot, paid \$566 “for the privilege of owning the portion [of the turnpike] in that town.”<sup>90</sup> The Fourth Turnpike suggests that the idea of sufficient population and wealth as determinants in reverting the road back to town control, at least on a relative basis, appears to be valid.<sup>91</sup>

The New Hampshire Turnpike went free all at once. Author Dennis Chesley stated that the proprietors informed the legislature “of their intent to relinquish and surrender said road for a valuable consideration.” The proprietors received \$20 per share (\$8,460 in total) from the towns along the turnpike and opened the gates in 1825.<sup>92</sup> In 1800, the population density of the eight towns along the turnpike was 37.6 per square mile and the wealth index, \$3.73. In 1825, the estimated population density increased about 18 percent to 44.4 per square mile and the wealth index nearly doubled to \$7.11. The New Hampshire Turnpike data raises the question “How much local resources are needed to support reverting a turnpike back to town control?” The wealth index at dissolution was lower than the Fourth Turnpike, but apparently sufficient for the people to feel that they could afford to not only maintain the road but purchase it from the turnpike corporation as well. That it was anchored at the coast by the state’s wealthiest town, Portsmouth, and on the Merrimack River by

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<sup>90</sup> Frederick Woods, *The Turnpikes of New England: And Evolution of the Same Through England, Virginia, and Maryland* (Boston: Marshall Jones Company, 1919), 221.

<sup>91</sup> Though it must be admitted that this analysis assumes that each town is completely independent in setting the turnpike free. The author does not believe that to necessarily be the case.

<sup>92</sup> W. Dennis Chesley, *The New Hampshire Turnpike 1796–1825*, unpublished typescript, May 1982, 48–49. The turnpike cost \$112 per share to build (7). Total cost to purchase the turnpike from turnpike director’s minutes, *New Hampshire Gazette*, 8 February 1825.

the new state capital Concord, cannot be overlooked in its escape from tollgates, but each town needed to support its free section.

The freeing of the Fourth and first turnpikes suggests that when the towns possessed the wealth to publicly maintain their roads they opted to do so. Of course, it must be acknowledged that 1825 and 1840 were significantly different—politically, socially, and economically—than 1800, but the fact seems evident that, given the choice, the people of the towns these two turnpikes spanned preferred a town-supported road to a private corporation turnpike. This supports the idea that the turnpikes were created only because the towns lacked the resources to support long-distance roads. When the towns possessed the ability to care for the roads, they accepted and paid for the responsibility.

In the early 1800s society's relationship with corporations changed. This may be seen in attitudes to different types of corporations and the emerging manufacturing explosion brought about by the 1807 Embargo. The people, the courts, and the legislature enabled these changes. The shift in focus from municipal to for-profit purposes forever changed the corporate landscape in New Hampshire. While town-based corporations did not suddenly disappear in 1807, their days of growth were behind them. Figure 2 confirms this. From 1807 on, only social libraries continued to be chartered in any meaningful numbers, and this was probably due to the still increasing number of towns chartered after 1807.

## Conclusions

There are two ways to consider the post-1789 proliferation of corporations: it was something brand new or it was a continuation of a process that predated 1789. To argue for the former seems a fool's errand even considering the significant changes that took place between the colonial and Constitutional eras. Between these two eras the form of government became more flexible and representative of the people, the king's declaration that there shall be no economic competition from the colonies with English companies disappeared with the royal governor, in New Hampshire political stability was achieved and a depression was crossed, and public needs changed. None of these changes by itself explains the proliferation of corporations after 1789. A different answer is needed.

To argue a continuation of an existing process seems a safer bet. Corporations had a long history both in England and her colonies well before 1776. As this essay has shown, there were town-based corporations that started in colonial-era America (towns, ferries, and lotteries), in Confederation-era America (toll bridges) and, if interpreted properly, into Constitutional-era America as well (aqueducts and turnpikes).<sup>93</sup> Disregarding corporate financial institutions (banks and insurance) and canals, it is really not until the manufacturing corporations start around the 1807 Embargo that a truly non-town-based corporation comes into existence.<sup>94</sup>

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<sup>93</sup> This essay did not go into detail on the aqueduct corporations in the state because there were only five chartered during the period of interest (Portsmouth 1797, Exeter 1801, Hanover 1805, Exeter 1808, and Haverhill 1820) and it also seems obvious that aqueducts were town-based.

<sup>94</sup> The attorney's logical argument that turnpikes were "an affair of public concern and public convenience," could be extended to include canals. In New Hampshire while there were a few Erie

To argue that turnpikes were town-based, at least in New Hampshire, seems logical. The province pushed responsibility for the roads onto the far-flung towns. The state continued this policy. Both province and state worked, if imperfectly, with the towns in an effort to provide the means to create and maintain roads. It was only upon the creation of turnpike corporations, however, that through roads were created to the town and state's desire. When the towns became wealthy they purchased the privately owned turnpikes, turning them into town-provided entities again. Turnpike corporations, in New Hampshire at least, provided a relatively brief corporate interlude between two eras of municipal roads.

The impact the creation of the many towns had upon the New Hampshire corporate psyche cannot be overlooked. During the period 1760–1789 one-hundred-thirteen towns were chartered. This created large numbers of proprietors and selectmen with experience creating and running a corporation by the time the Constitution was ratified. Assuming fifty proprietors per town chartered and three selectmen per town (rotating into and out of office every three years), there would be 5,650 proprietors and 3,390 selectmen (or 9,040 people total) with town experience for the towns created between 1760 and 1789.<sup>95</sup> With a state population of 141,885 in 1790, and assuming that women and children made up half the population, this suggests 13 percent of men—roughly one in eight—had town-based corporate experience in 1789.

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Canal-like canals contemplated, most of the canal charters were to lock around a fall or closely spaced series of falls in a river. This might logically be considered a town-based corporation.

<sup>95</sup> The maximum number of selectmen was not to exceed seven. *Laws*, Chapter 2, 7 Oct. 1692.

Even with all the changes independence, Confederation, and Constitutionalism brought to New Hampshire, it was the people's familiarity and the value provided by the town-based, pre-1789 corporations that lead to the post-ratification corporate proliferation. The regime changes, improved economy, and state need certainly added to the speed with which the corporate form was embraced, but they cannot either singly or together explain why the corporate form was embraced. That explanation resides in the colonial town-based corporations.

# Appendices

## Appendix A

### Notes on Figure Sources

**Figure 1** (Number of Articles Using the Term “Corporation” in the *New-Hampshire Gazette, 1756–1829*).

Readex's America's Historical Newspapers (Early American Newspapers Series 1, 1690-1876). *New-Hampshire Gazette*, published in Portsmouth, weekly during the period covered.

Readex’s online newspaper was used to determine the number of instances the term “corporation” was found in the *New-Hampshire Gazette* between that newspaper’s inception in 1756 and the end of 1829. The counts are by types of feature as defined by Readex.

**Figure 2** (NH Population and Various Incorporations by Year)

*Original town charter dates* were obtained

from <http://www.nh.gov/nhes/elmi/communpro.htm> (accessed 20 June 2010), a New Hampshire state website. This link was dead link as of December 2014. An alternate site for town charter dates is <http://www.nhes.nh.gov/elmi/products/cp/> (accessed 3 December 2014), another New Hampshire state website.

For the New Hampshire state population prior to the federal census: *American Population Before the Federal Census of 1790* by Evarts B. Greene and Virginia D. Harrington (Gloucester, MA: Peter Smith, 1966), 5-7 and 70-73; and *The Population of the British Colonies in America before 1776: A Survey of Census Data* by Robert

V. Wells (Princeton N.J.: Princeton University Press, 1975), 69-70. US Census data used for 1790 and later.

*Corporate charter data: Ferries, Bridges, Lotteries, Canals, Social Libraries, Turnpikes, and Manufactories* from heading in the *Index to the Laws of New Hampshire* (Manchester, NH: John B. Clark, 1886), 187-180, 67-69, 298, 79-80, 286-290, 553-5, 309-332, and further research within the *Laws of New Hampshire* 10 vols. (New Hampshire, 1904–1922) to validate data.

The charters are presented in a cumulative manner. At any given point in time the cumulative number of charters for any given type of corporation is given. By counting all the charters this essay does not suggest that all charters resulted in on-the-ground entities. Rather, the intention of the people and legislature is determined by the number of charters received.

## Appendix B

### Wealth Index and Population Density Sources and Data

The population densities of the towns along the three turnpikes was calculated using the towns' area and the US Census population for each town. The towns' areas were found on <http://www.nh.gov/nhes/elmi/communpro.htm> (accessed 20 June 2010), a New Hampshire state website. This link was dead link as of December 2014. An alternate site for town areas is <http://www.nhes.nh.gov/elmi/products/cp/> (accessed 25 May 2015), another New Hampshire state website. The town population information was found in *Population of New Hampshire, 1623-1940* (Concord: New Hampshire State Planning and Development Commission, 1946). The 1825 population is a linear interpolation between the 1820 and 1830 census data. The 1850 Hart's Location population is an estimate created by the author.

The Wealth Index for each town is created using the US Census population data and the "Sum total of money at Interest including bank stock, stock in the funds & Securities for any kind of property at Interest, more than Interest is paid for" or similar line item in the "Town Inventories" contained at NHARM. The Town Inventories (or "Inventory of polls and ratable estates" in the *Index to the Laws of New Hampshire, 1679-1883*) enumerated the value of stock in trade, land, crops, livestock, rents, and buildings. In most instances a monetary value was not placed on the enumerated item. Rather they were counted in "acres of orchard land," "Acres of Mowing land," "Oxen wintered five winters," etc. As one of the few items with a monetary value, and the only item that was even somewhat available for spending or

investing, this essay used the “Sum total of money at Interest...” as a surrogate for town wealth, knowing full well that in an agricultural age, the land and the product of the land constituted the vast amount of wealth in each town. But rather than try to determine how to monetize those values, used “Sum total of money at Interest...” instead. The Wealth Index is simply this value divided by the population in each town.

The Town Inventory years are +/- 3 years from the year indicated.

Tenth New Hampshire Turnpike													
		1800		1810		1820		1830		1840		1850	
		Pop	Wealth										
Carroll	Area (sq. mi.)	24	\$ -	21	\$ -	25	\$ -	122	\$ -	244	\$ -	296	\$ -
Hart's Location		0	\$ -	35	\$ -	65	\$ -	33	\$ -	44	\$ -	0	\$ -
		1800		1810		1820		1830		1840		1850	
		Pop Density	Wealth per Person										
Carroll	Area (sq. mi.)	0.5	\$ -	0.4	\$ -	0.5	\$ -	2.4	\$ -	4.9	\$ -	5.9	\$ -
Hart's Location		0.0	\$ -	1.8	\$ -	3.4	\$ -	1.7	\$ -	2.3	\$ -	0.0	\$ -
		1800		1810		1820		1830		1840		1850	
		Pop Density	Wealth per Person										
Turnpike Average		0.3	\$ -	0.8	\$ -	1.3	\$ -	2.2	\$ -	4.1	\$ -	4.3	\$ -

Fourth New Hampshire Turnpike																
		1800			1810			1820			1830			1840		
	Area (sq. mi.)	Pop	Wealth	Pop	Wealth											
Hanover	49.1	391	\$ 400	549	\$ 6,300	688	\$ 5,200	687	\$ 4,510	870	\$ 34,120					
Lebanon	40.3	461	\$ 1,050	650	\$ 5,950	769	\$ 6,125	949	\$ 8,125	957	\$ 72,070					
Enfield	40.3	47	\$ 3,575	142	\$ 3,150	213	\$ 3,875	235	\$ 6,680	300	\$ 27,900					
Grafton	41.6	129	\$ -	358	\$ 580	373	\$ 500	447	\$ 275	523	\$ 7,000					
Springfield	43.6	570	\$ -	814	\$ 2,850	967	\$ 1,650	1192	\$ 2,700	1252	\$ 8,000					
Wilmot	29.4	0	\$ -	423	\$ -	670	\$ -	835	\$ -	1212	\$ 4,500					
Andover	40.2	1133	\$ -	1259	\$ 2,275	1642	\$ 9,325	1324	\$ 24,714	1168	\$ 18,225					
Salisbury	39.6	1767	\$ 11,300	1913	\$ 23,350	2016	\$ 27,050	1379	\$ 17,450	1329	\$ 12,600					
Boscawen	24.8	1414	\$ 870	1829	\$ 3,800	2113	\$ 12,000	2093	\$ 19,975	1965	\$ 29,900					
	Area (sq. mi.)	Pop Density	Wealth per Person													
Hanover	49.1	8.0	\$ 1.02	11.2	\$ 11.48	14.0	\$ 7.56	14.0	\$ 6.56	17.7	\$ 39.22					
Lebanon	40.3	11.4	\$ 2.28	16.1	\$ 9.15	19.1	\$ 7.96	23.5	\$ 8.56	23.7	\$ 75.31					
Enfield	40.3	1.2	\$ 76.06	3.5	\$ 22.18	5.3	\$ 18.19	5.8	\$ 28.43	7.4	\$ 93.00					
Grafton	41.6	3.1	\$ -	8.6	\$ 1.62	9.0	\$ 1.34	10.7	\$ 0.62	12.6	\$ 13.38					
Springfield	43.6	13.1	\$ -	18.7	\$ 3.50	22.2	\$ 1.71	27.3	\$ 2.27	28.7	\$ 6.39					
Wilmot	29.4	0.0	\$ -	14.4	\$ -	22.8	\$ -	28.4	\$ -	41.2	\$ 3.71					
Andover	40.2	28.2	\$ -	31.3	\$ 1.81	40.8	\$ 5.68	32.9	\$ 18.67	29.1	\$ 15.60					
Salisbury	39.6	44.6	\$ 6.40	48.3	\$ 12.21	50.9	\$ 13.42	34.8	\$ 12.65	33.6	\$ 9.48					
Boscawen	24.8	57.0	\$ 0.62	73.8	\$ 2.08	85.2	\$ 5.68	84.4	\$ 9.54	79.2	\$ 15.22					
Turnpike Average		16.9	\$ 2.91	22.7	\$ 6.08	27.1	\$ 6.95	26.2	\$ 9.24	27.4	\$ 22.38					



## Appendix C

### Petition Data

In an earlier incarnation of this essay petitions were to play a more prominent role than found in the final version. All the petition graphs created are here shared with the curious.

All extant petitions between 1680 and 1822 have been indexed. There are two databases: the Petitions List and the Petitions Index. The Petitions Index is an alphabetical listing of every name and subject listed in the petitions and is available as a PDF from the New Hampshire Archives and Record Management website (ca. 1680–1819). A more complete version (1680–1822) is available at the Archives. The online version is nearly 3,000 pages. The Petitions List (or “PetList”) is a chronological listing of the petition subjects. The author received his version directly from Dr. Frank Mevers, the former New Hampshire state archivist. This version of the petitions is available from the Archives upon request. At this writing it is not available on their website.

Dr. Mevers started creating the petition database in 1977. When he retired in 2010 he (and his ever-changing group of helpers) had indexed through 1815. Since then he has continued the task and has completed through 1822. He is taking a break from the activity, but “feeling like my days lack parameters,” he is planning to press on as long as the Archives sends him copies of the petitions. His efforts indexing the petitions have greatly eased the creation of the following graphs and for that, and his always gracious help, has this researcher’s undying gratitude.

### **Cumulative Petition vs. Year**

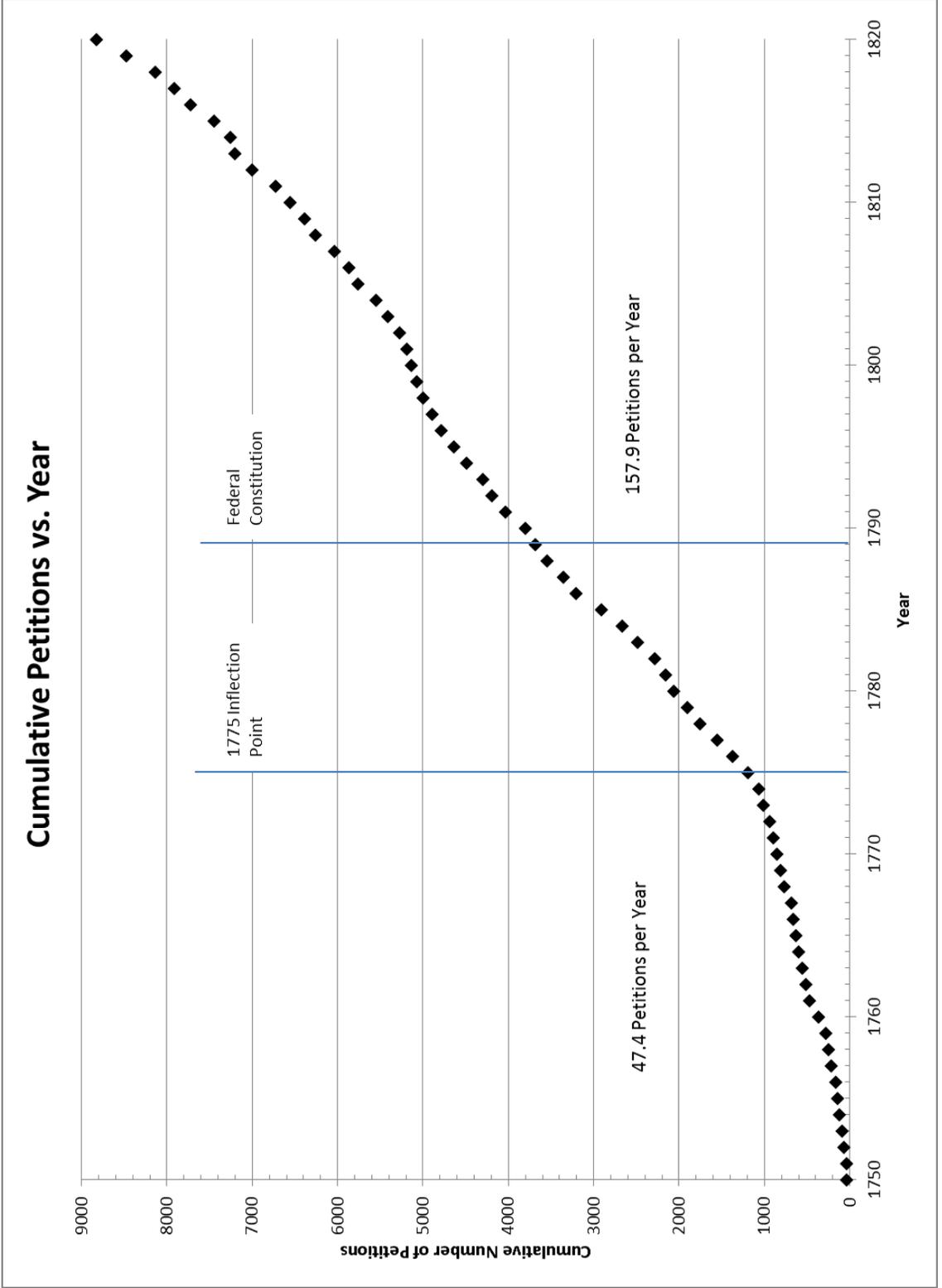
Straight categorization of petitions by year in a cumulative format. From this graph may be seen an inflection point in the number of petitions to the General Assembly (later the General Court) in 1775. Interestingly, of the roughly 125 extant petitions from 1775, only 5 (~4 percent) with a salutation were unambiguously addressed to His Majesty's General Assembly, or some variation thereof, rather than the Revolutionary Committee of Safety or Provincial Congress. From the petitions it appears that the Revolution was in New Hampshire by 1775. This graph may be used in conjunction with the next two to determine why petitions increased.

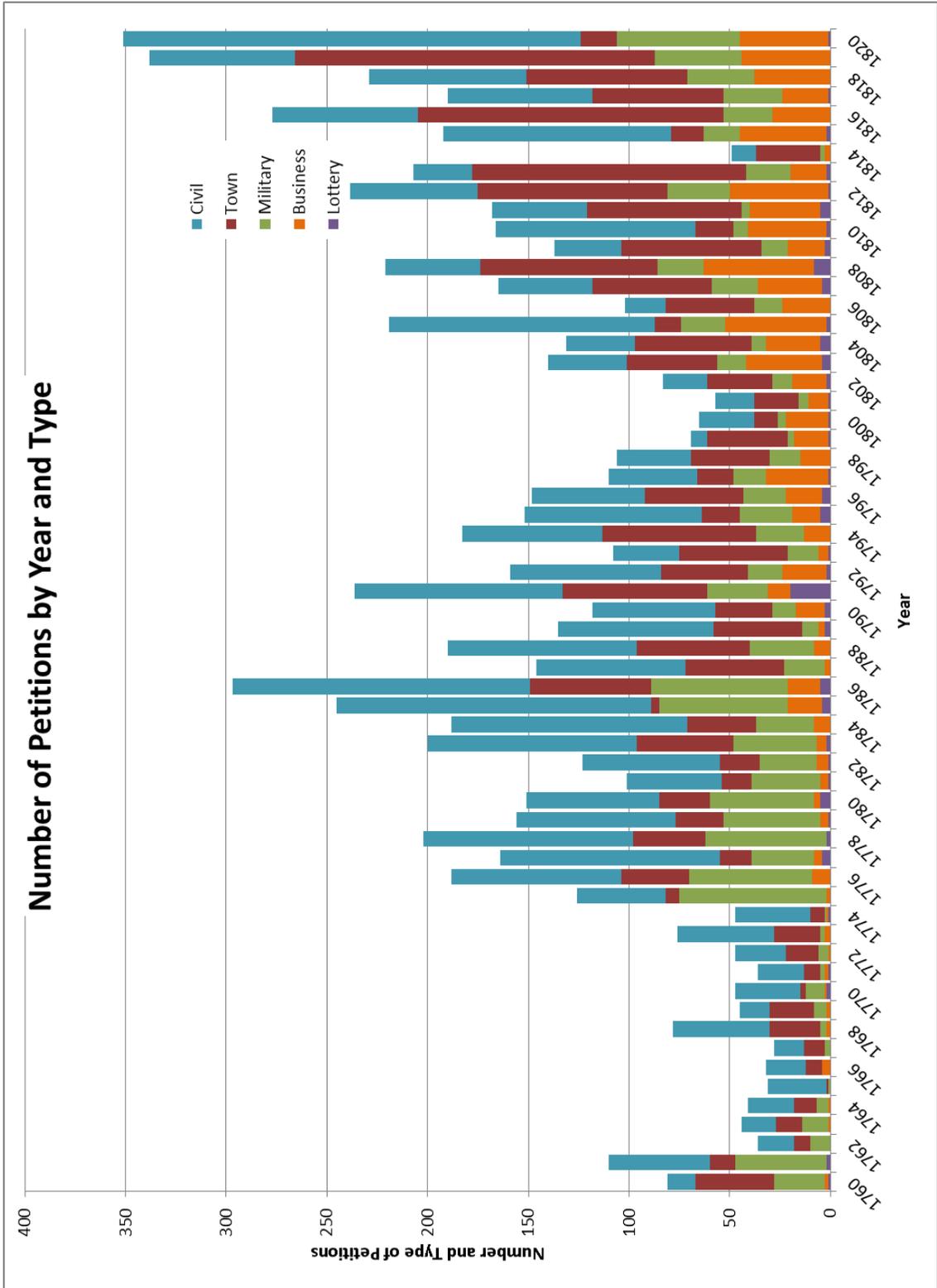
### **Number of Petition by Year and Type**

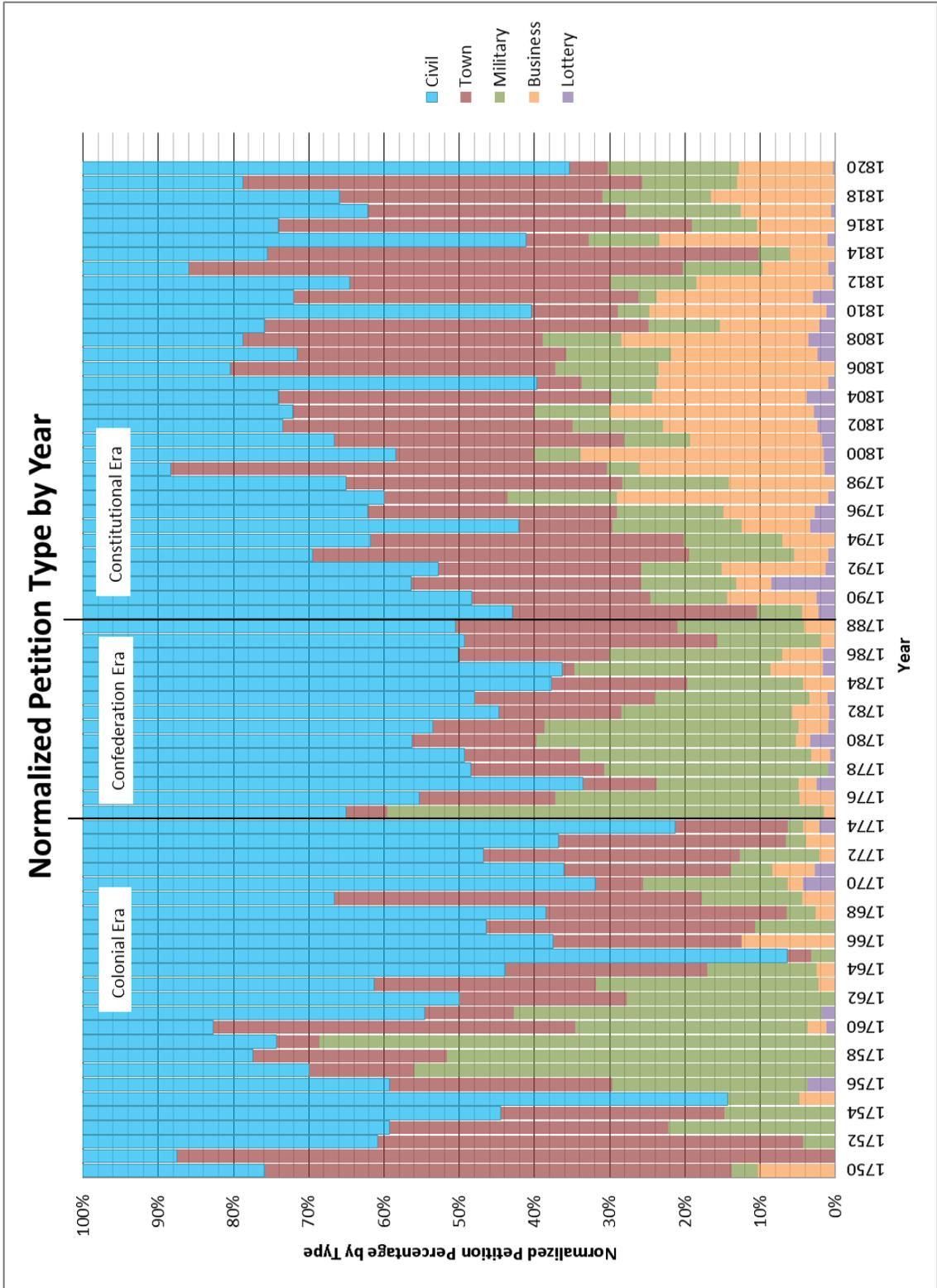
Petitions categorized by year and type. The author chose the categories as representative of the requests made by each petition and those that would add insight into the essay.

### **Normalized Petition Type by Year**

It is often difficult to visualize year to year what percentage of petitions are represented by any given category. This graph normalizes all petitions to 100 percent, enabling the representative weight of each category show through. For instance look at the relative weight of the military petitions during the French and Indian War (1756–1763) and the Revolutionary War (1776–1783). “Business” petitions did not significantly increase as a percentage of all petitions until about 1790.







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