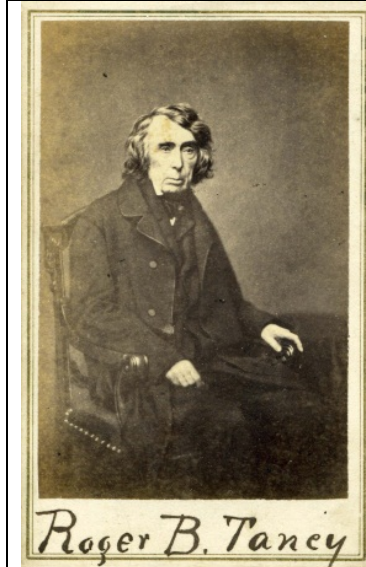


## Chapter 107 -- The “Taney Court” Begins To Assert Itself



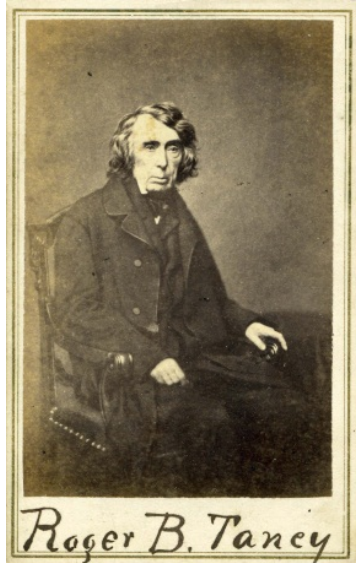
**Dates:**  
1836-1864

- Sections:**
- Roger B. Taney Succeeds John Marshall As Chief Justice Of The Supreme Court
  - Community Interests Prevail In *Charles River Bridge v Warren Bridge*

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Time: March 15, 1836

### Roger B. Taney Succeeds John Marshall As Chief Justice Of The Supreme Court



Jackson’s second term includes one other legacy that will affect the course of history over the next 28 years – his selection of Roger B. Taney as Chief Justice of the Supreme Court.

The former Chief, John C. Marshall, serves for 34 years and essentially establishes the Court’s status as a co-equal branch of the federal government.

Marshall also proves to be a thorn in the side of Anti-Federalists, like his cousin, Thomas Jefferson, and others who follow in the Democratic-Republican Party. He does so by consistently affirming the supremacy of federal laws over state laws, and by extending the scope of cases and issues brought before the Court.

Marshall dies on July 6, 1835, and Jackson turns to Taney, a longtime friend and member of his “Kitchen Cabinet” to fill the vacancy.

Roger Brooke Taney (1777-1864)

Taney’s roots are firmly in tidewater Maryland, but he is not wealthy, and, like Jackson, favors the “common man” over the privileged, and the preservation of the Union at all costs.

His prior experiences are remarkably diverse, including a successful legal career, election to his state legislature, and then a series of presidential appointments, as Acting Secretary of War, U.S. Attorney General, and Secretary of the Treasury.

Despite this track record, Taney is met with resistance by those who oppose Jackson at every turn. In January 1835, Clay's Whig supporters deny his nomination to serve as an Associate Justice on the Court.

When the President sends his nomination up again on December 28, 1835, it is met by stiff opposition from Clay, Calhoun and Webster. But even that potent combination cannot prevail over a Senate full of Jackson men, and Taney is finally confirmed on March 15, 1836.

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Time: February 14, 1837

### **Community Interests Prevail In *Charles River Bridge v Warren Bridge***

As a justice, Taney is a strict "letter of the law" adherent to the Constitution, and, like Jackson, favors state's rights over federal intrusion. He demonstrates this view in one of his early cases, *Charles River Bridge v. Warren Bridge*.

Here the state of Massachusetts has contracted with the Charles River Bridge Company (CRBC) in 1785 to build a 1503 feet span connecting Boston to Charleston and saving travelers from an 8 miles roundabout trek. In payment for the bridge, the Company is granted rights to collect user tolls for a 70 year period, at which time the bridge would become state property.

The bridge proves to be an overnight success, and the original owners eventually reap huge profits by selling their shares to later investors. As the population of Boston grows so too do the profits to the company and the complaints of the public about the toll rates being charged. When the new owners refuse to adjust the charges, the state decides to build what will become the nearby Warren Bridge, to be free to travelers after an estimated six year toll period to pay off the construction costs.

Owners of the Charles River Bridge Company see that this "free" Warren Bridge will end their ability to charge a toll and, hence, their source of profits -- and view this as a violation by the state of their 70 year contract. They respond with a lawsuit asking the court to prohibit construction of Warren Bridge.

The case eventually reaches the U.S. Supreme Court in 1831, and it appears that John Marshall and his "pro-business" colleagues are about to side with the company over the state. But administrative matters delay the ruling, and then turnover in the justices, culminating in Marshall's passing, forces the case to be reargued in 1837, with Taney now presiding.

In the interim, the Warren Bridge has actually been built, has achieved a free/no toll status, and has indeed dried up traffic across the Charles River Bridge.

Despite this outcome, the Taney court votes 5-2 in favor of the state over the CRBC plaintiff.

Taney concludes that the original contract did not overtly grant "exclusivity" to CRBC and that the new Warren Bridge is simply an example of the state doing its job by acting in the best interest of its citizens.

*While the rights of private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation*

In regard to the company's lost toll profits, he argues that such outcomes are built into the evolving nature of commerce – canals cut into toll road profits and perhaps the new trains will impact canals in the same fashion. One cannot prioritize company profits over public progress.

Finally, Taney decides that the will of the Massachusetts's state legislature should trump any federal issues related to Article I, Section 10 – “no state shall pass any...ex-post facto law impairing the obligation of contracts.”

A vigorous dissent from Taney is registered by veteran justice Joseph Story. He cites the risks taken by the CRBC investors in building what in 1785 was...

*The very first bridge ever constructed, in New England, over navigable tide- waters so near the sea one that many believed would scarcely stand a single severe winter.*

And he warns that if the rewards of risking capital are threatened by the state, improving public lives will suffer in return. Massachusetts had a good faith contract with the CRBC and ex-post facto they reneged on it.

*I stand upon the old law...and can conceive of no surer plan to arrest all public improvements, founded on private capital and enterprise, than to make the outlay of that capital uncertain and questionable, both as to security and as to productiveness*

In 1857 Chief Justice Taney will be involved in another case, Dred Scott v Sanford, that will involve protection of another form of “property” – slaves. His decisions here will again prove controversial.

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Time: 1801-1835

**Sidebar: Legacy Of The Marshall Court**

**Some of the Major Decisions Set Down By The Marshall Court**

<b>Year</b>	<b>Case</b>	<b>Impact</b>
1803	<i>Marbury v Madison</i>	Judicial review of Congressional laws
1807	<i>Ex Parte Bollman</i>	Supreme Court power to issue writs/commands to circuit courts
1810	<i>Fletcher v Peck</i>	First overturn of state law, protects property rights contract
1819	<i>McCulloch v Maryland</i>	Implied power of Congress to make necessary & proper laws
1819	<i>Dartmouth v Woodward</i>	Private corporations protected from state interference
1823	<i>Johnson v M'Intosh</i>	Inability of Native tribes to own lands
1823	<i>Propagation Of Faith v Town of Pawlet Vt.</i>	Corporations are a "group of individuals in perpetuity," with protected rights as such
1824	<i>Gibbons v Ogden</i>	Ends state power to regulate interstate commerce
1825	<i>The Antelope</i>	Confirms that slaves on board of a ship are legitimate property
1831	<i>Cherokee Nation v Georgia</i>	Indian nations as foreign states
1832	<i>Worcester v Georgia</i>	Sanctioning Indian removal
1833	<i>Barron v Baltimore</i>	Bill of Rights cases limited to federal, not state, challenges
1834	<i>Wheaton v Peters</i>	Copyright perpetuity