Republics of Capital: Marine Insurance Companies and the Body Politic, 1792-1815

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Introduction

After the American Revolution, Americans needed to restore or reinvent ruptured political and mercantile systems and to renegotiate the relationship between the two. The funding of the federal debt, which swiftly followed the creation of state and federal constitutions, created an opportunity for such a renegotiation by sparking a period of financial enthusiasm and creativity comparable to the political creativity with which Americans had recently created state and federal governments. Merchants and others who could mobilize capital launched corporations to pool and organize their wealth, and petitioned their state legislatures to grant these institutions official charters. The charters structured the governance of the capital itself, and simultaneously defined the new corporations' relationships to their shareholders, to state governments, to other corporations, and to American citizens more broadly. Debates about how corporations should govern wealth drew on, echoed, and furthered debates about how political bodies should govern citizens. I suggest, therefore, that the conversation about American federalism did not end with the federal constitution, but continued through the creation of what are usually called the first for-profit corporations of the United States.

In 1809, an American political economist argued that corporations—which he termed, crucially, "minor republics"— performed an invaluable role in reinforcing the social contract.[1] The "restless" and "quarrelsome" nature of human beings, he suggested, was generally overcome in civilized society by four types of social ties: blood ("silken ties"), laws backed by force ("iron bands"), scientific and artistic associations ("flowery bands"), and, most importantly, commercial ties, particularly those that bound together members of "incorporated monied commonwealth associations." He termed these latter connections "golden chains," and suggested that they were "perhaps *the most to be depended on of all.*" Joint-stock corporations transformed Americans into co-investors who were less likely to quarrel with one another because of their shared financial interests. Such "minor republics," he suggested, by reinforcing Americans' mutual interests, might even prevent citizens of the larger republic from turning against their government.[2]

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[1] Samuel Blodget, *Economica: a Statistical Manual for the United States of America* (Washington [D.C.]: Printed for the author, 1806), 17.

[2] Blodget, 12. This argument aligns Blodget with a school of thought identified by Jennifer Baker, who finds in much of early American literature arguments that a republican commonwealth benefited from the myriad mutual dependencies created by commerce and, especially, debt. Baker, *Securing the Commonwealth* (Baltimore: Johns Hopkins University Press, 2005).

This political economist was Samuel Blodget, Jr., the founder of the first American marine insurance company. Blodget ardently believed that for-profit corporations linked American citizens together, and bound them to their states, more strongly than even state laws backed by force. But when Blodget founded the Insurance Company of North America he in fact created a set of connections even more complex than he articulated in his political economic tract. The "golden chains" of invested wealth not only bound citizens together, but also created a set of connections among institutions. They connected for-profit corporations to state and federal governments as well as to one another. And in creating the republic's first marine insurance company, Blodget and his fellow directors tethered all of these American bodies politic to merchant capital, merchant networks, and the world of overseas trade.

In her discussion of the political significance of corporations in the early republic, Pauline Maier adopts the perspective of a source from the 1820s:

> The proliferation of corporations could signal, in effect, an extension of American federalism … so that 'the whole political system' was 'made up of a concatenation of various corporations, political, civil, religions [sic] and economical,' in which the nation was a 'great corporation, comprehending all others.' From such a perspective, well constructed corporations were not embodiments of faction but units in an integrated social and political system, all working for the public good and neatly tucked under the supervisory authority of state legislatures.[3]

This description is drawn from a dictionary written largely by lawyers, which heavily emphasized abstract concepts, but Maier in fact claims that the creation of such "concatenated" corporations was a real, empirical process, through which "Americans substituted for the old bonds between superiors and dependents new social ligaments voluntarily contracted by equal citizens through constitutions of their own design."[4] Yet pre-Constitutional power structures did not simply dissipate after 1789, and there is certainly no historical consensus that Americans easily exchanged older, more hierarchical social, political, and economic relationships for newer, more egalitarian ones. The transition process, therefore, requires more careful consideration.[5]

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[3] Maier, "The Revolutionary Origins of the American Corporation, *The William and Mary Quarterly* 50, No. 1 (Jan., 1993): 82.

[4] Drake De Kay, "*Encyclopedia Americana,* First Edition." *The Journal of Library History* 3, No. 3 (Jul., 1968): 201-220. Maier, "Revolutionary Origins," 82.

[5] The Handlins suggest that post-Revolutionary Massachusetts viewed its first joint-stock corporations rather like towns, granting them special privileges so that they would take on public improvement projects that the towns would not undertake, and that the state was too weak to accomplish. However, their narrative follows a trajectory inward toward the hinterland and away from the port cities. By contrast, a focus on insurance companies emphasizes the degree to which the American state-building process was linked through capital to international mercantile

To interrogate this transition, this essay takes up the chartering of the Insurance Company of North America (INA). Among the first and most powerful of American financial corporations, marine insurance companies exemplified the financial arrangements of the post-Constitutional era, but they were nonetheless grounded in existing mercantile wealth, laws, and customs—even mercantile politics and systems of knowledge, as I have argued in the previous chapter. With INA's charter as their precedent, the first American marine insurance company charters sought to define the governance of mercantile wealth and to set the terms for the companies' relationships to the states that chartered them, to their own members, and to American citizens. We should read the new companies, in other words, as bona fide bodies politic, which represented American mercantile wealth primarily and American citizens secondarily.

The legislators and newspaper writers who debated the ratification of corporate charters focused very little on the charters themselves, which founders drafted and submitted to legislators, fairly successfully, as *fait accompli*. Instead, they engaged in theoretical political debates about the accumulation and governance of mercantile wealth in the new republic. At the same time, their conversations were also specific disputes over the accrual of privileges by the prospective incorporators, a known faction with particular social and political affiliations. In this chapter I suggest that the creation of American marine insurance companies can be read as a continuation of the process of American constitution-making, which attempted to resolve the political arrangement and expression of mercantile knowledge, wealth, and power in the legal, political, and social context of the new republic.[6]

Disruption and Re-Constitution

When Revolutionary violence began, American mercantile and political networks ruptured. Loyalists fled the country, abandoning their positions of political and commercial privilege. The occupation of Boston became an opportunity for ship owners and merchants of

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activities. The Handlins also argue that the state itself was responsible for encouraging citizens to form associations, which lends support to Maier's vision of a profound and voluntary reordering of society after the Revolution, but is not as clearly true about the financial projects I investigate. Oscar Handlin and Mary Flug Handlin, *Commonwealth: A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861* (Cambridge: Belknap, 1969).

[6] Earlier chapters of this project explain the business of marine insurance and argue that eighteenth-century marine insurers functioned as a form of governance over a transnational community of merchants. Later chapters discuss how the negotiation represented by the ratification of insurance company charters played out in American social and cultural realms.

smaller nearby towns to make their own fortunes, and these newcomers established themselves after the end of the war as the city's new mercantile aristocracy.[7] In Philadelphia, local traders likewise shifted their accustomed patterns to escape the hazards of occupation or to take advantage of new opportunities.[8] Subsequently, as Thomas Doerflinger writes, "The convulsions of the 1780s [rendered Philadelphia's] merchant community … far more unstable and anonymous."[9] The city's mercantile upheaval went hand in hand with political upheaval: as Philadelphia's Quakers withdrew from politics, a set of formerly second-tier Anglican merchants rose to occupy their places.[10] Both systems—mercantile and political—would need to be refashioned and reorganized over the following years.

As British authority lost its coercive force, Americans began developing new procedures and institutions for political governance. Gordon Wood suggests that the congressional resolution of May 10, 1776, urging colonies to draft new constitutions, was not only "the most important act of the Continental Congress" but the most profoundly revolutionary act of the era.[11] The resolution spurred a period of constitutional creativity, during which Americans brought myriad theories, desires, fears, prejudices, and material interests to bear upon the problem of republican governance.

The question of the role of property in a republic emerged rapidly in most states' constitutional debates. Constitutional framers frequently attempted to prevent the emergence of tyranny and to retain "balance" in government by adapting the British model of a two-house legislature.[12] Unwilling to recreate the hereditary class that populated the British upper house, however, most states opted instead to impose stricter property qualifications on upper house representatives, who were imagined as a non-hereditary aristocracy of wealth.[13] The Massachusetts constitution, which assigned delegates to the upper house proportionately by

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[7] John Tyler, "Persistence and Change in the Boston Merchant Community during the American Revolution," in *Entrepreneurs: The Boston Business Community, 1700-1850*, eds. Conrad E. Wright and Katherine Viens (Boston, 1997), 97-122.
[8] Thomas Doerflinger, *A Vigorous Spirit of Enterprise: Merchants and Economic Development in Revolutionary Philadelphia* (Chapel Hill: UNC Press), 248.
[9] Doerflinger, 249.
[10] Doerflinger, 255.
[11] Gordon S. Wood, *The Creation of the American Republic 1776-1787* (Williamsburg and Chapel Hill: Institute of Early American History and Culture and UNC Press, 1969), 132.
[12] The Pennsylvania Constitution of 1776 established a one-house legislature, reasoning that this was the best way to prevent the emergence of tyranny, but after this constitution's implementation, a countermovement developed, that emphasized "governmental balance, the rule of law, and checks on majorities." Douglas M. Arnold, *A Republican Revolution: Ideology and Politics in Pennsylvania, 1776-1790* (New York: Garland, 1989), 59.
[13] Wood, 214.

property, articulated this goal most clearly: "The House of Representatives is intended as the Representatives of the Persons, and the Senate of the property of the Common Wealth."[14] Massachusetts jurist Theophilus Parsons described the consequences of such an arrangement for the legislative process:

> If a law affects only the persons of the members, the consent of a majority of any members is sufficient. If the law affects the property only, the consent of those who hold a majority of the property is enough. If it affects, (as it will very frequently, if not always,) both the person and property, the consent of a majority of the members, and of those members also, who hold a majority of the property is necessary.[15]

As summarized by Parsons, political bodies were by their very nature amalgams of people and property. Both people and property required representation in government, and both, effectively, would have a vote.

Since the early twentieth century, historians have debated the degree to which framers of the federal constitution were guided by their material interests.[16] This debate, however, while often including discussions of the funding of the debt, has rarely extended forward in time to include the full extent of the post-ratification building of the republic's financial infrastructure, during which Americans continued to struggle with the questions about the accrual, control, and representation of wealth that had figured so prominently in arguments about political constitutions.[17] However, these later conversations were so fundamental that, I suggest, they should be considered part of the constitutional process itself.

When the federal constitution was ratified, domestic and foreign observers immediately recognized the government's acquisition of the power to tax as a tremendously consequential

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[14] Cited in Wood, 218.

[15] *American Political Writing During the Founding Era: 1760-1805*, eds. Charles S. Hyneman and Donald Lutz (Indianapolis: Liberty Fund, 1983). 2 vols. 1: [36]: [Theophilus Parsons], "The Essex Result." Parsons was heavily involved in the adjudication of marine insurance cases and consulted with several companies on legal matters.

[16] Gordon Wood has written that republicanism "added a moral dimension, a utopian depth, to the political separation from England" (47). More recently, historians such as Woody Holton and Robert A. McGuire have revived and refined the Beardian argument that the framers of the federal Constitution were driven by their material interests to a significant extent. Holton argues that the framers were unhappy that state constitutions "had shown excessive indulgence to debtors and taxpayers," and intended the federal Constitution—against overwhelming popular sentiment—to tip the balance of power toward lenders, speculators, and governments. Woody Holton, *Unruly Americans and the Origins of the Constitution* (New York: Hill and Wang, 2007), esp. 8-16. For a quantitative reassessment of Beard's argument, see Robert A. McGuire, *To Form a More Perfect Union* (Oxford: Oxford University Press, 2003).

[17] Charles Beard, in the follow-up work *Economic Origins of Jeffersonian Democracy* (New York: McMillan, 1915), discusses some of the first acts of the federal legislature; but his trajectory is to map merchant-capitalism as Federalist and agrarianism as Republicanism, there is an effective transition into party politics in his discussion and in the works of many who have pursued these questions.

development in American state-formation.[18] This power created a direct relationship between the federal government and property-holding citizens. As Americans well knew from the British example, the other way for a government to acquire money (without simply printing it) was by borrowing. The funding of the federal debt and the chartering of the Bank of the United States, which closely followed the ratification of the Constitution, allowed the government to borrow on a massive scale and was thus similarly significant.[19] But in creating the debt and the bank, the administration created new forms of property, and thus crated another set of relationships that needed balancing: the relationship between the federal government and the holders of the new property.[20]

The ratification of the Constitution, the funding of the debt, and the chartering of the Bank inspired confidence and excitement in prospective investors, both foreign and domestic. Nonetheless, some Americans had misgivings about the relationship between the government and the holders of the new forms of property it had created. Massachusetts attorney general James Sullivan described the consequences of funding the debt in 1792 in particularly vivid terms:

> The public securities of the United States of America were a dead, inactive kind of property, previous to the establishment of the constitutions of the new government … Upon the adoption of the new system of government, they assumed all the properties of a

[18] In his discussion of the federal constitutional process as an act of state-building, Max M. Edling borrows a framework from the social sciences suggesting that the state-building process involves three fundamental activities: increase in military capacity, increase in extractive capacity, and centralization of authority. Edling, *A Revolution in Favor of Government* (Oxford: Oxford University Press, 2003), 45, citing Michael Mann, "The Autonomous Power of the State: Its Origins, Mechanisms and Results," in *States in History*, ed. John A Hall (Oxford: Blackwell, 1986), 112, and Charles Tilly, *Capital, Coercion and European States, AD 990-1990* (Oxford: Blackwell, 1990), 96.

[19] Borrowing was closely linked to taxation, since the power to tax reassured lenders that the government would be able to repay its debts. The Barings, borrowing money to invest in the new federal bonds, reassured potential lenders that "the adoption of the present government removes [the] difficulties" that the federal government had had in raising money under the Articles of Confederation. Baring Archive, NP1.A7.1.2

[20] This discussion draws inspiration from John Brewer's description of the emergence of a "financial interest" during Britain's eighteenth century wars, which prompted political commentators to rethink the traditional position and privileges of the "landed interest" in government. Brewer, *The Sinews of Power: War, Money, and the English State, 1688-1783* (New York: Knopf, 1989), Ch. 7. It also aligns, to a certain extent, with the interpretation of Woody Holton, who writes that the Constitution [which he defines to include the funding of the debt], "produced a massive shift in the balance of power between Americans who paid taxes and those who had invested in government bonds." (267) Holton's account, however, concludes before the creation of the Bank or any other of the financial corporations of the 1790s, and thus implies that Hamilton's plan finalized the relationships between government, lenders, debtors, taxpayers and the public. The conceptual framework of this chapter also owes much to Bruce Carruthers, who envisions the British crown as a "sovereign debtor," which, through borrowing, creates a group of people with a stake in the government's survival and some sway over its activities. Carruthers envisions this as a rather general relationship between politics and the market itself, rather than a set of relationships among specific institutions. Carruthers, *City of Capital: Politics and Markets in the English Financial Revolution* (Princeton, N.J.: Princeton University Press, 1996).

> rising credit, and became an immense active capital for commerce; but not for such a commerce as was advantageous to the people; their activity centered in themselves; and while they swelled the medium, they created proportionably a demand for more.[21]

Sullivan's metaphor of resurrection was an uneasy one, particularly in that the "dead" property suddenly brought to life by the new constitutions did not appear to have trustworthy republican motives. It did not devote itself to the prosperity of "the people" as a whole, but was interested primarily in multiplying itself. Even worse, this self-willed, self-interested body of debt-property provoked an insatiable appetite among investors to create more such bodies, each presumably just as interested in its own growth. Such bodies were indisputably American property, and thus belonged in the American body politic, but could they be trusted to be loyal to it? Where, exactly, did they belong, and if they never stopped multiplying, how could they ever be controlled?

While this particular period of financial enthusiasm subsided with what has been termed the first United States securities market crash in 1792, investors neither permanently retreated from bond ownership nor lost their hunger for new forms of debt in which to invest.[22] Instead, they embarked upon a secondary set of creative schemes to combine their capital, buy government and bank debt, and use the expected interest to further their own aims. Some of their projects were small scale and focused on short-term objectives, while others became institutions at the heart of the American financial sector. The creation of these latter institutions was a part of the still ongoing process of American constitution making—most notably in that they involved the creation of new bodies politic, which Blodget described as "minor republics" but which are more commonly known today as corporations.[23]

Corporations and Bodies Politic

In American national myth, the best-known pre-Revolutionary corporation is the East India Company, a vast, crown-chartered monopoly chartered for the purposes of profit. It is easy

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[21] James Sullivan, *The Path To Riches* (Boston: P. Edes, 1792), 44.

[22] On the market crash, see David J. Cowen, "The First Bank of the United States and the Securities Market Crash of 1792," *The Journal of Economic History* 60, No. 4 (Dec., 2000), 1041-1060.

[23] The New York Tammanial Tontine, for example, formed in 1791 to fund the building of a permanent hall. It planned to raise $64,000, of which a maximum of twenty-five percent would go toward the building of the hall. The rest would be invested in United States government bonds, state bonds, or bank stocks. See Joseph Stancliffe Davis, *Essays*, II: 285; Elizabethtown, NJ: *The New-York Journal, & Patriotic Register*, January 18, 1792; "Plan of the New York Tammanial Tontine Association" (New York: Francis Childs and John Swaine, 1792), American Antiquarian Society.

to create a dramatic contrast between this corporation, linked closely to the British state, and the hundreds of smaller, citizen-controlled corporations that arose in the United States by the mid-nineteenth century. Yet corporations do not divide so neatly into the categories of British/monarchical/monopolistic and American/liberal/post-Constitutional. Despite a well-honed anti-corporate rhetoric that emerged in political forums whenever controversial corporations were proposed, Americans by the 1790s could also draw on a range of very positive ideas about corporations. These ideas, just like Enlightenment ideas about political governments, had been developing for centuries, but had been held in check by political circumstances.

The fact that a corporation was a person for specific juridical purposes did not particularly trouble early modern legal theorists or their eighteenth century successors. The jurist William Shepheard emphasized that a corporation "is a Body onely in consideration of Law, and not like to a naturall Body, for it cannot commit Treason, be Out-Law'd, Excommunicate, appear in person in a Court, be Sworn, Dye, and other such like Acts which a natural body may do."[24] For centuries, the most common types of English corporations were not joint-stock companies but cities and towns. Other groups frequently incorporated included craft guilds, charities, and universities, which organized people for a wide variety of purposes in specific civic spaces.[25] Accordingly, corporations' rights as polities—organizations of people—received far more attention than their rights as persons.[26]

After the Glorious Revolution, commercial companies became particularly contentious, as the British government grew more powerful, overseas commerce became extraordinarily profitable, and the relationship of the crown to other political institutions became a matter of debate.[27] Joint-stock companies, which often received monopoly rights to engage in particular kinds of for-profit venture, were criticized as a way for the crown to bestow favor and privilege

[24] William Shepheard, *Of Corporations, Fraternities, and Guilds* (London: H. Twyford, T. Dring, and J. Place, 1659), 109-10. Alexander Hamilton concurred, matter-of-factly reiterating the distinction between the "*legal,* or *artificial* person" created by incorporation and the "*natural* person," to whom different sets of laws applied. Clarke, M. St. Clair, and D. A. Hall. *Legislative and Documentary History of the Bank of the United States* (Washington: Gales and Seaton, 1832), 100.

[25] As Philip J. Stern has argued, the early modern English corporation was not only a body politic but also a form of "fellowship" with "an inescapably social character." *The Company-State: Corporate Sovereignty and the Early Modern Foundation of the British Empire in India* (Oxford; New York: Oxford University Press, 2011), 8. On an alternative British route to the pooling of risk without incorporation, see Penelope Ismay, "Trust Among Strangers: Securing British Modernity 'by way of friendly society,' 1780s-1870s" (Ph. D. diss., UC-Berkeley, 2010).

[26] See, too, Pauline Maier's extended discussion of corporations, "The Debate over Corporations: Massachusetts in the Early Republic," in Conrad Edick Wright, ed., *Massachusetts and the New Nation* (Boston: Northeastern University Press, 1992), 73-117.

[27] Philip Stern traces the East India Company's role in this conversation after 1688 in *The Company-State*, ch. 7.

upon a particular group of subjects. Some early modern English jurists in fact argued that corporations could not be legal if their monopoly restricted the freedoms of others.[28] George I affirmed the crown's control over for-profit corporations with the so-called Bubble Act of 1720, which illegalized all joint-stock companies lacking a formal crown charter. The restrictions of the Bubble Act, however, did not discourage British subjects from pooling their capital. With formal corporations legally restricted, they frequently resorted to workarounds such as the "equitable trust," a de facto corporation with some restrictions on the transfer of shares that technically distinguished them from corporations.[29] Many such small-scale crypto-corporations were formed during the eighteenth century and virtually none were prosecuted.[30]

While the Bubble Act's control extended over all joint-stock companies in Britain, it was particularly focused on the insurance business. It was not passed in response to the collapse of the South Sea Company, as is frequently supposed.[31] In its own time it was most frequently known as "the act for establishing the two insurance companies."[32] The act chartered two corporations to engage in the marine insurance business in exchange for cash payments to the crown. It granted to these two entities the specific privileges related to incorporation, including perpetual succession, but did not grant them the exclusive right to insure.[33] Many marine insurance brokers and underwriters continued to practice independently at Lloyd's of London or in organized groups in smaller port cities. As the eighteenth century progressed, the British insurance sector proved so profitable that Adam Smith proclaimed it a general principle that insurance companies were one of the few types of joint-stock venture that could succeed without

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[28] Shepheard was emphatic that a corporation could not be dedicated to restricting the freedoms of others: "All By-laws by them made against the Liberty and Freedom of the People, as, to forbid, or Restrain Trade, Impose Taxes or Burdens of payment on the people, where the Law doth not impose them; to bind a man's Inheritance, to restrain men from suing in what Court they please, or to enhance the prizes of Commodities to the hurt of the publick, and private advantage of the place, are void." Shepheard, *Of Corporations, Fraternities, and Guilds*, 84.

[29] Roman Tomasic, Stephen Bottomley, and Rob McQueen, *Corporations Law in Australia* (Leichhardt, NSW: Federation Press, 2002), 8.

[30] *By Authority. Joint-stock Companies with Transferrable Shares. Report of the arguments, upon the application to the Court of King's Bench, for leave to file an information against Mr. Ralph Dodd, upon the statute of 6 Geo. I. cap. 18* (London: J. M. Richardson, 1808). Reprinted in Robin Pearson, ed., *The History of the Company: The Development of the Business Corporation 1700-1914* (London: Pickering & Chatto, 2006), 8 vols. 1:57-168. Ron Harris, in "The Bubble Act: Its Passage and Its Effects on Business Organization," *The Journal of Economic History* 54, no. 3 (September 1, 1994), 624, mentions a 1722 case of prosecution but the circumstances and outcome of the case are unclear.

[31] Nor was its main purpose to prevent "bubbles" (a term rarely used before the nineteenth century). Harris, 613.

[32] Harris, 614.

[33] Harris, 613. The Bubble Act is 6 Geo. 1, ch. 18; the original charter of the London Assurance Company is available at CLC/B/192/MS08726, London Metropolitan Archives.

a monopoly. Their business could be reduced to strict "rule and method," he reasoned, and thus it would inevitably generate profit over the long run.[34] Insurance companies, highly capitalized entities accumulating mercantile wealth and information, active in overseas affairs, and vastly profitable during wartime, had thus throughout the century been at the center of conversations about joint-stock companies, monopoly privilege, and state authority, but in the British case it had been demonstrated that they could come to a profitable and nonthreatening arrangement with the state.

Anglo-Americans had long if intermittent involvement with the corporation. Those living in royal and proprietary colonies were technically permitted to incorporate through their colonial legislatures, provided that neither Governor, Lords of Trade, colony proprietor, nor crown disapproved of their ventures.[35] Colonies chartered as corporations, however, were technically barred from creating corporations of their own, though residents of these colonies often found ways to make exceptions, and the entire colony of Massachusetts was built around its towns, de facto corporations that granted land, ruled, and taxed themselves.[36] British authorities took more pains, however, to repress profit-seeking joint-stock corporations.[37]

When American Revolutionary hostilities began, both British authorities and Americans at first downplayed the power of corporations, but for opposing reasons. Britain insisted the colonies were "only like corporations in England and therefore subordinate to the legislature,"[38] while Massachusetts resistance leaders argued that Parliament had no authority over their colony since it had relocated "beyond the four seas" and thereby rendered itself something more than a "mere" corporation.[39] As Americans began forming new political institutions, though, the corporation reemerged as an inspiring but also troubling political form. State constitutions requiring voters to own property of course followed Parliamentary precedent, but they also

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[34] Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, ed. R. H. Campbell and A. S. Skinner, vol. II of the *Glasgow Edition of the Works and Correspondence of Adam Smith* (Indianapolis: Liberty Fund, 1981), 7 vols. Chapter: [V.i.e] Of the Publick Works and Institutions which are necessary for facilitating particular Branches of Commerce, http://oll.libertyfund.org/title/200/217501

[35] Joseph Stancliffe Davis, *Essays in the Earlier History of American Corporations* (Cambridge: Harvard University Press, 1917). 2 vols. 1:20.

[36] Pauline Maier writes that in the 1750s-1770s, "The legislature incorporated not just towns, districts, and the like, but schools, church officers, Boston's overseers of the poor, marine societies…" Maier in Wright, 78.

[37] Pearson, *The History of the Company: The Development of the Business Corporation 1700-1914*, I:xxi, 2.

[38] *The Works of John Adams*, by John Adams and Charles Francis Adams (Boston: Charles Little and James Brown, 1850), II: 371.

[39] John Adams, Novanglus Letter XIII, April 1775. Robert J. Taylor, ed., *Papers of John Adams*, Volume 2 (Dec. 1773 – April 1775) (Cambridge: Belknap, 1977), in C. James Taylor, ed., *Founding Families: Digital Editions of the Papers of the Winthrops and the Adamses* (Boston: Massachusetts Historical Society, 2007).

resembled the charters of joint-stock corporations, whose members had to hold shares in order to vote. T he existence of corporations proved that one polity might exist within another, setting a kind of precedent for federalism.[40] At the federal convention in 1787, James Madison claimed, "the two extremes before us are a perfect separation & a perfect incorporation."[41] Yet federalism, which aimed to establish the states somewhere between these two extremes, did not dictate a precise relationship between a greater and a lesser corporation. Furthermore, the logical consequences of a partial incorporation were problematic. If separation and incorporation were both perfect, did this mean that states would be "imperfect" if they lay somewhere in between?[42] Noah Webster in fact argued that a republican state was inherently an "imperfect" corporation because its members were too numerous to vote directly, and thus could not express their will "but by *delegation*."[43] Was the federal system simply going to create a set of degraded imitations of earlier corporate models?

Another major question during Constitutional debates was whether the federal government or the states would be able to charter corporations of their own.[44] As some Federalists reasoned, elected government was supposed to reflect the will of its constituents. If the public, through its elected representatives, had not expressed a desire for something to be done, did the corporation not act in opposition to the government by undertaking that same object? Was a corporation not, in fact, a type of legally authorized faction?[45] A simultaneous

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[40] Allison LaCroix, in her discussion of the American history of the idea of federalism, mentions that the incorporations of Scotland and Ireland were among the federal union's intellectual precedents, but makes no reference to non-state corporations. LaCroix, *The Ideological Origins of American Federalism* (Cambridge: Harvard University Press, 2010), Ch. 1. The other precedents she offers for American federalism are seventeenth century Anglo-American constitutional debates, continental European political philosophy, and experiments with North American colonial unions.

[41] James Madison, June 28, 1787. Gaillard Hund and James Brown Scott, eds. *The Debates in the Federal Convention of 1787* (Oxford University Press, 1920), 179.

[42] Alexander Hamilton was several times accused of wanting to reduce the states to "mere" corporations. See "New York Ratifying Convention: Remarks," *The Papers of Alexander Hamilton Digital Edition,* ed. Harold C. Syrett. Charlottesville: University of Virginia Press, Rotunda, 2011: Volume V: June 1788–November 1789. See also Timothy Pickering to Alexander Hamilton, April 5, 1803, in ibid., Volume XXVI: 1 May 1802–23 October 1804 and Additional Documents 1774–1799, note 2. In fact, this may have been Hamilton's intention: see "Constitutional Convention. Remarks on the Abolition of the States," June 19, 1787, in ibid., Volume IV: 1787–May 1788

[43] Noah Webster, Jr., to Thomas Jefferson, Dec. 12, 1790, in *The Papers of Thomas Jefferson Digital Edition,* ed. Barbara B. Oberg and J. Jefferson Looney (Charlottesville: University of Virginia Press, Rotunda, 2008), Main Series 18 (4 November 1790–24 January 1791).

[44] For more on this argument, see Johann N. Neem, *Creating a Nation of Joiners: Democracy and Civil Society in Early National Massachusetts* (Cambridge: Harvard University Press, 2008).

[45] Federalist Paper 69 reassured the public that under the Constitution, the United States' President, unlike the king of Great Britain, would not be permitted to charter corporations. *The Federalist,* ed. Jacob E. Cooke (Middletown, Conn., Wesleyan University Press, 1961).

Jeffersonian strain of anti-corporate sentiment warned that corporations would allow small groups of privileged citizens to exert outsized influence on public affairs, gradually drawing the powers of government into their own hands.[46]

In political narratives, the federal debates are usually described as the culmination of the constitutional process.[47] However, we might better understand the ratification of the federal constitution as an event that moved the constitutional conversation into a new phase, during which Americans continued to create corporations and to debate their status and relationship to existing political institutions. Opponents of the Bank of the United States, for example, raised concerns about the implications of raising a group of investors with tremendous financial clout to the status of a body politic. Thomas Jefferson warned that the laws of a federally chartered bank would be "paramount to [the laws] of the states." Hamilton, in response, defended the bank by explaining that it was more like a mercantile project, whose bylaws could "operate only on its own members … concern [only] the disposition of its own property, and must essentially resemble the rules of a private mercantile partnership."[48] Moreover, he noted, the federal republic was already planning far more consequential incorporations in the west: "the institution of a government, that is, the creation of a body politic, or corporation of the highest nature; one which, in its maturity, will be able itself to create other corporations." As we have seen, many state constitutions defined a body politic as a composition of persons and property. Hamilton downplayed the power of the bank by describing it a body politic that governed only the property of its members. For political purposes, he played up the degree to which it differed from a territorial polity, which controlled a broader group of inhabitants and which, crucially, could create corporations of its own. But, of course, the powers of a financial corporation extended much further than Hamilton implied, because such an institution—even if it directly "controlled" only the property of its members—used its wealth to create its own relationships with other polities and the citizens more broadly.

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[46] With these types of arguments in mind, the majority of the Pennsylvania legislature opposed the charter of all corporations during the 1780s. See Tench Coxe to Alexander Hamilton, Jan. 23, 1789, in Syrett, *The Papers of Alexander Hamilton Digital Edition* V: June 1788–November 1789, fn. 2. The Massachusetts constitution of 1780, attempting to finesse the factionalism question, prohibited the formation of any "corporation or association of men" if its interests were "distinct from those of the community," an impossibly subjective criterion (Neem, 5-6).

[47] Legal histories are another matter, which I hope to address in a later version of this chapter.

[48] "Hamilton's Opinion as to the Constitutionality of the Bank of the United States," in Paul Leicester Ford, *The Federalist: A Commentary on the Constitution of the United State*s (New York: Henry Holt and Company, 1898), 663.

The Merchants' Polity

Between 1781 and 1790, American state legislatures granted only 33 charters to what earlier historians have termed "business" corporations, but in the decade following the ratification of the Constitution, they granted 295.[49] The new corporations' supporters had no difficulty reconciling their financial goals with their civic ones, which included things like building turnpikes and circulating paper money. In the minds of opponents, however, the alignment of civic initiative and wealth seeking was troubling. The Pennsylvania legislature, inundated with requests for corporate charters, offloaded the responsibility of vetting charitable, religious, and literary charters onto the state attorney general and the Supreme Court in 1791.[50] It retained control, however, over the incorporation of for-profit companies, recognizing that these prospective bodies politic, developed for the purpose of accumulating wealth, required the most careful supervision.

The Insurance Company of North America's petition for incorporation prompted a major debate in Philadelphia newspapers about the role of capital-holding corporations in a republic. The debate, which the rest of this essay will explore in detail, in many respects continued the previous year's debate over the Bank of the United States. It centered on the same city, involved many of the same participants, and focused on many of the same issues.[51] In fact, the Bank debate itself had not even really ended, as the effects of the Bank remained to be seen, and as large financial projects continued to multiply with major implications for state governance. The Pennsylvania legislature was concurrently debating whether it should incorporate a second state bank, whether the state should start a loan office, and whether the Bank of North America should become the repository of state funds.[52] Nearby, New Jersey had just incorporated a manufacturing company in the midst of tremendous controversy.[53]

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[49] Davis, *Essays*, II:24.

[50] The governor had the final signoff. *Laws of the Commonwealth of Pennsylvania: from the Fourteenth Day of October, One thousand Seven Hundred, to the ... Twenty-Eighth Day of March, One Thousand Eight Hundred and Eight* (Philadelphia: John Bioren, 1803), IV: 28.

[51] There were implicit federal issues at stake in the insurance company debate, since insurance companies were directly involved in foreign affairs.

[52] See *Dunlap's Daily Advertiser*, January and February 1793, throughout.

[53] A columnist in the *Philadelphia Daily Advertiser* condemned the manufacturing company as part of the recent financial fracas: "A system of finance has issued from the treasury of the United States, and has given rise to a scene of speculation, which like subtle poison has infused itself into the body politic, and bids fair to corrupt the great

Upon first glance, a marine insurance company did not seem to have the potential to reach as deeply into public life as did a bank, or to directly affect as many citizens' lives as would a manufacturing company. And, indeed, the INA debate was confined to a smaller group of people, principally the Philadelphia merchants who read the commercial gazettes. Yet a very large amount of money was at stake, and the exclusivity of the project actually served to sharpen the civic question. Insurance companies were nearly as highly capitalized as banks. But where a bank could be forced to make loans to a government and produce a useful circulating currency, and where a manufacturing company could create jobs and generate physical products for use and export, a marine insurance company would be controlled by, and would primarily benefit, port city merchants. These merchants were heavily involved in overseas affairs, who drew a great deal of wealth from their involvement in these affairs, and whose fealty to territorial governments was often called into question by landholders. INA's opponents also objected to the creation of such an institution by the would-be incorporators in particular, as they were a specific group of people with known social affiliations and political inclinations. In both its theoretical and partisan aspects, then, the debate over INA continued constitutional debates about power arrangements in the new republic, bringing the Constitutional debate about corporation-as-polity to bear specifically on the question of mercantile wealth.

Republics of Capital

The INA debate bypassed the details of the charter itself, which the company's framers successfully presented to legislators as a near-finished text. Nevertheless, the charter was a serious political document, which outlined the governance of the company's capital and defined a number of important relationships, including the relationship between the shareholders and the company's leaders, and the relationships among the company, the state, other corporations, and the public. Most insurance company charters would closely follow INA's, creating a relatively uniform vision of how to properly integrate mercantile wealth into the republic.[54]

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minds of the people, hence has arisen a variety of corporations all calculated to excite the spirit of speculation, and sap the foundation of industry." Jan. 7, 1792, quoted in Davis, 1:431.

[54] Massachusetts Acts and Resolves 1807 Chap. 0068, "An Act to Incorporate Peleg Tallman and others, into a company, by the name of The Kennebeck Marine Insurance Company," and "An Act to incorporate the subscribers of the Insurance Company of North-America," *Laws of the Commonwealth of Pennsylvania,* Vol. 4 (Mathew Carey, J. Bioren), 333-39.

Legislative approval, in standard procedure, transformed a specific group of people into a "corporation, or body politic," with the right to acquire, hold, and dispose of its own property; to make its own laws, so long as they were not "repugnant" to state or federal laws; to appear as a legal entity in court; and to create its own seal, a visual emblem of its sovereignty that the company would use to authenticate documents.[55] When granting these rights, the states generally asked for little in return; even strict Massachusetts demanded only the right to inspect company books upon request.[56] While in theory temporary—American insurance company charters were often given for 14 or 20 years, unlike the perpetual charters of their British predecessors—by the time renewal years came around, the insurance companies, like the banks, were well established.[57] Not one of the Pennsylvania insurance companies founded in the 1790s or 1800s failed to achieve the renewal of its charter.[58]

Like state constitutions, the constitutions of financial corporations balanced the representation of individuals with the representation of wealth. Shareholders elected company directors, who subsequently chose a president from among their numbers by majority vote.[59] Within this framework, corporations varied in the number of directors who served (theoretically, more directors would allow more interests to be represented) and the degree to which major shareholders could dominate the voting. Elaborate voting rules aimed, in theory, to prevent any single shareholder from becoming a kind of company tyrant, but those with more wealth did receive more representation. INA's charter specified that each shareholder would get one vote per share up to fifty shares; then one vote for each ten shares beyond fifty, but that no single entity could possess more than one hundred shares, equivalent to 55 votes. Other companies adjusted these figures, but pursued the same basic aim of capping the number of votes controlled by the wealthiest shareholders. A small company in Maine, for example, stated that a stockholder

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[55] Corporate seals drew on older corporate traditions of royal authority and aristocratic families, as I will discuss in a later chapter.

[56] Andrew Schocket writes that the legislatures of Pennsylvania "made banking oversight among their lowest priorities" in the early republic; insurance companies took up even less of their time. *Founding Corporate Power in Early National Philadelphia* (DeKalb: Northern Illinois Press, 2007), 102.

[57] The Insurance Company of Pennsylvania's charter was renewed for 20 years on January 21, 1813 without modification. Pennsylvania. Chapter XIX, *Acts of the General Assembly of the Commonwealth of Pennsylvania, … One Thousand Eight Hundred and Twelve* (Philadelphia: John Bioren, 1813), 39. INA's charter was extended the following week. *Ibid*., 43-44.

[58] My own quantitative work—still in progress.

[59] Note the Americanized leadership titles. The London Assurance Company of 1720 was run by a "Governor," "Subgovernor," "Deputy Governor" and "Court of Directors."

got one vote per share, up to a maximum of ten.[60] In an era when states required prospective voters to own property and pay taxes, the process of shareholder voting resembled political elections even more closely than it does today.[61] Economist Eric Hilt has developed a formula to quantify the "graduated voting rights" of corporate stockholders—that is, the degree to which one share guaranteed one vote, no matter how many votes were owned. Examining New York corporations between 1790 and 1825, he has found that "insurance and finance" corporations, not including banks, hewed most closely to the principle of one vote per share—in other words, they were the type of corporation designed most conveniently for control by a small number of highly capitalized shareholders.[62] If we consider these companies polities of people, the "one vote per share" principle made insurance companies the least democratic of corporations, but if we consider them polities of wealth, they were models of direct representation.

Corporate charters also determined what relationships insurance companies could forge with other bodies politic within or beyond the state. Generally, charters permitted companies to invest in federal debt, state debt, or in other corporations situated within the state. While insurance companies would gain local influence through their ability to invest in all varieties of local corporations (as the following chapter demonstrates), most of their capital ended up in federal debt or in local banks, giving them, respectively, a new claim on federal authority and a strong hand in organizing the domestic circulation of capital. Insurance companies in fact contributed a large percentage of the capital of American banks—wealth that they drew from their merchant-investors' overseas networks. In this fashion, for-profit corporations not only resembled territorial bodies politic but built deep relationships with them, though the consequences of these relationships were not always obvious to observers. Americans who

[60] For banks, this procedure was equally, if not more complex. The Bank of Pennsylvania and the Philadelphia Bank limited each stockholder (whether "person, co-partnership, or body politic") to thirty votes. *Laws of the Commonwealth of Pennsylvania : from the fourteenth day of October, one thousand seven hundred, to the ... twenty-eighth day of March, one thousand eight hundred and eight* (Philadelphia: John Bioren, 1803), 233, and *Laws of the commonwealth of Pennsylvania, from the seventh day of December, one thousand eight hundred and two, to the fourth day of April, one thousand eight hundred and five* (Philadelphia: John Bioren, 1806), 285.

[61] Another aspect of this similarity is that there was substantial overlap between public officials and those who controlled corporations. As Eric Hilt and Jacqueline Valentine have found, the individuals by far wealthiest in corporate shares in New York in 1791 were public officials. Hilt and Valentine, "Democratic Dividends: Stockholding, Wealth, and Politics in New York, 1791-1826," *Journal of Economic History* 72, no. 2 (June 2012), 332-363.

[62] Eric Hilt, "When did Ownership Separate from Control?" *Journal of Economic History* 68, no. 3 (Sept. 2008), 658. See also commentary by Davis, *Essays* II: 324.

protested the power of American banks, for example, had little sense of how much bank money was marine insurance money.

Voting for directors was generally the extent of stockholders involvement in company business. However, stockholders could force the companies to act directly through another type of local institution: the newspaper. INA's charter assured stockholders of a meeting if at least $6,000 worth of shareholders gave at least six weeks notice and explained their reasons in two public gazettes of Philadelphia. Some marine insurance companies were also required by charter to advertise their capital in local newspapers; their near-constant advertising in port city gazettes would render them highly visible participants in global capital and information networks and thus figures of authority in conversations about international commercial affairs. A marine insurance company could thus generally carry on its business rather privately, but the public had the right to know the size of local corporate bodies and when they were in a state of turmoil: when stockholders had serious and extra-constitutional demands.

In short, corporate charters created republics of capital, in which membership was acquired by the purchase of shares; in which more shares gave a purchaser—to a carefully calculated extent—more authority to control the company's wealth. The introduction to this chapter quoted Maier's description of corporations as "neatly tucked under the supervisory authority of state legislatures." But as these charters demonstrate, the relationship between corporations, polities, and the public was not as neat or as hierarchical as such a description suggests.[63]

Debating the Incorporation of Merchants

A flurry of essays in Philadelphia's commercial gazettes in December 1792 and January 1793 debated the incorporation of the proposed Insurance Company of North America, which would become the first chartered marine insurance company in the country. Essayists, who knew that the company would set a precedent for further incorporations, framed the legislative question in abstract terms. Should a republican government support the consolidation of mercantile wealth into a domestically based but largely freewheeling financial corporation? Two main questions addressed how the incorporation would affect the mercantile community itself: whether current brokers and underwriters in Philadelphia were failing the city's merchants, and

[63] Maier, "Revolutionary Origins," 82.

whether an incorporation represented a monopoly in the business of marine insurance. If so, one columnist alleged, this would be the first example of a "commercial monopoly" granted in the United States. The monopoly question, while superficially focused on the marine insurance business, had major implications for republican government more broadly, as did the third key concern: whether large financial corporations, particularly those controlled by merchants, damaged civic life. INA's supporters argued that incorporation brought about a beneficial new relationship between merchants and citizens, while the company's opponents suggested that binding the two communities together through a state charter would harm both.

INA contended that its incorporation would solve the problem of inadequate and under-regulated insurance in Philadelphia by pooling and organizing the wealth of its investors. This argument at first glance seems to compare the reliability of individuals to a group: that is, to suggest that merchant underwriters were less reliable than a corporate body. And indeed, the adoption of a corporate form by insurers seemed to offer a number of practical advantages to insurance buyers. If a merchant bought insurance through a broker, when his ship sank, that broker would have to hunt down each individual underwriter and compel him to pay his share of the claim. By contrast, if a merchant bought insurance from a company, a board of directors decided by simple majority vote whether to pay. Meanwhile, company capital earned interest sitting safely in a nearby bank.[64] Put in these terms, it is understandable that economic historians tracing the rise of capitalism see the corporate form as a more supple and efficient vehicle for mobilizing wealth than individual merchant financiers. Indeed**,** the most recent economic historian to investigate the matter has concluded that incorporated insurance companies drove most private brokerages out of business by the end of the Quasi-War.[65] However, as late as 1802, Noah Webster noted that the three marine insurance brokerages in Boston, combined, did as much business as did Boston's three companies.[66] Based on this and similar evidence from other

[64] Works emphasizing the significance of this transition include A. Glenn Crothers, "Commercial Risk and Capital Formation in Early America: Virginia Merchants and the Rise of American Marine Insurance, 1750-1815," *The Business History Review* 78, no. 4 (2004): 607–633; Christopher Kingston, "Marine Insurance in Philadelphia During the Quasi-War with France, 1795-1801," *Journal of Economic History* 71, no. 1 (2011): 162-183, and William Fowler, "Marine Insurance in Boston: The Early Years of the Boston Marine Insurance Company, 1799-1807," in Conrad Edick Wright, *Entrepreneurs: The Boston Business Community 1700-1850* (Boston: Massachusetts Historical Society, 1997). In the longer project, I suggest that the decline of the brokers was more generational than institutional in nature.

[65] Kingston, 162-183.

[66] Noah Webster, *Miscellaneous Papers on Political and Commercial Subjects* (New York: E. Belden & Co., 1802), 39s.

cities, there is reason to believe Philadelphia insurers when they argued in 1793 that the brokerage model worked perfectly well and that there was plenty of money available for underwriting in the city. Their refusal to insure vast sums on single voyages, they argued, signaled their communal experience and good judgment, not their lack of capacity.[67] In other words, they understood themselves not only as individual investors but as members of a sophisticated, informed, and disciplined investment community that worked together perfectly well without formal incorporation.

INA's supporters argued that incorporation brought the insurance business under closer control of Pennsylvania's legal system, to the benefit of insurance buyers. Should a dispute arise over the terms of an insurance contract, INA argued, it would be easier and more straightforward for wronged merchant customers to force restitution from a local corporation than from individual underwriters, whose wealth, dispersed across overseas mercantile networks, was of unknown quantity and accessibility.[68] Established underwriters retorted that shareholders of a corporation were subject only to limited liability, while a wronged insurance-buyer could bring suit against an individual's entire estate.[69] As with the above argument about restitution, the insurers' discussions of their individual responsibility actually reflected their characteristics as a group. Insurers were an experienced community of merchant financiers with a closely observed set of customary practices and communal norms. Their individual reputations depended on how well they observed group practices. By contrast, the brokers and underwriters argued, INA, an institution chartered by the state, would draw a large number of uninformed, inexperienced citizen-investors into financial arrangements about which they knew next to nothing.

The most serious issue in the INA debate was whether the corporation would represent a monopoly—a political organization of capital anathema to eighteenth-century republicans. INA requested no monopoly over the marine insurance business, but opponents warned that the company's large capitalization (presumably augmented by investment returns) would enable it to insure so cheaply as to acquire a de facto monopoly.[70] In fact, it would become the "first

[67] *Dunlap's Daily Advertiser*, Jan. 7, 1793.
[68] To the Honorable the Senate and House of Representatives of Freemen the Commonwealth of Pennsylvania in General Assembly Met." McAllister MSS 017 box 8, Historical Society of Pennsylvania.
[69] As one early Hartford insurance broker warned merchants in an advertisement, "Insurances made [through an individual broker] have ever been considered safer than when made by a corporate body, where the property of the Corporation only, and not of the individuals, is liable for losses." *Connecticut Courant*, March 24, 1800.
[70] *Dunlap's Daily Advertiser,* Jan. 1, 1793.

precedent of a commercial monopoly" in the republic.[71] A pro-corporate columnist retorted that the company's founders hated monopoly as much as anyone, and that INA was far from a vehicle for elite control: its founders had set its share prices low in order to allow Americans from "all parts of the United States" to participate.[72] The founders worked to prevent monopoly over INA itself in two further ways: by limiting new subscribers to twenty shares apiece, and by selling some of their own shares, at face value, to local elites, or as they delicately put it, "for the accommodation of gentlemen who … had not [previously] subscribed." The columnist concluded, "such an instance of generosity we seldom meet with in *Monopolists*…" reasoning that dealing local elites in to the project was just as much a gesture of anti-monopolistic sentiment as was limiting most new participants to a small number of shares.[73] Both strategies aimed in practical terms to retain a balance of power within the joint-stock company, as any good republican would wish to do in a public polity. The columnists also emphasized that the initial decision to transform the project (originally a tontine) into an insurance company was not the feat of a few controlling members, but was "unanimously agreed" to be done at a shareholders' meeting. The transformation process, moreover, exemplified orderly republican processes: the shareholders chose a committee to make a plan, then approved the plan by vote, and then formally adopted a new constitution.[74] Such a demonstration of communal will and good legislative order, they implied, reflected the best that formal republican processes had to offer. As informed observers knew, the new state legislatures had already failed to live up to such a standard.

To the objection that corporations, even without monopoly, "tended toward aristocracy"—precisely the kind of thing American constitutions were supposed to prevent—INA proponents replied that the states and the federal government had already incorporated several companies in which INA's opponents were deeply invested. (The Bank of North America, which consolidated the wealth of Philadelphia's older Quaker elite, was the clear target here). It would be hypocritical for those already holding shares in other companies to oppose INA, they suggested. INA's incorporation merely restored balance among the city's existing financial polities. When a columnist protested that monopoly was particularly to be feared in the

[71] *Independent Gazetteer,* Jan. 19, 1793.
[72] I discuss the tontine in another section of this chapter. *Dunlap's Daily Advertiser*, Jan. 7, 1793.
[73] *Dunlap's Daily Advertiser,* Jan. 7, 1793. The author is needling one particular critic, who had not been invited to buy shares and was thus apparently not an important local elite.
[74] *Dunlap's Daily Advertiser*, Jan. 7, 1793.

business of insurance because it was "virtually a commerce in the necessaries of life," a corporate booster mocked him, comparing his argument to Lord North's "mysterious and unintelligible" assertion "that the Americans were virtually represented in the British parliament."[75] In one sense, this respondent was simply arguing that the term "virtual," as used by his opponent, was meaningless. But by invoking the despised British figure, he also implied that there was no need to fear monopoly in the new American context, where clear written constitutions had supplanted inchoate British notions of "virtual" representation.

Twinned with the question of monopoly, which addressed the advantages incorporation offered to the few, was the broader civic question of the advantages incorporation offered to the many. That is, would the incorporation of an insurance company benefit Pennsylvania and the United States as a whole? Both corporate founders and their opponents believed that incorporation would bind the American public and the merchants more closely together. Corporate founders argued that this closer relationship would benefit the public and the merchants while anti-corporatists argued that it would be to the detriment of both.

The pro-insurance faction claimed that a corporation would strengthen the United States by keeping more wealth in the country, wealth that was currently being "drained" into the hands of European correspondents who charged Americans commissions to acquire insurance for them overseas.[76] A large incorporated insurance company would allow more American merchants to insure conveniently at home, while keeping the company's own capital circulating domestically where it would benefit "the Citizens of the Commonwealth in general." Less money would dissipate into American merchant-insurers' overseas networks, and less would need to be paid as "tribute" to the European correspondents. This latter term further reflects the notion of mercantile communities as polities, with insurance premiums charged by overseas merchant-financiers compared to the tributes levied by the Barbary states on European governments.[77]

INA's boosters further imagined that the state's blessing in the form of incorporation would enhance the company's reputation as a safe insurer, establishing "a greater Confidence in the Minds of Persons who may incline to do business with them."[78] In taking advantage of this "confidence," the INA would not be tricking its customers, but simply taking advantage of

[75] *Dunlap's Daily Advertiser*, Jan. 1, 1793.
[76] To the Honorable the Senate..."
[77] To the Honorable the Senate…"
[78] *Dunlap's Daily Advertiser*, Jan. 1, 1793.

existing prejudices in favor of state-chartered institutions. "It is well known," INA petitioners wrote, that "people have more confidence in an incorporated society than in unconnected individuals."[79] The people trusted the government, and the "incorporation is a declaration on the part of government, that the citizens to whom it is granted are worthy of confidence."[80] Pennsylvania and INA would essentially strike a bargain. INA would house its capital at home, benefiting citizens and potentially investing a portion of its riches directly in state debt, and in return, the state would tell the public that the corporation was worthy of its trust.

The anti-corporate faction did not dispute that incorporation would tie merchants more closely to the state and the public, but they argued that this closer relationship threatened the welfare of public and merchants alike. They suggested, for instance, that the corporation would damage civic life because it had a large, anonymous membership. It would become a kind of secret polity within the state. Its shareholders might even be foreigners, who would drain Pennsylvanian wealth into other states or other countries.[81] By contrast, the existing underwriters of Philadelphia were local fixtures, "notorious" for their possession of "real and personal property exceeding 60,000 dollars."[82] This editorialist turned on its head the contention that Philadelphia merchants dispersed their wealth across the oceans. He suggested that it was corporate wealth that was secret, while any Philadelphian could verify individual merchant-underwriters' wealth with their own eyes. Anti-corporate columnists also argued that a large, secret, "interested" faction of shareholders would make it impossible to hold a fair jury trial on any matter related to the company because any juror might be, secretly, a shareholder.[83] The proper function of a republic, one suggested, depended on citizens' abilities to know one another's identities in court. "If [members of a corporation] have the privilege of a political baptism," he cautioned, "the members cannot be known and challenged; and hence the cause of the insured may go on to trial by a number of interested parties on the jury."[84] INA's opponents, all in all, suggested that the established insurers of Philadelphia were public figures, whose stability could be verified by any city inhabitant, while the corporation's members shielded their

[79] To the Honorable the Senate..."
[80] *Dunlap's Daily Advertiser*, Jan. 1, 1793.
[81] *Dunlap's Daily Advertiser*, Jan. 3, 1793.
[82] *The Independent Gazettee*r, Jan. 19, 1793.
[83] *Dunlap's Daily Advertiser*, Jan. 1 1793, citing the retort to this petition.
[84] *The Diary* or *Loudon's Register* (New York, NY), Jan. 2, 1793.

identities through membership in an exclusive body politic. In so doing, they imperiled both Pennsylvanian wealth and the proper function of the state's legal processes.

Today, it is easy to read fears of a "secret faction" of corporate shareholders as anti-elitist. But in fact, the anti-corporate editorialists were suggesting that the new company, by selling its shares so indiscriminately, brought too many uninformed citizens into mercantile affairs. They even argued that the inclusion of the broader public in the insurance business was evidence of sinister intent on the part of INA's founders, "persons, with whom [the multitude] have but little connections, and for purposes very opposite to the prudent maxims of trading people." These persons, breaking with the traditional and appropriate exclusivity of merchant finance, intended to "infect the multitude with [their] poison."[85] Cheap shares appealed to the people "most credulous and most ignorant in money affairs,"[86] and would open "a large field of speculation & jobbing" as the original shareholders sold out. Soon thereafter, the market would most likely crash.[87] When average members of the public invested, in other words, their ignorant behavior not only brought them to ruin but destabilized the commercial enterprises of others.[88] Moreover, in lending their wealth to company directors, shareholders gave these directors too much control over merchants. Asked one columnist, "Has the assured [merchant] nothing to dread in a legal contest with a powerful monied company, shedding its influence over almost every description of citizens, and including almost every grade of life?"[89] What first appears to be a defense of the individual citizen against the powerful corporation is actually a defense of traditional financial relationships among merchants. INA's directors were not backed, fairly, by their own resources, but by the capital of large numbers of uneducated citizens. Legislative approval would misleadingly guarantee the safety of this arrangement to INA's customers and investors.

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[85] *Dunlap's American Daily Advertiser,* Jan. 7, 1793.
[86] *Dunlap's American Daily Advertiser*, Jan. 7, 1793.
[87] *Dunlap's American Daily Advertiser*, Jan. 3 and 7, 1793.
[88] See also Cato's Letter #91 (Saturday, August 25, 1722), in which John Trenchard finds it "unnatural" that "the benefits arising by [monopoly joint-stock] companies often "are the rewards of clerks, thimble-men, and men of nothing; who neglect their honest industry to embark in those cheats … then turn awkward statesmen … It is a strange and unnatural transition from a fishmonger or pedlar to a legislator… when united in a body under the direction of artful managers combining with great men, they can turn all things into confusion, and generally do so." Ronald Hamowy, ed., *Cato's Letters, or Essays on Liberty, Civil and Religious, and Other Important Subjects* (Indianapolis: Liberty Fund, 1995). Vol. 3.
[89] *Independent Gazetteer*, Jan. 19, 1793.

As the above evocation of an unfair legal contest suggests, the anti-corporate editorialists believed that public involvement in the new company was not only bad for the public, but also bad for merchants. One columnist argued that incorporation conflicted with mercantile principles because it drew merchants into political affairs. "The abstract principles of government," which were historically specific, were irreconcilable with mercantile principles, which were timeless. Governments might improve over time, he wrote, but "the practical rules of mercantile gain, were as well understood 30000 years ago, as now; and merchants then were, and still are, more likely to pursue their own interests with propriety, than theoretical projects are to teach them."[90] Incorporation, which transformed a group of insurers into a political body and harnessed them to the mutable government and a broader group of investors without mercantile training, had a far greater potential to harm than to improve American commercial affairs.

Resolution

INA's supporters argued that if the state ever feared the power of a new corporation, it could always incorporate *more* companies to counter the power of the "hydras" already in existence. This would restore, in effect, a balance of power among polities—an argument that resonated strongly with the federal constitutional conversation.[91] In fact, this was precisely the solution that resolved the two-year standoff over INA's incorporation. The legislature incorporated two corporations simultaneously to appease the two preeminent factions in the city of Philadelphia. INA was created by Samuel Blodget, a native of Boston, working in partnership with Ebenezer Hazard, the former postmaster of the Continental Congress. It was thus associated with out-of-towners, with the federal government and the new Bank of the United States, and with Philadelphia "merchant-republicans" such as John Swanwick, who had quarreled with the directors of the city's oldest financial corporation, the Bank of North America. INA's opposition, which clustered around the Bank of North America, included Philadelphia's longer-established community of merchants, financiers, and underwriters, who were associated with pre-Constitutional power networks.[92] When INA at last received incorporation, so too did a company hastily organized by its opponents. INA's incorporation was thus a political compromise

[90] *Dunlap's Daily Advertiser,* Jan. 7, 1793.
[91] *Dunlap's Daily Advertiser*, Jan. 4, 1793.
[92] Arnold, 61-63.

balancing the interests of two different factions by transforming them into bodies politic with equal relationships to the state government.

This compromise produced an insurance landscape formally similar to that of London, in which chartered companies practiced marine insurance alongside myriad private brokers and underwriters.[93] The two first Philadelphian companies neither together nor separately ever achieved a monopoly in the business of insurance. But this in no way diminished their power, for the companies did not turn against one another as the years passed. Rather, as later chapters will demonstrate, they began to collaborate with one another almost immediately, as well as with other new companies springing up in Philadelphia and port cities all over the country, and even with unincorporated insurance brokerages. This produced a collaborative sector of highly capitalized insurers who shared a deep knowledge about international commerce, a set of business practices, and close financial and personal relationships with the rapidly multiplying American private banks. Configured in this fashion, the new corporations became in a sense their own confederation, which brought the preexisting capital, culture, and knowledge base of merchant-insurer networks into a new kind of relationship with American political institutions. The institutional alliances made possible by the companies' charters strengthened the insurance sector's influence on American political economy domestically, while empowering, as I will suggest in the next chapter, their significant interventions in Napoleonic-era foreign affairs.

Conclusion

A generation of *laissez-faire* historians celebrated the American corporation as something new and unique, and imagined widespread American economic prosperity as the result of a unique symbiosis between the American Constitution and the "free enterprise" unleashed via the for-profit corporation.[94] More recently, historians have taken a far more critical approach toward the new American corporations and the powers they acquired under—or, some would suggest, wrested from—the new political order.[95] This essay, by approaching the chartering of marine

[93] This was of course a political compromise, but it could also be argued that a rivalry between the two companies would guard against monopolistic behavior.

[94] On the vigorous protests of public-mindedness made by the incorporators of INA, Horace Lippincott wrote, "There is no doubt that these gentlemen were serious and sincere, although in the light of the present day attitude toward corporations one is compelled to smile at their phrases. Perhaps if the trust accorded these worthies was exhibited now we would be rid of much abuse in word and deed." *Early Philadelphia; Its People, Life and Progress* (Philadelphia: J.B. Lippincott, 1917), 258.

[95] "Philadelphia's corporate men …placed elite economic interests at the head of the urban economic agenda, one

insurance companies as a continuation of Constitutional debates, rather than as a set of "economic" events following the resolution of "political" conversations, has aimed neither to celebrate nor to condemn corporations, but to restore corporations to their rightful positions among the bodies politic constituted in the aftermath of the Revolution. In so doing, it seeks to make two closely related interventions: one about economic institutions (particularly insurance companies) and another about political bodies.

First, this paper suggests that early American financial corporations were bodies politic in their own right, and that contemporaries understood them as such. Debates over the corporations of the 1790s thus continued, rather than succeeded, American constitutional conversations about the proper representation of wealth in a democratic republic. I have drawn particular attention to the incorporation of marine insurance companies because these institutions were built around existing mercantile communities, practices, and bodies of knowledge as well as capital, and thus their incorporation represented something particularly more akin to a negotiation between existing polities than to the creation of new communities from scratch, as Pauline Maier envisions in the passage that opens this essay. Insurance companies, furthermore, exemplify the inherent overlap between economic and political institutions. They bear even closer resemblance to political bodies than most other forms of corporation, in that they accumulate resources from a large group of people, and acquire the right to control the behavior of those whose risk they assume. Historians frequently mark the emergence of the insurance corporation as a major moment in the history of capitalism, emphasizing the way in which these companies accumulated wealth in ways that allowed its broader and more efficient circulation.[96] However, in the American context, the marine insurance company was a real political institution from its very origins.[97]

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with great ramifications to the current day," writes Andrew Schocket. "Officers [of business corporations] … promot[ed] policies that furthered economic growth on their terms (corporate profit) at the expense of other considerations (distribution of wealth, quality of life, etc)." More broadly, Schocket suggests that Northern urban economic elites borrowed the "corporate form from Britain to reestablish themselves in positions of power that Constitutionally-sanctioned democratic governments had stripped from them. Americans found these corporations, he suggests, "strange, new, and even frightening." *Founding Corporate Power*, 211, 6.

[96] See Crothers, Fowler, and Kingston particularly.

[97] Such a perspective also suggests a response to two new works on American insurance in the nineteenth century, Jonathan Levy's *Freaks of Fortune* (Cambridge: Harvard University Press, 2012) and Sharon Murphy's *Investing in Life* (Baltimore: Johns Hopkins University Press, 2010). In *Freaks of Fortune*, Levy argues that during the nineteenth century, the rise of liberalism involved individuals surrendering their traditional forms of communal risk mitigation and instead selling their risks to large for-profit corporations such as insurance companies. Sharon Murphy, in *Investing in Life*, suggests that life insurance companies over the same period aspired to "quasi-public

Conversely, this material suggests a renewed consideration of the ways in which Americans conceptually situated their political governments among a broad variety of corporations, joint-stock and otherwise. Both kinds of corporations were communities made up of people and wealth. Samuel Blodget's notion of a society united by the "golden chains" of corporate shareholding was a sincerely positive vision of the American future—a way of using a venerable type of institution to reinforce social bonds created by a new territorial government, which Blodget suspected might not quite suffice on their own.[98] And the "minor republics" were not only developed to create bonds among citizens as Blodget suggested. They were also expected to develop their own relationships with other corporations and polities of all kinds.[99] Establishing the role of wealth in government, then, should not be understood as a sullying of an ideal democratic republicanism but as a project that had long been at the heart of Anglo-American conversations about political life.

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status as protectors of the most vulnerable members of society, [which] helped them earn a level of respect among the public and legislators that a purely for-profit company could not expect" (121). The insurance company, then, takes on responsibilities that previously belonged to the *Gemeinschaft* in Levy's narrative, or that in Murphy's, perhaps more properly belonged to the state. In both cases, the insurance company, as a capital-holding corporation, is framed as an institution that rose in opposition to more genuine political communities composed of American citizens. I suggest, by contrast, that the American insurance company was, from its origins, understood to be a legitimate political community, one that represented wealth first and people second. The responsibilities it assumed cannot be assumed to inherently *belong* to territorial polities. Again, I make this point not to celebrate the insurance company but to recontextualize the notion of republican governance in the Constitutional era. Perhaps enlightening here, though wholly anachronistic, is Paul Krugman's description (which he borrows from a Clinton-era government official) of the late-twentieth-century federal government as "an insurance company with an army." Paul Krugman, "An Insurance Company with an Army," *The Conscience of a Liberal* (blog), *New York Times*, Apr. 27, 2011, http://krugman.blogs.nytimes.com/2011/04/27/an-insurance-company-with-an-army/. Thanks to Tristan Tomlinson for the reference.

[98] Of course, not all Americans had property, and many Americans actually *were* property, legally speaking; this, too, should inform our understanding of what early American bodies politic were intended to be.

[99] David Hendrickson frames the fundamental Constitutional problem not as the creation of a nation-state but as the creation of a treaty among the states as preexisting polities. While states certainly considered themselves to have initiated, and to have authority, over the corporations they chartered, it is certainly worth considering the corporate negotiations of the 1790s within this framework, particularly given the clout of the mercantile communities that predated the republic. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence: University Press of Kansas, 2003).