

The Wheeling Bridge Case: Its Significance in American Law and Technology. By *Elizabeth Brand Monroe*. • Boston, Mass.: North-eastern University Press, 1992. xvi + 268 pp. Maps, illustrations, notes, bibliography, and index. \$45.00. ISBN 1-5555-130-X.

Reviewed by Rick Szostak

A number of historians have argued that the American legal framework has been very conducive to the nation's growth. In particular, it has been suggested that the courts consistently interpreted the law in a way that favored the forces of modernization over entrenched interests. Though this may not always have served the short-term social good, it did ensure that new ideas had a better chance of succeeding in the United States than in countries where the legal system protected the status quo.

This is the starting point of Elizabeth Monroe's analysis. In the middle years of the nineteenth century, the Wheeling Bridge Company proposed (and built) the first bridge across the Ohio River. Though not officially affiliated with any railroad company, the bridge naturally pitted those who supported this new transport technology against the supporters of unobstructed river navigation. Steamboat interests in Pittsburgh complained that the bridge would (and did) obstruct river navigation. Monroe makes it clear that their opposition was also driven by fear of the competition of interregional railroads.

Did the courts support the innovators or the entrenched interests? As we might expect in a legal dispute that dragged on for years, the picture is clouded by numerous subsidiary issues raised by counsel on both sides. Bridge advocates could point to the Northwest Ordinance, which had promised a road link to Ohio. Opponents could point to constitutional protection of the right to navigate on the Ohio, as well as to the importance of that river to the postal service. The governments of Pennsylvania and Virginia were soon drawn into the fray. Virginia had clear standing before the court (because its state legislature had passed the act creating the bridge company), but Pennsylvania had first to prove that its state-owned canal network would suffer from the bridge before being allowed to plead. (In fact, the Pennsylvania government was also hopeful that the Pennsylvania Railroad would out-compete the Baltimore and Ohio, which hoped to pass through Wheeling.) With the involvement of these two state governments, the debate between North and South over states' rights also became part of the case. Congress itself eventually entered the action, raising important questions of the division of power between legislature and judiciary.

To this reviewer, the most interesting issues were the technical and economic arguments concerning the obstruction of navigation. When first proposed, the bridge was high enough that only the tallest steamboat chimneys were blocked, and these only during unusual periods of high water. Chimney heights were expanding during this period as a result of a perhaps exag-

gerated view that the greater height enhanced energy efficiency. When the bridge was first completed (it was built, blew down, and was rebuilt; the second bridge still stands), many ships were delayed in passage during a lengthy period of high water. In trading off the right to navigation against the right to cross the river, the Court was forced to examine such questions as the cost of hinging chimneys and lowering them (as had to be done on the Louisville canal), how navigable the river was above Wheeling, and the proportion of Pittsburgh trade that depended on high chimneys.

The verdict was not one-sided. The bridge company was required to adjust its plan so that ships were more readily able to pass. However, the Court recognized that some interference with navigation was acceptable and, moreover, that Congress had the right to suggest reasonable limits on the rights of navigation. (Note that the Court alone could not create the right to bridge rivers: it required the purposive action of Congress as well.) The legal framework was thus established for bridges to be built across the Ohio and other major rivers in the succeeding decades (though Congress does not appear to have recognized that it was establishing a precedent at the time). It is worth noting that as the technology of bridge construction improved, bridge companies were forced to meet ever-higher standards.

The book is clearly the result of careful scholarship. Government records, newspapers, and the papers of even fairly peripheral figures are drawn on extensively. It is well written, and contains a number of quite useful maps and drawings. Although only those with a special interest in legal history may be tempted to read it cover to cover, anyone with an interest in steamships, railways, bridges, or the interaction between the government and the private sector in the mid-nineteenth century will find material of interest in this detailed monograph.

A reviewer would not be doing his job if he did not provide some quibbles. Monroe unfortunately downplays the connection between the British legal tradition and the American. She also might have experimented with a thematic approach, for the chronological treatment pursued necessarily involves a great deal of repetition, as the lawyers on each side trot out the usual suspects at each step in the legal maze. Finally, Monroe might have allowed herself the luxury of a longer conclusion: the details of any case study tend to fit imperfectly with any grand theory. She had earned the right to speculate.

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