

The Paradox of the American State: Public-Private Partnerships and State-Building

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ABSTRACT

From its formation, the American federal government partnered with private organizations to accomplish state goals. With little formal organizational capacity, the American state relied on the resources and credibility of private organizations. This thesis investigates the success of public-private partnerships in American state-building. By looking at alternative enforcement mechanisms, this thesis adds to theories of state-building and private power. The American experience helps us conceive a more nuanced perspective on state formation that recognizes the state's varying tools rather than focusing solely on the development of formal organizational capacity.

The questions driving this thesis are: How can public-private partnerships expand state capacity? Are there systematic differences in the outcomes and purposes of partnerships based on the branch of government – whether legislative, presidential, bureaucratic, or judicial – that mediates the partnership? My case studies examine the use of partnerships in the early state's interactions with American Indian tribes. The cases put these general questions into more focus by examining if these partnerships expanded state capacity to dictate the terms of engagement and the content of racial orders. When these partnerships expand capacity, I explore the ways in which this state goal is accomplished. However, I remain acutely aware of the potential for partnerships to both fail to build capacity or become merely means to service a private interest.

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*Introduction*¹

Recession. Bank failure. Collapse of the automobile industry. A massive oil spill. Rising health care costs and millions of uninsured. Over the last ten years, Americans have faced monumental challenges born out of market failures and irresponsible actions of private corporations and banks. But politicians did not fashion solutions that nationalized businesses or industries. Nor did they choose to give substantial decision-making authority to government officials. Instead, the solutions chosen relied heavily on private individuals and businesses. When the *New York Times* reported on the bank bailout plan, the reporter noted, “Wall Street helped produce the global financial and economic crisis. Now, as the Obama administration prepares to unveil a revised bailout plan for the banking system, policy makers hope Wall Street can be part of the solution.”² Through new structures of incentives and regulations, US government officials desire to shape private behavior in ways to benefit the public and produce common goods. These initiatives, however, were not unprecedented. Throughout American state-building, the federal government has relied extensively on private capacity, from charitable

¹ I would like to say special thanks to my supervisor, Professor Desmond King, whose continual support to me personally and academically made this thesis a reality. Professor King introduced me to the field of American political development and guided me to much of the work that is central to my analysis. My parents, Jim and Lisa French, and fellow DPhil candidate, Anna Oldmeadow, provided invaluable proof-reading and helpful suggestions at critical moments. The Rhodes Trust and Rhodes House have given me the opportunity of lifetime to study at Oxford as well as the continual personal support. Because of their generosity, I have been able to pursue my study of politics at one of the top universities in the world. Much of the archival research in this thesis would not have been possible without generous grants from Merton College and the Department of Politics and International Relations. As I was finishing my thesis, I gave birth to my son. A grant from Merton College allowed me to pay for part-time child care for the last several months as I finished up the thesis.

My years in Oxford would not have been as productive or enjoyable without the many good friends that I have made in Oxford both in the Rhodes community and in the department. Most importantly, my husband, Jake Hodson, has been my biggest supporter and has never let me doubt myself. His willingness to follow me to Oxford and encourage me as I follow my academic dreams has made this journey possible and, subsequently, much more exciting.

² Floyd Norris, “U.S. Bank Bailout to Rely in Part on Private Money,” *New York Times*, February 8, 2009, accessed online at www.nytimes.com.

organization to businesses, to meet goals set out by politicians and administrators in the national government.

From its formation, the American federal government partnered with private organizations to accomplish state goals. With little formal organizational capacity, the American state relied on the resources and credibility of private organizations. This thesis investigates the success of public-private partnerships in American state-building. By looking at alternative enforcement mechanisms, this thesis adds to theories of state-building and private power. The American experience helps us conceive a more nuanced perspective on state formation that recognizes the state's varying tools rather than focusing solely on the development of formal organizational capacity.

This thesis demonstrates that throughout much of the nineteenth-century the federal government utilized private capacity to administer and control policy with regards to American Indian tribes. The early American system of trading with American Indian tribes was a dual system with public trading houses and a licensing system for private traders. The licensing system, in particular, provided incentives for private traders to self-police and help control a geographical expanse that was constantly threatened by foreign nations attempting to (re-) establish hegemony. At the same time as the licensing system became more fully developed, the government also sought to achieve another one of its principal goals, education and civilization efforts, by working with religious organizations to establish schools, churches, and provide instruction. While national officials felt that these efforts were vital to successful integration and acting humanely, they lacked the funds and personnel to construct a public school system in the territory west of the states' boundary lines. During the administration of President Ulysses S. Grant, religious organizations took on a much larger role to help meet the president's desire to

combat political patronage and re-establish federal control of the field service from parochial, congressional interests. At the height of Grant's administration, major religious organizations were in charge of the administration of most American Indian reservations. These partnerships helped cement national authority in government-tribal relations and were the foundation of a paternal racial order for American Indians.

This thesis examines the dynamics of these relationships between the national government and private organization in state-building. A study of the American state may seem at first blush to offer little new or innovative. After *Bringing the State Back In* reinvigorated the study of the state, scholars challenged the notion of American statelessness and a single European path to state development. However, despite a scholarly literature that has begun to probe the alternative path to state capacity taken in the United States, most scholars still view the American state as weaker than its European counterparts without sufficient organizational resources to direct and coordinate state capacity.³ But I will demonstrate that the American experience requires a more nuanced perspective on state formation which examines all of the tools that states have for policy implementation and not just bureaucratic capacity.

The questions driving this thesis are: How can public-private partnerships expand state capacity? Are there systematic differences in the outcomes and purposes of partnerships based on the branch of government – whether legislative, presidential, bureaucratic or judicial – that mediates the partnership? As the cases begin to lay out the use of partnerships in the early state's interactions with American Indian tribes, the investigation puts these general questions into more focus by examining if these partnerships expanded state capacity to dictate the terms of

³ Peter Evans, Dietrich Rueschemeyer and Theda Skocpol, eds., *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985), hereafter *BSBI*; and Stephen Skowronek, *Building a New American State* (Cambridge: Cambridge University Press, 1982). Even J. P. Nettl, who has a more multidimensional view of state power, considers the United States the weakest of the countries he discussed. J. P. Nettl, "The State as a Conceptual Variable," *World Politics* 20 (1968): 559-592.

engagement and the content of racial orders. When these partnerships expand capacity, I explore the ways in which this state goal is accomplished. However, I remain acutely aware of the potential for partnerships to both fail to build capacity or become merely means to service a private interest.

The public-private partnerships that I am discussing must be distinguished from other uses of private capacity by the nation-state. I am concerned only with state capacity to accomplish core and substantive missions. This eliminates the study of situations where private organizations take on support roles (i.e., providing cafeterias for government buildings, cleaning staff, etc.). While this out-sourcing is an interesting phenomenon, it is outside of the realm of my current study which focuses on substantive state missions. Substantive missions can come from a variety of sources including enabling legislation, executive orders, and agency mission statements. To achieve them, the American state throughout its existence has been forced to find creative solutions to government action.

Traditionally, theories of capacity building and the American state have been developed out of the Weberian tradition. For a Weberian, the American state with its minimal bureaucratic structure is a classic weak state. Theories of private power also have a long and varied history in political science from a Tocquevillian tradition which praises private initiative to the theories of bureaucratic capture which document the disproportional power that private groups can gain. These traditional theories have faced growing challenges to their rigid conceptions. This thesis builds on the growing literature that emphasizes alternative conceptions of state power and the role of private individuals and groups in state building.

Classic Theories of the State

Two of the classic studies of states and capacity in comparative terms – those of Max Weber and J. P. Nettl – have set the tone for the way in which the American state has been viewed. While varying in approach and with different conceptions of what a state is, both authors doubted whether America could ever acquire a strong state. It was not difficult to note that by many metrics, the United States at its founding had few of the resources of other European states of the time. In the nineteenth century, America lacked the extensive bureaucratic and military establishment of its European counterparts.

Strong organizational and coercive capacities were the hallmark of strong states for Max Weber. For Weber, a strong state was absolutely dependent on its bureaucratic capacity. In contrast to the strong European states, America lacked many of these organizational controls. Weber characterized the American state as a “polity which...is not fully bureaucratized.”⁴ Despite Weber’s emphasis on coercive mechanisms of the state, he did not divorce it from society. The ability to use coercive mechanisms rested on the state’s ability to gain legitimacy for the actions from its population.⁵

Weber’s treatise on modern and ancient political organization sets forth terms and typologies that allow for cross-historical and -cultural study. The comparability built into Weber’s analysis made it useful for multiple disciplines. It proved very influential in the study of the state. Many of the essays in the volume edited by Peter Evans, Dietrich Rueschemeyer, and Theda Skocpol make the Weberian perspective central to their arguments.⁶ Weberian states came to be seen as “compulsory associations claiming control over territories and the people

⁴ Max Weber, *Economy and Society*, eds. Guenther Ross and Claus Wittich (New York: Bedminster Press, 1968): 971.

⁵ Weber, 903-4.

⁶ *BSBI*.

within them. Administrative, legal, extractive, and coercive organizations are the core of any state.”⁷

In contrast, for J.P. Nettl, stateness is a quantitative variable that has four main components – the institutionalization of power in a set of functions and structures, as a unit in international relations, as a distinct sector of society, and as a socio-cultural phenomenon. Nettl doubted that the United States could ever acquire a strong sense of state because of its federal structure; “probably no truly federal regime can incorporate any adequate notion of state, since both functions and powers involved in this concept are – by almost any definition – coordinate with the regional units, and the necessary overall superordination or sovereignty does not therefore exist.”⁸ Instead of a competition between the state and other sectors in the society, the struggle for autonomy occurs between the institutional structures that make up the state. Because of these structural and social weaknesses in the United States, Nettl argued that in the United States the functions of a state are accomplished instead by the legal system and not the state.⁹ Like Weber, Nettl’s conception of stateness, as a variable that could take a range of values for different nations, allowed political scientists to make international and historic comparisons and proved valuable as an analytic tool as the field took renewed interest in the concept of the state.¹⁰

As the behavioral revolution overtook political science for much of the middle of the twentieth century, these studies stood as the classic arguments for American statelessness. But as the new institutionalist framework gained ground so did the study of the state and America’s

⁷ Theda Skocpol, “Bringing the State Back In: Strategies of Analysis in Current Research” in *BSBI*, 7.

⁸ Nettl, 568.

⁹ Nettl, 586.

¹⁰ See Peter Evans, “The Eclipse of the State? Reflections on Stateness in an Era of Globalization,” *World Politics* 50(1): 62-87 and Desmond King and Robert Lieberman, “Ironies of State Building: A Comparative Perspective on the American State,” *World Politics* 61 (2009): 547-588.

place in the spectrum.¹¹ One of the most far-reaching arguments for studying the state as an independent variable in political science is Theda Skocpol's introduction to *Bringing the State Back In*. The editors of the collection hoped to challenge social science explanations where "government" was viewed primarily as an arena within which economic interest groups or normative social movements contended or allied with one another to shape the making of public policy decisions."¹²

The arguments assembled in the book were decisive in re-legitimizing the study of the state in political science. However, much of the analysis perpetuates past understandings of the distinction between strong and weak states in terms of capacity and outcome. First, Skocpol evaluates the circumstances when states can successfully achieve their desired political outcomes. She speaks of "distinctive" or "transformative" state strategies that are attempted during "times of crisis" or "given historical moments".¹³ She then argues that the underpinnings of state capacity to achieve these radical changes come down fundamentally to four resources: sovereign integrity, administrative-military control over the territory, loyal and skilled officials, and plentiful financial resources.¹⁴

It would be difficult to argue that the fundamental change at a critical juncture which Skocpol looks for is not decisive evidence of the state as an autonomous actor. In addition, the four resources she lists as the "universal sinews of state power" are certain to give the state which possesses them an enormous boost in capacity to affect a desired change. What is missed, however, are the other ways that states can affect societal change in less dramatic circumstances

¹¹ See, e.g., *BSBI*; Stephen Skowronek, *Building a New American State*; James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition have Failed* (New Haven, CT: Yale University Press, 1998); Gabriel Almond, "The Return to the State," *American Political Science Review* 82 (1988): 853-874; Eric Nordlinger, *On the Autonomy of the Democratic State* (Cambridge, MA: Harvard University Press, 1982).

¹² Skocpol, 4.

¹³ Skocpol, 9-13.

¹⁴ Skocpol, 16.

with less impressive resources. Simply looking for change that is a clear break from the past we miss much of what is interesting about how states gradually alter the status quo to create far-reaching consequences. Kathleen Thelen's work underlines the state's ability to affect change over the long run in less dramatic fashion but with just as transformative results.¹⁵ The volume edited by Thelen and Wolfgang Streeck provides several examples of incremental but transformative change. Jacob Hacker demonstrates how the changing nature of risk has allowed conservative politicians to alter the American welfare state with no drastic changes to the major programs or policies by simply not covering new types of risk. In the same volume, Steven Vogel explains how the Japanese government has used its corporate ties, which have traditionally been the hallmark of a corporatist economic style, to push for corporate downsizing and liberalized labor markets. Skocpol's four essential resources divert our attention from implementation tools that are not coercive in nature and that can be used by a creative state to achieve goals as substitutes for more traditional forms of capacity

By characterizing autonomous state action and resources as centralized and coercive, Skocpol continues a longer tradition of portraying the United States as weak because it is "fragmented, dispersed, and everywhere permeated by organized societal interests." Beyond the structure of state authority, Skocpol contends that the national government does not have the resources for strong actions lacks "a prestigious and status-conscious career civil service with predictable access to key executive posts; authoritative planning agencies; direct executive control over a national central bank; and public ownership of strategic parts of the economy."¹⁶ Despite the lack of these resources that many European states had, the United States was able to

¹⁵ See Kathleen Thelen, *How Institutions Evolve* (Cambridge: Cambridge University Press, 2004) or Wolfgang Streeck and Kathleen Thelen, "Introduction," in *Beyond Continuity*, ed. Wolfgang Streeck and Kathleen Thelen (Oxford: OUP, 2005).

¹⁶ Skocpol, 12.

navigate the treacherous waters of state-building to come to the twenty-first century as the sole international superpower with broad reaching national domestic standards in areas as diverse as interstate commerce, the environment and education. The paradox this thesis starts to address is how such a weak state by comparative standards achieved such transformative goals.

Alternative Conceptions of the State

Stephen Skowronek starts to probe this question. His book, *Building a New American State*, questions the assumption that the pre-New Deal America lacked capacity.¹⁷ Skowronek shows how the American state responded to the external stimuli of crisis, class conflict, and complexity in the Progressive era to create expanded capacity in a patchwork fashion through centralization and professionalization. Even with increased federal capacity to solve national problems, Skowronek contends that the shift was not accompanied by a new source of sovereignty and authority to direct and monitor the new capacity. In the previous era, courts and parties played this role but Progressive-era reforms caught bureaucrats between multiple principals in the complex American political system. Despite an expansion in capacity, Skowronek's account leaves the reader skeptical of the American state's ability to direct and control this capacity. While Skowronek's account of the state challenges previous scholarship that dated the state's development of bureaucratic capacity to Roosevelt's New Deal; it questions that reconstituted state's ability to achieve its goals.

One of the challenges faced by the American state highlighted by several authors is the federal system of government—constitutionally determined divisions of power between the national government and sub-national units. The traditional picture painted has been of states as competitors with the federal government for authority and primacy in setting goals in particular

¹⁷ Skowronek, *Building a New American State*.

areas of national concern.¹⁸ This perspective obscures the more complex relationship between national and state governments.

The recent work of Kimberley Johnson addresses the dynamic relationships between states and the federal government.¹⁹ The founding states that created the Articles of Confederation in 1777 and later put the Constitution into effect in 1789 had a far more developed policy mechanisms than the federal government initially. Because of the resources available at the sub-national level, the national government faced a struggle to get states to buy into the success of the new state. Part of the on-going negotiation between the federal and state governments has been the use of partnerships between the national and sub-national units. Johnson documents the use of intergovernmental partnerships in the Gilded Age and Progressive Era to expand, centralize, and strengthen federal institutions.²⁰ Johnson's description of these relationships highlights the gains made by both sides through the new policy mechanisms:

The new intergovernmental policy instruments, and the administrative capacity they created, ultimately became the device that accommodated the expression of national interest desired by national-level actors while acknowledging the demands of judicial or state-oriented interests for some degree of state control. For reformers, interest groups and bureaucrats at the state level, the ability to tap into the fiscal and regulatory authority of the national government via intergovernmental policy helped to strengthen and legitimize emerging government activities.²¹

Kimberley Johnson's work on the use of intergovernmental policy instruments in state-building calls attention to alternative mechanisms the American state has used to build federal capacity within the bounds of the structural constraints of the constitutional order. Johnson contends that "instruments such as intergovernmental regulations and grants-in-aid permitted the development of national administrative capacity while still responding to a constitutional, political, and ideological framework that privileged state interests and favored state control over

¹⁸ See, for example, Nettl, 570.

¹⁹ Kimberley Johnson, *Governing the American State: Congress and the New Federalism, 1877-1929* (Princeton: Princeton University Press, 2007).

²⁰ Johnson, 2.

²¹ Johnson, 9.

policy outcomes.”²² By highlighting mechanisms that allow the federal state to coordinate and connect state and local efforts, Johnson challenges the notion that a strong state has to impose its goals on alternative sources of power. Instead, she documents how the federal government, especially Congress, augmented their power by finding mechanisms that deployed the capacity of sub-national governments in an environment that is ideologically opposed to an outwardly coercive national state.

Johnson’s work alerts one to a growing view in American political development that “American state building, strength, and institutional capacity form through *links* with society, not necessarily through *autonomy* from society.”²³ Rather than seeing the state as completely separate from society and only succeeding by coercion, Johnson shows it is more productive to recognize that even traditionally weak states can achieve their goals by using capacity that has already been developed by sub-national units of government and private organizations. The recent work by Brian Balogh reinforces Johnson’s conclusions. Balogh examines how the nineteenth-century state accomplished its goals through the use of law, subsidies, and third parties rather than rely on bureaucrats.²⁴

While the new institutional literature has advanced the field’s understanding of the American state by disproving old myths about the way in which the American state functioned and by expanding our theoretical knowledge of the state, the literature still narrowly focused on one area of state power: coercive, administrative mechanisms. Skowronek starts to break apart this assumption by examining the role of courts and political parties in building the American state in the nineteenth century.

²² Johnson, 18.

²³ King and Lieberman, 3.

²⁴ Brian Balogh, *A Government out of Sight: The Mystery of National Authority in Nineteenth-Century America* (Cambridge: Cambridge University Press, 2009).

Unfortunately, little research and theorizing has been done on the alternative mechanisms that the state itself can use to accomplish goals. In recent work, Desmond King and Robert Lieberman encourage more theorizing on American state-building.²⁵ King and Lieberman contend that new studies on American political development highlight the irony of a “weak state and strong outcomes.”²⁶ They suggest the development of a new theoretical language to describe American efforts emphasizes the nuanced nature of state building. King and Lieberman propose J.P. Nettl’s classic multidimensional concept of the state to serve as a basis for the new framework.²⁷

The following thesis follows in this tradition of re-conceptualizing state building. But in contrast to King and Lieberman, I find inspiration from another comparativist: Christopher Hood. Hood’s toolkit approach allows one to compare governments with regard to range and mix of tools that they use. As Christopher Hood argues, “The value of identifying government’s basic instruments is precisely that it can help us explore different governance paradigms across time and space.”²⁸ By understanding the litany of instruments that can be used to create outcomes, one can begin to look comparatively at how states substitute instruments for one another with changing social and political conditions. Hood groups state tools into four main categories: nodality, authority, treasury, and organization. Nodality is the government’s ability to become the central contact in information networks. Authority is government’s legal power.

²⁵ Desmond King and Robert Lieberman, “Ironies of State Building”; Desmond King and Robert Lieberman, “Finding the American State: Transcending the ‘Statelessness’ Account,” *Polity* 40(2008): 368-378; Desmond King, Robert Lieberman, Gretchen Ritter, and Lawrence Whitehead, eds., *Democratization in America: A Comparative-Historical Analysis* (Baltimore: John Hopkins University Press, 2009).

²⁶ King and Lieberman, “Ironies of State Building,” 548.

²⁷ King and Lieberman, “Ironies of State Building,” 549.

²⁸ Christopher Hood, “Intellectual Obsolescence and Intellectual Makeovers: Reflections on the Tools of Government after Two Decades,” *Governance* 20 (2007): 135.

Treasury refers to governments achieving goals by spending money. Finally, government's use of direct action such as bureaucracy or military fits under the heading of organization.²⁹

Hood seeks a parsimonious theory that could allow for comparison across time, area, and policy domain. The four basic tools represent the mechanisms that governments use to get from broad policies or goals to actual outcomes on the ground. Nodality, authority, treasury, and organization can be combined in multiple fashions to achieve public policy goals. Each of these tools can be used to either gather information or modify behaviour which creates a four by two chart of the eight basic tools. Of course, in each of these categories there is a wide variety of intensities and levels of application (particular to universal) that increase the options for governments.

Additionally, government policy may rely on combinations of these tools to achieve its goal. For example, the current American government has a goal to decrease the exposure to mercury. To achieve this goal, multiple tools are used. First, the government uses its nodality resources to post information on the harms of mercury and warnings about avoid eating fish in certain areas because of potential contamination. Second, mercury emission levels for power plants are capped and these businesses must report to the federal government plans on how they will meet their targets and their actual emission levels due to governmental authority to command. Next, the government's organization monitors the actual levels by in-field testing. Finally, the government runs a cap and trade program through which it facilitates the smooth economic transactions by offering information on buyers and sellers.

Hood's framework reminds political scientists that states have multiple ways of accomplishing goals.³⁰ While Weberian state analysis often encourages one to look at the last

²⁹ Christopher Hood, "Intellectual Obsolescence and Intellectual Makeovers," 129.

³⁰ Christopher Hood, *The Tools of Government* (London: Macmillan, 1983).

tool – organization – which encompasses state bureaucratic and military capacity, this tool is one of the more cumbersome tools – coercive, blunt, and costly. For historical reasons, coercive organization is politically costly throughout much of American state-building. Instead, the federal government and administration had the ability to use tools of information, authority, and funding to mold national development. These tools were leveraged by administrators and politicians to channel private action to accomplish state goals.

Private Power Traditionally

The study of private power has an even longer history. As opposed to the importance of bureaucratic capacity in state building, the success of the American experiment, to many, lay not in the power of a national state but instead in the hands of the American people. Problems were solved in early America, for these commentators, by the association of like-minded individuals concerned with upholding the American creed. As Alexis de Tocqueville noted, “Wherever at the head of some new undertaking you see the government in France, or a man of rank in England, in the United States you will be sure to find an association.”³¹ Tocqueville saw in Americans a distrust of the government and a will to solve social problems through one’s own exertions without resorting to public assistance.

In the eyes of commentators in the Tocquevillian tradition, Americans believed in their exceptional ability to achieve a better future without the interference of a coercive national state.³² These popular perceptions of American exceptionalism from the statist tradition of Europe led to an academic assessment of the American nation as being stateless. Private power

³¹ Alexis de Tocqueville, *Democracy in America*, vol. II (New York: Alfred A. Knopf, 1994): 106.

³² See Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, 1955); Seymour Lipset, *Continental Divide* (New York: Routledge, 1990). For an analysis of this tradition and its implications, see Desmond King and Marc Stears, “The Missing State in Postwar American Political Thought,” in Lawrence Jacobs and Desmond King, eds., *The Unsustainable American State* (Oxford: Oxford University Press, 2009): 116-132.

in these narratives became a positive force that helped society avoid the necessity of an overbearing administrative state.

But the assessment of the role of private power in state development has been far from universally positive. Classic studies of private influence in government affairs explored the cozy sub-systems between congressional committees, bureaucrats, and interest groups in determining policy.³³ In more recent studies, Terry Moe has explained the incentives of interest groups to attend to the minute details of bureaucratic structure while the general public has little awareness of the area.³⁴

The interest group literature often features an underlying normative component that criticizes the subversion of the public good for more particular aims. In much of the literature, the variable to be explained is how the behavior and opinions of government officials change based on interest group involvement.³⁵ However, this focus ignores a more nuanced relationship where government officials can be active in courting and controlling private behavior. For example, during the 1860s, the federal government aggressively encouraged the building of the transcontinental railroad with funding and land grants to privately chartered companies like the Union Pacific and Central Pacific Railroads.

Alternative Conceptions of Private Power

³³ See for example, Arthur Maass, *Muddy Waters: The Army Engineers and the Nation's Rivers* (Harvard: Harvard University Press, 1951); Douglass Cater, *Power in Washington* (New York: Random House, 1964).

³⁴ Terry Moe, "The Politics of Bureaucratic Structure," in eds. John Chubb and Paul Peterson *Can the Government Govern?* (Washington DC: Brookings Institute, 1989); "The Politics of Structural Choice," in ed. Oliver Williamson, *Organization Theory* (Oxford: Oxford University Press, 1990); "Positive Theory of Public Bureaucracy," in ed. Dennis Mueller, *Perspectives on Public Choice* (Cambridge: Cambridge University Press, 1997).

³⁵ See E. E. Schattschneider, *Semisovereign People* (New York: Holt, Rinehart and Winston, 1960); Richard Hall and Frank Wayman, "Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees," *American Political Science Review* 84(3): 797-820; Kevin Esterling, "Buying Expertise: Campaign Contributions and Attention to Policy Analysis in Congressional Committees," *American Political Science Review* 101(1): 93-109.

Two more recent studies of administrative agencies have addressed the relationships built between agencies and private organizations. Daniel Carpenter and Robert Lieberman demonstrate that bureaucrats can be active in courting private capacity to expand their autonomy and meet substantive legislative mandates.³⁶ Carpenter's argument that some Progressive Era agencies were able to build bureaucratic autonomy to take action regardless of legislative and interest group preferences in part because of networks built with other outside organizations. Beyond having basic capacity to implement policies and political differentiation from other agencies, the autonomous agencies that Carpenter describes had to also build their organizational reputations through both propaganda and broad social coalitions.³⁷ As Carpenter explains, "The power of bureau officials lay in the *multiplicity* of their ties to political organizations. Multiple networks did not refract power. They rather reduced the dependence of agencies on any one group, putting the agency in the role of broker among numerous interests seeking access to the state."³⁸

Robert Lieberman's study of the Equal Employment Opportunity Commission provides an alternative use of private organizations by bureaucratic agencies. Private organizations were courted not just for their political and coalitional power but also for the resources they possessed which could be used to help the EEOC accomplish its goal of creating effective antidiscrimination enforcement. Lieberman stresses that "in order to understand how the EEOC, laboring under the institutional and political constraints imposed on it, managed to oversee the birth of affirmative action, it is necessary to look beyond its regulatory outcomes and the regular

³⁶ Daniel Carpenter, *The Forging of Bureaucratic Autonomy* (Princeton: Princeton University Press, 2001), and Robert Lieberman, "Civil Rights and the Democratization Trap: The Public-Private Nexus in the Building of American Democracy," in Desmond King, Robert Lieberman, Gretchen Ritter, and Lawrence Whitehead, eds., *Democratization in America: A Comparative-Historical Analysis* (Baltimore: John Hopkins University Press, 2009): 211-229.

³⁷ Carpenter, 14.

³⁸ Carpenter, 363.

administrative processes associated with them. Overcoming these constraints required working in partnership with other institution, both private and public, whose aims overlapped with and whose capacities complemented those of the EEOC and its staff.”³⁹

The use of partnerships with private entities to achieve public goals is widely overlooked in the literature on state-building. However, the work of both Carpenter and Lieberman points to a role in expanding administrative capacity even if politicians place structural constraints on bureaucratic agencies. The narratives of these two scholars diverge as they point to very different reasons and conditions for public-private relationships. For Carpenter, strong agencies with established capacity build multiple networks of private organizations to create the potential of autonomous behavior. On the other hand, Lieberman’s story is one of agency weakness, an agency with very few allocated or demonstrated capabilities used private organizations to overcome weaknesses.⁴⁰ The relationships described by Carpenter and Lieberman highlight a need for further theorizing on the types of partnerships and their implications.

Federal Indian Policy as a Case Study: Why American Indian Affairs?

Before the Civil War, the national government’s role was limited. However, the federal government had control over foreign policy, interstate trade, the development of roads and other transportation routes, census-taking, the regulations of immigration, and relations with American Indians. As early as the eighteenth century, the national government was heavily involved in the mediation between American settlers and their indigenous neighbors. The national government played an active role in establishing peace treaties between the United States and neighboring tribes, conducting and regulating trade with tribes, and establishing contact with and collecting

³⁹ Robert Lieberman, “Private Power and American Bureaucracy: The EEOC and Civil Rights Enforcement,” Paper presented at APSA annual meeting 2006: 16.

⁴⁰ Lieberman, “Civil Rights and the Democratization Trap.”

information about interior tribes through expeditions. Most of these functions were carried out by the War Department. The first Office of Indian Affairs was created in the Department in 1824. The Office was transferred to the newly created Interior Department in 1849. As Stephen Rockwell notes, these tasks were central to American state-building and involved significant resources.⁴¹

State Interests in American Indian Policy

The national government was not an impartial mediator in its interactions with American Indian tribes. The state had two main interests that were essential in dictating the terms of engagement. First, the young nation needed the ability to provide security against external threats. Legitimacy for the state would depend on its ability to provide this core state function. Second, as many historians have noted, the federal government has actively controlled the terms of race, citizenship, and American identity. National American Indian policy provides multiple examples of the state's ability to dictate the terms of race and culture.

The American state had two strategies to maintain these interests: the minimization of conflict and the creation of the invisible American Indian. To minimize conflict between settlers, border dwellers and neighboring tribes, the early state first had to establish diplomatic relations and peace with major eastern and southern tribes – many who had been or were still allies of Great Britain and fought against the United States in the Revolutionary War. The treaty-making process continued to be a crucial part of the relations with American Indians until its abolition in 1871. To help enforce territorial provisions in treaties and to maintain federal control of the fur trade with American Indians, Congress set federal western boundaries on the nation and made it a criminal offense to make land purchases in Indian territory. Despite laws on

⁴¹ Stephen Rockwell, *Indian Affairs and the Administrative State in the Nineteenth Century* (Cambridge: Cambridge University Press, 2010): 2-4.

the books about settlement and offenses in tribal areas, the flaunting of the laws by settlers and traders made it necessary for the national government to minimize conflict by using federal troops for law enforcement against white settlers, peace-keeping, and subjugation of American Indian populations who attempted to enforce retribution for white abuses or did not stay within the narrow constraints of federal and treaty law.

The state was also interested in reducing the visibility of American Indian tribes as autonomous political and cultural bodies. While the policies used to enforce this strategy often aided in minimizing conflict, the invisibility of American Indians filled a much larger purpose by opening up a more expansive western territory while (forcibly) assimilating American Indians into the dominant white, Christian culture. While racism would prevent American Indians from exercising citizenship, American politicians and reformers saw it as their Christian duty to eliminate American Indian tribes by absorption through education and “civilization” rather than extinction. From 1819, assimilation was encouraged and later made mandatory through the creation of schools and churches on reservations. American Indians were also made invisible to many through the forcible removal often over a thousand miles in length in poor conditions with few supplies. Tribes were relocated to portions of the country with little white settlement rather than in or near states that were hostile to their presence. Despite the stated goal of assimilation of American Indians, national officials often chose tools to accomplish their goals that were the most blunt and brutal instruments – subjugation, removal, and even education were accomplished with a high price in American Indian lives. While not an explicit means of accomplishing invisibility, for policy-makers convinced of the inevitable extinction of the American Indian race, the loss of lives was often seen as tragic but unavoidable.

Alternative Sources of Power

The American state's ability to accomplish its goals of security and racial maintenance depended on maintaining hegemony over alternative sources of power. This hegemony was far from automatic. The national state faced competition from several powerful forces that were also acutely interested in enforcing their own interests with regard to American Indians. The threats to the state for control of broader nation came from three main sources: states, foreign nations, and business.

The most obvious threat to the federal government's authority is the state governments. The system of federalism set up in the United States Constitution gives expansive control of many areas of national life to the states. The federal government's powers are expressly limited to those laid out in the constitution. William Novak has written on the power of states over a broad spectrum of police powers including health, safety, welfare and morals.⁴² Not surprisingly, states were also keen to control American Indian populations within their boundaries. Federal law and treaties carved out niches for American Indian reservations often within state boundaries. States had an explicit interest in the enforcement of state laws on reservations and were much more strident in their desire for the elimination of tribes by any means necessary. Federal law and agents were seen as threats to state sovereignty and control. As part of a larger debate over the proper balance between states and the national government, these feuds had both moral and constitutional implications. As states such as Georgia tried to impose state law on those living on tribal reservations, turned a blind eye toward and even encouraged murder and encroachment by white settlers, the federal government had to find ways to maintain the authority of their treaties and laws with regard to American Indians.

Before the American purchase and conquest of the land between the Atlantic and Pacific, several foreign nations also had interests in American Indian territory. Many tribes had sided

⁴² William Novak, *The People's Welfare* (Chapel Hill: University of North Carolina Press, 1996).

with the British during the Revolutionary War due to promises of land, money, and increased power.⁴³ Despite their defeat, British agents continued to try to destabilize the young nation. One mechanism for destabilization was by encouraging their tribal allies to attack and harass American settlements, culminating in the War of 1812 where Britain called heavily upon its allies.⁴⁴ One of the means for colonial powers, such as the British and Spanish, to maintain control over their territories in the New World was to maintain alliances and trading relationships with tribes. These nations made it difficult for the American state to accomplish its goals with regard to American Indians.

Finally, businesses have been interested in state development and regulation since the founding of the republic. Article I of the Constitution provides Congress with explicit control over trade that is international or with American Indian tribes.⁴⁵ The fur trade with American Indian tribes was a large and lucrative market. Millions of dollars were made by large companies such as the American Fur Company in the United States and the Hudson Bay Company in Canada. The exploitation of these relationships made businesses interested in the arrangements and regulations established by the national government regarding trade.⁴⁶ By providing inflows of cash, goods, and liquor into Indian Territory, the trading companies threatened the American state's ability to maintain loyalty and control throughout the vast expanse west of the state boundaries.

Public-Private Partnership in American Indian Policy

Despite threats to the American state's authority and legitimacy in American Indian affairs, by the middle of the nineteenth century the national government's supremacy was

⁴³ Francis Paul Prucha, *The Great Father* (Lincoln: University of Nebraska Press, 1986): 14-5.

⁴⁴ Prucha, 22-30.

⁴⁵ U.S. Constitution, Article I, Section 8.

⁴⁶ See William Belko, "John C. Calhoun and the Creation of the Bureau of Indian Affairs," *South Carolina Historical Magazine* 105 (2004): 171.

assured. As the case studies will show, this supremacy allowed for far-reaching state goals to be pursued. While the Office of Indian Affairs had a relatively large and regionally dispersed bureaucracy by the Civil War, the national state relied on private organizations for knowledge, organizational capacity, and political networks to try to insert its interests and accomplish its goals in the area of tribal relations and management. The work of Stephen Rockwell supports the contention that throughout the nineteenth century the federal government through the Office of Indian Affairs was overwhelmingly successful in accomplishing the results it desired.⁴⁷

The following chapters will examine four examples of partnerships in nineteenth century American Indian policy. In the early American state, religious organization provided the organizational capacity for civilization and education efforts while trade in the western territories was controlled through a licensing system. Private organizations were also critical in bringing and supporting court cases that asked fundamental questions about the status of American Indian tribes with relation to the states and federal government. At the height of government reliance on private organizations, President Ulysses S. Grant's Peace Policy placed religious organizations in charge of reservations in an attempt to rid federal administration of corruption and restore integrity to the federal management of American Indian policy.

A Note on Writing about American Indian-Federal Government Relations

One of the aspects of these case studies that make them interesting to early state-building – exploring how the federal government went about constructing ideas of race and citizenship – also makes them more difficult to describe and analyze. As a white American researcher, I have a responsibility to understand the peculiar methodological difficulties of writing about American Indian history and my own cultural preconceptions. Writing American Indian history can be particularly difficult because the written sources that historians often rely heavily upon are

⁴⁷ Rockwell, *Indian Affairs and the Administrative State in the Nineteenth Century*.

skewed to represent the views of the government and other literate white Americans. It is easy to rely on the more than 11,000 cubic feet of material in the National Archives that document the history of the Bureau of Indian Affairs. Donald Fixico warns:

A dependence on documents eliminates other evidence, and precludes other methods and disciplines from interpreting Indian history. This singular, focused approach has produced an interpretation that hinges on the white point of view. It is not a balanced history of American Indians since it yields but one version of a history of two people interacting. Rather, it is an Amerocentric interpretation of Indian history, a point of view that is shared by the majority of American historians writing about the United States, Europe, diplomatic, and general history.⁴⁸

While I am not writing original histories of the tribes and individuals that I am studying, I have a responsibility to search out balanced secondary sources that consider both written and oral sources as well as aspects of tribal history beyond the interactions with white settlers and the government.

In addition, there are cultural issues that I have an ethical responsibility to understand. First, in much of the literature that has been written in the area, language that is insensitive and derogatory toward American Indians is often used or reproduced. I have to be aware of the power that language has in perpetuating and normalizing particular cultural stereotypes. Second, it is especially important for researchers working on the political history of American Indians to recognize that tribes are sovereign people who have certain rights and responsibilities that are inherent to their status. It is often mistakenly implied that these rights are simply granted by the federal government. In tackling this subject matter, I have tried to remain aware of, and take into account, these cultural implications by bringing a proper attitude, respect, and consideration of the American Indian viewpoint and be aware of my particular cultural biases.⁴⁹

⁴⁸ Donald Fixico, "Ethics and Responsibilities in Writing American Indian History," *American Indian Quarterly* 20 (1996): 32.

⁴⁹ Fixico, 35.

Methodology and Case Selection

As with many research designs, the nature of the question I am asking suggests a particular type of methodological approach. My focus on American state-building demands analysis that is rich with historical cases. I contend that American state-building is often underappreciated because private power is more difficult to measure and less visible which necessitates a more qualitative approach. By trying to get at less visible manifestations of power, there are few easily quantified indicators to estimate public-private partnerships. Legislative indicators are easier to come by because one can examine legislation and budgets to look for examples of the state using private capacity. However, much of the work on bureaus cannot be done simply by looking at budgets. Partnerships are rarely created in easily searched or identifiable public documents. Thus, a purely quantitative study of the frequency of the phenomena is infeasible for this thesis. However, that does not mean that the study will completely eschew quantitative analysis. Determinations of capacity growth and mission accomplishment must rely on statistics to help tell the story of state development.

For the main question of research, I will be focusing on the source of partnerships to explain variations in capacity and substantive mission. Because of my inability to collect a large enough unbiased sample of the available cases of partnership, I will not be using random selection to choose my cases but instead carefully selecting cases to probe at the causal mechanism put forward by my research question. These case studies have been chosen to ensure variation on the explanatory variable. As Gary King, Robert Keohane, and Sidney Verba explain, “The ‘best’ intentional design selects observations to ensure variation in the explanatory variable (and any control variable) without regard to the values of the dependent variables. Only during the research do we discover the values of the dependent variable and then make out initial

causal inferences by examining the differences in the distribution of outcomes on the dependent variable for given values of the explanatory variables.”⁵⁰ My theoretical propositions expect different outcomes based on the source of the partnership. Congressionally-mandated partnerships operate differently than bureaucratically-initiated ones. The four case studies were chosen to illustrate each possible value of the independent variable: legislative, presidential, bureaucratic, and judicial.

My thesis will also explore state-building cross-temporally. Rather than focus on a single time period, I have chosen to look at the phenomenon throughout the eighteenth and nineteenth centuries. By studying this breadth of American history, I limit the direct comparability of the particular cases to one another. Obviously, the cases have more differences than the independent variable that I am investigating. However, despite the temporal differences, these cases present similarities that allow for significant and important research to be conducted on the question at hand. I have decided to focus exclusively on one domain of governmental policy – American Indian affairs – in order to maximize the comparability of my cases across time. I bring in examples from the larger policy arena but a systematic study of other policy areas provides case material for further projects. In addition, the breadth of policy questions addressed within this particular area is vast. My case studies examine topics as diverse as trade, schools, reservation management, resettlement, and federalism. Studying American Indian affairs allows the researcher to keep constant the bureau studied while dealing with a spectrum of issues that have implications for broader questions of state-building.

This emphasis on cross-temporal study finds support within historical institutionalism which stresses that we must “look closely at the intertemporal aspects of politics, rather than take

⁵⁰ Gary King, Robert Keohane, and Sidney Verba, *Designing Social Inquiry* (Princeton: Princeton University Press, 1994): 140.

a ‘snapshot’ view of political processes and outcomes. ... This requires *genuinely* historical research. By genuinely I mean work that carefully investigates processes unfolding over time.”⁵¹ By studying the relationships across time and with comparison to my theoretical hypotheses, I intend to identify those that are generalizable about the American state-building experience.

While the narratives I construct are historical, my theoretical propositions draw from a formal analytic tradition. Like rational choice institutionalists, I assume that each office and position in the American system comes with particular incentives and restraints. One must understand the complex structure of American politics to build plausible stories about the different branches and actors. Structure matters because it tells us about the limits and possibilities of action but it cannot tell us everything about how particular actors will respond to particular situations. To get to the heart of the uncertainty and action that occurs in particular case requires a more nuanced historical account of structure and agency. The perspective of historical institutionalism lets one tell the story of agency within and breaking through structural boundaries in a way that is less possible than with rational choice institutionalism.

For each of my case studies, the historical narratives are constructed based on primary archival research from the National Archives, Library of Congress, and smaller collections, as well as secondary historical accounts. The construction of narratives goes beyond simply telling a historical story. The hypotheses laid out in my initial chapter guide the evaluation and interpretation of historical events. As Tim Büthe contends, “To be useful as a test of a deductively sound model, a narrative should be structured by the model in that the presentation of empirical information follows the model’s identification of actors, their preferences, etc., so as to minimize the ad hoc character of the empirical account.”⁵² The initial theoretical work

⁵¹ Paul Pierson, “The Limits of Design: Explaining Institutional Origins and Change.” *Governance* 13 (2000): 494.

⁵² Tim Büthe, “Taking Temporality Seriously,” *American Political Science Review* 96 (2002): 490.

provides the systematic structure for this investigation of public-private partnerships and their role in state-building. When approaching archival resources, the vast amount of data makes selection more critical. To try to aid in material selection, I went to the archives with hypotheses and null values. By understanding what type of evidence would prove and disprove my theoretical assumptions, I looked for both types instead of only being alert to evidence that would confirm my hypotheses.

Public-private partnerships are not merely a late twentieth century phenomenon; but instead an enduring form of state development that trace their origins to the founding of the country. Their use and impact is far from uniform and represent both substantial gains for the American state and significant setbacks. In the next chapter, I will set out a theory of public-private partnerships and state building that includes testable hypotheses. Starting with a typology of partnerships that recognizes a variety of outcomes that can result, I then develop a set of hypotheses about the likelihood of and circumstances surrounding my four types of partnerships.

These hypotheses are tested in a study of governmental relations with American Indians in the early state period and the post-Civil War period. Through these case studies, the approach I develop demonstrates its potential to understanding the complexity of the American state. The case lay out examples of legislative, bureaucratic, executive and judicial partnerships in the period of early state building. Chapter 2 looks at the trade and intercourse system developed by Congress. Chapter 3 examines the role of bureaucrats and religious organizations in creating schools and civilization efforts among American Indian tribes. In Chapter 4, I focus on President Ulysses Grant's Peace Policy which gave religious groups primary responsibility for management of Indian affairs. In the final case study in Chapter 5, I examine the court cases

surrounding Cherokee land in Georgia, focusing especially on *Worcester v. Georgia*. I conclude with an assessment of the role of public-private partnerships in achieving state goals in the area of relations with American Indian tribes while fleshing out the broader implications of the four case studies and pointing to areas for future research.

Chapter 1 – A Theory of Public-Private Partnerships

Public-private partnerships occur when private activity and organization is courted and coordinated by any of the branches of the state to serve public regulatory functions.⁵³

Throughout history, these public-private partnerships became one of the tools through which the American state subtly but irrevocably altered (and perpetuated) American society. Despite inroads made by Carpenter and Lieberman in analyzing the role of private power in bureaucratic operations, and evidence that these types of relationships are significant, very little has been done on public-private relationships in state-building. The American state did not have to rely solely on its own tools. Instead, due in part to a lack of state resources, national actors looked to private capacity to help achieve substantive missions.

As others have noted, the American state lacked many of the organizational resources of other states, such as a strong bureaucracy or police powers. In addition, the separation of powers which were so critical to the democratic experiment often prevented uniform and decisive state action. When Terry Moe discusses political organization, he cites the authority that is unique to the state: “[Political] decisions are enforced by the courts and backed by the police powers of the state.”⁵⁴ This may be true of the American state in the twenty-first century but it has not always been the case. State militias which technically could be called into action to achieve national goals proved unreliable. During the Whiskey Rebellion, President Washington’s attempt to call into action the Pennsylvania militia proved impossible and instead he had to muster a federal militia to march into the state.

⁵³ The definition for these partnerships borrows from Robert Lieberman’s account of associational politics. Lieberman, “Civil Rights and the Democratization Trap.”

⁵⁴ Terry Moe, “Politics of Structural Choice: Toward a Theory of Public Bureaucracy,” in *Organization Theory: From Chester Barnard to the Present & Beyond*, ed. O. Williamson (Oxford: OUP, 1990): 120.

Episodes like these are not limited to the nineteenth century. One of the most famous cases of the twentieth century, *Brown v. Board of Education*, faced similar opposition. In 1957, Governor Orval Faubus had ordered Arkansas National Guard and later city police to physically block the attendance of nine African-American youths at previously segregated Little Rock Central High School. President Eisenhower had to order the withdrawal of the National Guard and use the US Army to ensure their attendance. Little Rock was not an isolated incident and despite the ending of de jure segregation, American schools are more segregated in 2006 than fifteen years earlier.⁵⁵ In explaining the differing societal results after *Brown* and *Roe v. Wade*, Gerald Rosenberg emphasizes the role of the market in providing a means of implementing *Roe* while *Brown* had to wait for legislative action in the form of the 1964 Civil Rights Act and 1965 Elementary and Secondary Education Act.⁵⁶ As history has shown, the federal state has had to look for enforcement mechanisms that do not necessarily require full state cooperation for effective enforcement.

The American state often had to rely on mutually beneficial (but not necessarily Pareto-optimal) solutions to achieve state goals. Of course, public bureaucracy and public-private partnerships are not optimal solutions for all people governed by the American state. Instead, they are mutually beneficial to a minimum winning coalition necessary for achieving a state goal. This solution can then be imposed on the losers in the political process and the politically impotent. As Moe contends, “Public bureaucracies are not structures of mutual advantage. However benign or beneficent their public purpose might be, they are essentially structures of

⁵⁵ Gary Orfield and Chungmei Lee, *Racial Transformation and the Changing Nature of Segregation* (Cambridge, MA: The Civil Rights Project at Harvard University, 2006) (downloaded at http://www.civilrightsproject.ucla.edu/research/deseg/Racial_Transformation.pdf).

⁵⁶ Gerald Rosenberg, *The Hollow Hope: Can Courts Bring about Social Change?* (Chicago: University of Chicago Press, 1991).

coercion.”⁵⁷ The same can be said for public-private partnerships. While they benefit insiders, these deals between government and private organizations exclude and even exploit political losers. However, one should not assume these relationships will be perfect equilibria. Often they will be marked by tension. Even with shared goals, the state has to compete for reputation and legitimacy.

Additionally, the use of private capacity often masks the power of the federal state. Skowronek notes that within the limits of a state of party and courts, “the great anomaly among Western states successfully met the challenges it faced during the nineteenth century.”⁵⁸ What Skowronek misses is that power does not have to be wielded through coercive mechanisms of military and extensive bureaucracy. Part of the success of the nineteenth century American state depended on the development and successful use of alternative mechanisms and private power. In an anti-state environment, enforcement of federal goals through non-traditional mechanisms could be beneficial in preventing backlash.

Rather than directly providing social welfare and infrastructure for state functions, the federal government often relied on private action to provide the organizational capacity to fulfill these functions. The internal improvements opposed by Democrats were largely accomplished by investment and speculation that were indirectly encouraged by federal land grants and protective tariffs. The national banking system established during the Civil War chartered private banks and set up incentives for these national banks to hold federal rather than state bonds.

Public-Private Partnerships in the American System

⁵⁷ Moe, 126.

⁵⁸ Skowronek, 35.

Ironically, as America developed enhanced powers over alternative sources of power, such as states or private organizations, it often had to enlist the resources of some of those very organizations. For the American state with limited formal powers, achieving state goals required getting private individuals and organizations to buy into the state. Private power had to be given reasons to work through the federal government and not against it. As private individuals and groups used federal mechanisms, they helped build federal legitimacy. Competition from alternative sources of power both at the sub-national level (states) and in the private sphere actually increased the incentives for the state to use partnerships. In these cases, the federal state could not simply rely on imposed or coercive solutions to problems. By giving these groups a larger say in state development the American state helped guarantee its continued existence and health.

Federal government relationships with private organizations created a private interest in the legitimacy and expansion of the federal state. The early American experience illustrates the necessity of private groups in creating state stability. At the end of the eighteenth century, the original thirteen colonies had created an independent nation but that nation lacked any binding sense of nationalism in its citizenry. Alexander Hamilton's plan to service all war debts at face value served a certain small speculator interest over small farmers. However, his plan was designed to harness mercantilist interest for profit in the service of the state interest in growth. Hamilton was determined to have speculators relying on state success (which would ensure they received face value for their debt) rather than speculating against the state and its currency.

One must be careful in describing state development. Too often expanded state capacity is equated with progress. Administrative reform was seen as a step toward a more efficient, scientifically-determined national policy. However, federal goals rarely follow a progressive,

liberal path. Instead, these goals often represent the multiple and conflicting orders in national politics. As Rogers Smith, on his own and with Desmond King, has shown the American state was not simply characterized by egalitarian and liberal values as Tocqueville contended. Instead the national state played an active role in the subordination of women and racial minorities.⁵⁹ In the case of Hamilton's development plan, a particular capitalist interest was serviced in order to ensure financial stability but at the cost of more egalitarian forms of economic development. The American state building operation was not simply a steady progression toward the full realization of liberal goals. Instead, the tools of the state, both coercive and more hidden, have been used to support the varying traditions that found representation in the branches of the national state. The case studies in this thesis provide examples of these multiple and conflicting orders.

The complexity of the American system of government also makes analyses of state power and capacity difficult. Much of the literature on the American state attributes its weakness to the vertically and horizontally divided system. Centering the loci of power in the system is difficult as the different branches of the federal government compete over time for resources and shift in importance across time. However, the heterogeneity of the American federal system seems to make the collective term, 'state', even more important. When Nettl defines the word, he writes, "A large part of the point of the word 'state' in Europe is that it is the only concept that effectively joins government, bureaucracy, and legislature into one collectivity and thus imparts real value to the distinction between state and government."⁶⁰ A unifying term that can describe

⁵⁹ Rogers Smith, "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America," *APSR* 87(1993): 549-566 and Desmond King and Rogers Smith, "Racial Orders in American Political Development," *APSR* 99(2005):75-92.

⁶⁰ Nettl, 570.

the United States as an entity beyond its formal branches helps us to conceptualize and discuss the nation's development.

The American state is made up of three formal branches at the national level (legislative, executive, and judicial) and the informal administrative branch which helps advise and implement. These four branches compete for influence in determining the national agenda. Influence over this agenda is often zero-sum between these actors. Strong presidents, such as Andrew Jackson, dominate the national sphere at the expense of congressional influence and reputation. Or as Daniel Carpenter has illustrated, national bureaucrats can create autonomy, by building their reputations and subsequently coalitions, which can dominate congressional preferences.⁶¹

However, these branches also must be viewed as a collectivity which is part of another nested game. The American state, especially during the eighteenth and nineteenth centuries, had to build legitimacy for its continued existence by gaining the loyalty and recognition of citizens, state and local governments, and private organizations. This loyalty was far from automatic. The state competed to supply services, control the monopoly on violence, and provide leadership with state governments and private organizations. The history of race and slavery in America shows that this competition was fierce. Nationalism was built in disjointed steps; and in the case of slavery, it took a civil war to begin to establish national authority in dictating questions of race and citizenship.

As the federal state gained authority and legitimacy vis-à-vis other sources of power in the republic, the gains were often distributed unevenly among the branches of government. When President Washington established the precedent of negotiating treaties with American Indian tribes, the federal state as a whole gained legitimacy in foreign affairs. However, the

⁶¹ Carpenter, *The Forging of Bureaucratic Autonomy*.

office of the President gained more from this institutionalization than the other branches because the President was seen as the proper person to negotiate treaties. State-building in the American case was far less straightforward than European nations. However, the fractured and uneven nature of state development should not blind us to the decisive gains that were made to legitimize the federal state.

Much of the literature on state building focuses on the creation of a national bureaucracy. Because administrative capacity is important in achieving state goals, this is not surprising. Capacity relates to our notions of execution and thus is bound up in the workings of the administrative arm of government. But the use of private partnerships is not the exclusive domain of the bureaucracy. Congress and the president often had to look for alternative sources of capacity to achieve goals when they were not available through administrative or military arms. In addition, ideological aversion to national bureaucratic solutions led national politicians to think of new ways of accomplishing state goals that often drew upon private power. The American Constitution's division of power represented a new way of political organization; so it was not unexpected that American politicians did not adopt wholesale European forms of administration and execution.

The final branch of government, the judicial branch, also plays a critical if less visible role in encouraging private involvement in state mechanisms. While the judiciary does not partner directly with private organization, it provides the enforcement mechanisms and independent arbitration to help ensure contracts and the implementation of federal law. Statutes can leave enforcement to private individuals bringing suits in courts rather than giving the bureaucracy the tools and authority for public enforcement. Legislators may find this mechanism more appealing because it does not require the principal-agent problems and

subsequent oversight associated with delegation to bureaucrats while still being able to claim credit for taking action.⁶² With private suits, the use of private capacity is initiated by legislators but bureaucrats can also be active in helping private groups and individuals use these mechanisms. While the legislature may be purposely avoiding the bureaucracy, the laws give bureaucrats a bargaining chip. As Robert Lieberman's study of the EEOC shows, the federal bureaucracy can give advice on court cases, help plan strategy, and provide authoritative opinions as amicus briefs.⁶³

Public-Private Partnerships and Capacity Development

Public-private relationships helped extend the federal government's power in the expanding nation but at a cost; private action masked the federal government's role and seriously diminished the state's ability to claim credit for promoting American economic and social development. Despite these weaknesses, public-private partnerships have been an enduring feature of the American administrative state from its founding. Additionally, the relationships do not appear to be simply products of legislative patronage demands or desires to diminish bureaucratic capacity. The long-standing use of public-private relationships begs questions about when they are used and if they really expand state capacity.

The implications for control over public-private relationships are not straightforward. Despite their potential to enhance the power and capacity of the state, these relations do not automatically create the resources necessary to achieve state goals over potential opposition.

⁶² This hypothesis is similar to the argument by Matthew McCubbins and Thomas Schwartz on congressional oversight. Rather than supply the broad discretion necessary for the bureaucracy to conduct sweeping "police patrols", private suits can alert the state when violations to the law are occurring and allow responses on a case-by-case basis (similar to "fire alarms"). Matthew McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked," *American Journal of Political Science* 28 (1984): 165-179.

⁶³ Lieberman, "Civil Rights and the Democratization Trap."

The invisibility of state involvement and visibility of private entities creates a public belief that governmental solutions are not necessary. Additionally, the power dynamics of partnerships can create administrative dependence on private capacity. If the state mechanisms are utilized simply to service a private interest, the relationship begins to look like the capture models elucidated by mid-twentieth century scholars. Finally, as Joel Aberbach and Bert Rockman have demonstrated agencies are part of a broader political framework. While these partnerships are an answer to weaknesses imposed by political principals, politicians also have tools to control the relationships.⁶⁴

Elizabeth Clemens goes so far as to claim that capacity borrowing from private organizations fails to create durable state capacity to ensure social welfare provision.⁶⁵ Clemens is correct to point out that partnerships can build state capacity without actually building administrative capacity. For example, during the Civil War the United States Christian Commission, an off-shoot of the Young Men's Christian Association, was given permission by the heads of the Army and Navy to provide ministry as well as medical and supply services to Union troops. The U. S. Christian Commission sent almost 5,000 delegates into the field to minister to the physical and spiritual needs of soldiers and distributed over \$5,000,000 in aid and goods.⁶⁶ The President, members of Congress, and high-ranking officers in the military supported the organization's work; and in the field, commission delegates were given a semi-official status and were posted under military surgeons, chaplains or even field officers. The government ordered that the supplies for the commission could be shipped by military railroad.

⁶⁴ Joel Aberbach and Bert Rockman, *In the Web of Politics* (Washington DC: Brookings, 2000).

⁶⁵ Elisabeth Clemens, "Lineages of the Rube Goldberg State: Building and Blurring Public Programs, 1900-1940," in *Rethinking Political Institutions: The Art of the State*, eds. Ian Shapiro, Stephen Skowronek, and Daniel Galvin (New York: NYU Press, 2006).

⁶⁶ M. Hamlin Cannon, "The United States Christian Commission," *The Mississippi Valley Historical Review* 38(1): 78.

The commission created a vast organizational network of field associations to oversee the distribution of reading material, food not on official rations, first aid, and religious teachings.⁶⁷

While the organization was crucial in providing for soldiers' welfare during the war, the reliance of the government on the commission may have prevented more enduring organizational capacity to provide these services.

Examining public-private partnerships helps one understand a vital mechanism through which the various branches gained power against each other and collectively in opposition to other sources of power. To understand the ways in which partnerships can build state capacity it is first necessary to expand the notion of capacity and understand the variety of mechanisms that allow a state to accomplish its goals.

Toolkits are not unique to the state. Other private (and public) organizations also can build these capacities. Business firms, charitable organizations, and state and local governments all have budgets and ways of collecting funds. Organizations also collect information about their members, activities, and outside phenomena of interest to them. Non-state actors obviously have staff and resources to employ as organizational resources; many even have security operations that are independent of the national state. While authority may seem to be the unique domain of the government, there can be little doubt that statements by organizations can be authoritative despite a lack of formal legal authority. These statements can even be backed up by sanctions. Churches can excommunicate; businesses can dismiss; groups can remove financial backing. In sum, organizations have a broad range of tools at their disposal to accomplish their own goals; and states can borrow these capacities.

The use of private capacity is not automatic. The relationships that this thesis seeks to investigate are partnerships and not simply coercive relationships. For a partnership to occur, the

⁶⁷ For more on the US Christian Commission, *see* Cannon, 61-80.

state has to give something as a bargaining chip to access private capacity. The relationship has to be mutually beneficial to both of the participants. Pure commands from the state require substantial resources in all of the Hood's categories but these resources are exactly what the American state is often lacking in the first place.

Even without a full set of tools, the state has many bargaining chips to offer private organizations in return for capacity. These bargaining chips can be grouped according to the four main tools of governments. The most obvious is probably treasury. Deals involving financial guarantees for resources are attractive and facilitate straight-forward transactions. "The cheque-book is often a substitute for doing it yourself, for government as well as individuals... [G]overnment can use 'cheque-book government' instead of organisation and direct action."⁶⁸ However, extra monetary funds are not always available or readily given to private organizations so while this may be the easiest mechanism the state must also have other bargaining chips.

In the nodality category, governments can share information or expertise with groups. As Hood points out, "One of the important things that government gets from its central position is a store of information or a panoramic picture. This gives it a reason to be listened to, quite apart from any other government-like properties, unless it forfeits all credibility."⁶⁹ This panoramic picture gives the state information that other entities may not have both about fellow citizens but also about government operations. Additionally, the nodality bargaining chip is attractive because the use of information is more efficient and cost-effective means to achieve goals because, unlike monetary or organizational capacity, it cannot be used up.

Third, governments can use their authority to capitalize on a resource that is unique to the branches of the state. By lending its name or issuing licenses the government provides

⁶⁸ Hood, *TOG*, 50.

⁶⁹ *Ibid.*, 21.

legitimacy to particular activities by specific organizations. Official tokens that are limited in nature are to some extent self-policing as well. Groups or individuals that go through the process to achieve a license have an incentive to make sure other individuals comply with the rules.⁷⁰ Additionally, the government can use its position of authority to provide access and legitimacy to groups trying to gain access to the branches of government. For example, members of every branch can (and do, in the American case) provide briefs to supplement a court case in a way of supplementing a group's argument. Members of each branch can also provide insider lobbying into the other branches. Legitimacy and access are two very attractive bargaining chips that come with the government's tool of authority.

The final tool, organization, is one of the least likely to be used as a bargaining chip by governments. The need to use private capacity often results from a lack of funds or organization and thus governments are looking to the manpower and infrastructure of private organizations. If the government had extensive organizational resources, they would have few reasons to need to borrow capacity from outside groups. However, government's organizational resources can be of help to private groups. In the American system Congress can deny the administrative arm formal legal enforcement tools to accomplish its goals and instead rely on private individuals and groups enforcing the law through litigation. In these cases, the government's organizational resources can be utilized to brainstorm strategy, hold hearings, and conduct investigations. Both the actual conduct and the information gathered from these activities can be useful to private groups.

There is no sure indicator between the tools that a state has in its toolbox and its likelihood to employ private capacity. However, certain circumstances can increase the probability of alternative approaches being taken. One need only turn to Adam Sheingate's work

⁷⁰ Ibid., 70.

on innovation in American political development to learn lessons for situations which will be more conducive to unorthodox methods for goal attainment.⁷¹ The key to understanding and explaining much of institutional change for Sheingate is entrepreneurship. “Entrepreneurial innovation is a speculative act of creative recombination that, when successful, transforms the institutional boundaries of authority.”⁷² Instead of looking for structure induced equilibriums that reduce uncertainty, Sheingate highlights ways that the complex American system can leave opportunities for entrepreneurs. Three situations make it more likely for innovation to occur:

These characteristics of complex institutions – uncertainty, heterogeneity, and ambiguity – each contribute to a process of entrepreneurial innovation and institutional change. Conditions of uncertainty present opportunities for speculative acts of creativity; heterogeneous components of complex systems are subsequently combined and recombined in various ways and the ambiguous relation among actors and institutions provides entrepreneurs with assets for the consolidation of their innovations into lasting institutional change.⁷³

For this study, Sheingate’s work helps conceptualize the mechanism through which alternative policy and administrative tools originate and are used in practice. Uncertainty over policy and political responsibilities can give bureaucrats and presidents the ability to shape a policy arena. Slack monitoring facilitates this uncertainty and the possibilities for consolidation. Each branch of the American state (legislative, executive, judicial, and administrative) has access to multiple and overlapping tools that allow for heterogeneous resources. Bureaus or programs with few resources to conduct their operations have an incentive to find alternative mechanisms for enforcement. Innovative arrangements are born out of scarcity.

Public-private partnerships represent a type of entrepreneurial activity. They have never been the traditional way of addressing political problems, in part because they involve the risks

⁷¹ Adam Sheingate, “Political Entrepreneurship, Institutional Change, and American Political Development,” *Studies in American Political Development* 17(2003): 185-203.

⁷² Sheingate, 190.

⁷³ Sheingate, 193.

outlined previously. However, if managed properly they have the potential of gains for both the national government and the partner. The question is at what point are politicians and bureaucrats willing to take the risk of an unsure and even untried solution? The theory laid out by Sheingate provides a framework that helps me develop the hypotheses in my next chapter that speculate on the likelihood of entrepreneurial action for partnerships in different circumstances.

Building a Theoretical Framework

Anecdotally, it appears that public-private partnerships play a role in American state development. However, no study has systematically evaluated the partnerships that develop in the federal state and their relationship with the state's ability to achieve its goals. For this reason, my thesis sets out to answer the question: How can public-private partnerships expand state capacity?

The thesis makes distinctions between types of public-private relationships. There is a vast range of possible ways in which the state can use private capacity to accomplish its goals. Legislators or bureaucrats can use budgetary funds to pay private groups to deliver a service. Bureaucrats can share information with advocacy groups to coordinate strategy. And bureaus often use their authority to legitimate the actions of certain groups. This variety could lead one to analyze these relationships by the tools used and gained from the interaction. However, this type of analysis does not appear to help us with the overarching question about capacity. Both the Interstate Commerce Commission (ICC) after 1920 and the EEOC at its creation required informational assistance from private groups to successfully administer their delegated responsibilities. Information sharing between the ICC and railroads was necessary to meeting its

mandate to set minimum rates and plan for a national railway system.⁷⁴ In a not so dissimilar way, ambiguities in enforcement mechanisms and priorities led the EEOC to an information-sharing partnership with civil rights groups to create an effective affirmative action regime in the late 1960s and 1970s.⁷⁵

Despite similarities in the tools used and gained in the partnerships, these two cases highlight opposite ends of the spectrum for normative evaluations of the relationships. The ICC is often cited as the most striking example of bureaucratic capture by regulated interests while the EEOC's action is viewed as an innovative and effective partnership. The difference between the two cases can be better analyzed by looking at the impact on statutory mission and capacity. As will be discussed in more detail later the partnership between the EEOC and civil rights organizations helped the agency meet its legislatively mandated mission to prevent unlawful employment practices⁷⁶ and built its capacity to achieve its administrative and policy goals in the future. On the other hand, the ICC's relationship with railroad companies did little to meet its requirement for "fair and impartial regulation of all modes of transportation."⁷⁷ In fact, the cozy relationship between the ICC and the railroads diminished the commission's capacity for future action as it led Congress to cut funds and created hostility among other potential administrative and interest group partners.⁷⁸ The differences between the two case studies highlight the necessity of a focus on administrative capacity building and on fulfillment of statutory missions when developing a typology of public-private relationships. The following typology requires an initial investigation of what is meant by capacity and substantive missions.

⁷⁴ Theodore Lowi, *The End of Liberalism*, 2nd ed. (New York: W. W. Norton, 1979) and Samuel Huntington, "The Marasmus of the ICC," *Yale Law Journal* 61 (1952): 427.

⁷⁵ Lieberman, "Civil Rights and the Democratization Trap."

⁷⁶ See Section 706 of the Civil Rights Act of 1964.

⁷⁷ Transportation Act of 1940.

⁷⁸ Huntington, "The Marasmus of the ICC".

Substantive Mission

The first factor that is important in creating a typology of public-private relationships is the agency's mission. An evaluation of relationships with regard to mission is crucial because, in the political and social realm, outcomes matter. Administrative agencies are created as means of carrying into effect legislative goals. For this reason, it is important to evaluate whether an agency actually meets its mission. By looking at the state's ability to effect change on the ground, one avoids the pitfall of conceiving of administrative power as simply the size of the bureaucracy and instead posits that its ability to structure relationships and societal outcomes matters regardless of the mechanisms. Looking at outcomes also helps one make a distinction between the close relationships between the EEOC and civil rights organizations and the ICC and railroad companies.

Embedded in the mission of an agency are two main components. The first are delegated missions which are spelled out in congressional, executive, and judicial directives. The second are the more amorphous goals that both political principals and agents may have for the agency. For example, in providing subsidies or tax incentives for the domestic manufacturing of green technologies, the government is not only encouraging the increased production of these goods but also improved environmental conditions and supporting a nascent industry to out-compete foreign suppliers of the technology. These goals are often stated in congressional testimony and media coverage but are not the direct policy goal in the legislation.

Administrative agents may also have their own goals. These goals can be both administrative and policy-oriented. Administrative goals focus on the delivery and implementation of the agency's substantive mission. Policy goals, on the other hand, try to

affect the other side of the policy process by attempting to change government policy either through Congress or the president. For example, as Daniel Carpenter shows, the Post Office was both concerned about delivering services to its constituents (“speedy mail delivery”) and changing federal policy (for instance, the Postal Savings Act).⁷⁹

A distinction needs to be made between fulfilling a bureaucratic mission and administrative capacity. First, meeting a statutory mission does not necessarily mean that an agency is strong or has built capacity. For example, weak and strong agencies can outsource outcome provision to private organizations without necessarily expanding their own capacity. By evaluating the state’s ability to accomplish specific missions, one can assess what the state is accomplishing without necessarily tying it to administrative capacity. As mentioned previously, only looking for signs of what federal agencies are doing to accomplish state goals may blind one to more covert coordination. Measuring capacity requires consideration of the resources the state has on hand while assessments of mission accomplishment do not.

Measuring mission accomplishment requires the researcher to first find the statutory missions entrusted to the bureau. Second, one must look at additional sources such as annual reports, media coverage, and congressional testimony to determine the larger goals that are held for particular agencies or pieces of legislation. Then the researcher has to ask if the bureau achieved results in these areas during the time period. I will start by looking at the bureau’s own annual reports for their assessment of the problem at hand. However, the possibility for bias will also require that I consult statistics on the phenomena of concern and secondary assessments of the bureau’s results.

Capacity

⁷⁹ Carpenter, chapters 3-5.

To fully evaluate the impact and value of public-private relationships, one must have metrics to understand capacity. I start by asking the questions: What are the components of state capacity? And, under what circumstances is state capacity more likely to be built? By examining these questions, I build the framework for my theoretical typology and hypotheses that follow.

The histories of the Office of Indian Affairs and, as Lieberman shows, the EEOC highlight the problems of applying the traditional Weberian model of state strength and capacity to the United States. The Weberian model focuses almost exclusively on the legitimate coercive mechanisms of the state. However, even without powerful coercive mechanisms American administration is able to capitalize on other state tools to encourage alternative enforcement of state goals and social arrangements. This can be partially seen by looking at a more comprehensive taxonomy of public policy tools developed by Christopher Hood.

Capacity is a measure of the resources available to a state.⁸⁰ I contend that capacity is made up of three main components: tools (nodality, authority, treasury, and organization), reputation and ideas. The tools are the building blocks of all basic policy implementation and the share of each of these determines parameters within which an agency must work. As Daniel Carpenter has shown, the reputation of an agency also is important in giving agencies the social-based leverage with which to build independence.⁸¹ Finally, ideational traditions provide content and justification for actions but also the shifting coalitions of ideas supply the creativity and impetus for change.⁸² These resources are the mechanisms through which the goals of an agency

⁸⁰ This definition differs significantly from those often used in the literature by separating tools from results. Theda Skocpol defines capacity as the ability “to implement official goals, especially over the actual or potential opposition of powerful social groups or in the face of recalcitrant socioeconomic circumstances.” (“Introduction,” *BSBI*, 9). However, this thesis makes the distinction between building resources that can be used in the future and accomplishing specific goals for a particular piece of legislation.

⁸¹ Carpenter, *Forging of Bureaucratic Autonomy*.

⁸² See Robert Lieberman, “Ideas, Institutions, and Political Order: Explaining Political Change,” *American Political Science Review* 96(4): 697-712; and Rogers Smith, “Which Comes First, the Ideas or the Institutions?” in

are met. Some of these resources (authority, treasury, and organization) are formally allocated by legislative and executive determinations.

These initial structural, legal, and monetary allocations are important because they determine the original strength or weakness of the agency. However, initial conditions fail to tell us much about how agencies develop capacity over time. One of the ways that agencies can build capacity is to leverage their existing resources with private organizations to create effective enforcement, enhanced reputations and manpower on the ground. On the other hand, agencies can lose their reputations for their particular realms if partnerships with private organizations downplay their importance. Both strong and weak agencies have reasons to try to build capacity through partnerships.⁸³ However, partnerships do not automatically create expanded capacity. Capacity is built when an agency gains resources through a partnership that did not exist prior to the relationship.

Measuring capacity is complex because my initial definition essentially sets out three main components: tools, reputation, and ideas. Table 1.1 sets out each component, guiding question and operationalization.

Table 1.1

Measuring American State Capacity

Component	Resources
Guiding Question	Were resources gained that could help the agency achieve its goals?
Elements	Tools (nodality, authority, treasury, organization), reputation, ideas
Measures	<i>Tools</i> <ul style="list-style-type: none"> • Nodality: Information collected and presented in annual reports • Authority: Statutory, executive,

Rethinking Political Institutions: The Art of the State, ed. Ian Shapiro, Stephen Skowronek, and Daniel Galvin (New York: NYU Press, 2006): 91-113.

⁸³ Carpenter shows that partnerships can help strong agencies achieve autonomy while Lieberman shows that weak agencies can rely on private organizations to extend their power.

	<p>and judicial grants of authority</p> <ul style="list-style-type: none"> • Treasury: Budgeted resources • Organization: Agency size by staff and geographic size <p><i>Reputation:</i> Newspaper and academic assessments from primary and secondary sources</p> <p><i>Ideas:</i> Innovations presented in agency reports</p>
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Typology of Public-Private Relationships

By bringing the two different possibilities for the variables together, one can develop a useful classification of public-private relationships (Table 1.2). Because the two variables do not have to overlap, there are four distinct types of relationships that can be built: associationalism, bureau building, mercenary, and capture.

Table 1.2

Typology of Public-Private Relationships

		Statutory mission	
		Meet	Fail to accomplish
Capacity	Build	Associationalism	Bureau Building
	Fail to build	Mercenary	Capture

Associationalism

When an agency partnership with a private group both helps it meet a statutory mission and builds administrative capacity, it falls into this category. An example of associationalism is the relationship that Robert Lieberman describes between the Equal Employment Opportunity Commission and civil rights organizations.⁸⁴ Because the EEOC could not independently issue cease-and-desist orders or file lawsuits in the courts, it relied on the private organizations for

⁸⁴ Lieberman, "Civil Rights and the Democratization Trap."

human capital to strategize and collect information as well as for enforcement. This partnership helped decrease employment discrimination in the United States. It also helped build the commission's capacity. As Lieberman points out, the links with private organizations and the courts "proved especially fruitful for the EEOC in its quest to establish its own legitimacy as a civil rights enforcer and in so doing to construct a resilient enforcement regime."⁸⁵

Bureau-building

The second type of relationship leads to an expansion of administrative capacity but does not have a corresponding outcome in terms of statutory mission. A bureau building relationship can be seen in the development and results of Regional Clean Air Incentives Market. The Regional Clean Air Incentives Market was set up by the EPA in southern California as an alternative to traditional command and control regulation. The project aimed to bring air pollution in the region to national standards through a cap and trade system. For various reasons, the program failed to meet its air quality goals. In addition, while federal officials hoped that the program would cost less per ton to reduce emissions, it was actually more expensive. However, the program was the first American federal attempt at market-based pollution controls and is widely seen as a valuable learning experience. The EPA and federal government gained experience and contacts which have been useful in developing subsequent environmental policy and regulation.⁸⁶

Mercenary

The third type of relationship occurs when statutory requirements are accomplished without a bureau gaining capacity. The relationship with private organizations, which can be

⁸⁵ Lieberman, "Private Power and American Bureaucracy," 16.

⁸⁶ For a description of the policy, its shortcomings, and lessons learned see, Environmental Protection Agency, "An Evaluation of the South Coast Air Quality Management District's Regional Clean Air Incentives Market – Lessons in Environmental Markets and Innovation," November 2002, found at <http://www.epa.gov/region9/air/reclaim/reclaim-report.pdf>.

viewed in this case as mercenaries, is crucial in creating outcomes. However, the bureau itself has a negligent role in the outcomes except as a conduit and thus gains little of the resources that come out of the accomplishments. An example of this type of public-private relationship is the chartering of national banks during the Civil War. The purpose of the National Currency Act of 1863 and National Bank Act of 1864 was to solve the problems associated with a system of multiple bank notes and to integrate the financial system. These Acts gave federal charters to private banks that met certain criteria and created a national currency that would be issued through these institutions. Before this Civil War legislation, there was no national currency but instead a myriad of notes supplied by state banks that was susceptible to counterfeit and depreciation which caused problems for private commerce, individuals, and the government. The legislation created a uniform currency that facilitated the commercial and industrial growth of the second half of the nineteenth century.⁸⁷ It also improved the banking system and helped strengthen banks.⁸⁸ While achieving its limited goals, the legislation did not create durable national capacity to coordinate and authorize national banking policy which left the country susceptible to seasonal fluctuations, banks panics, and without a modern means of handling government funds.⁸⁹ It was not until the early twentieth century that legislation started to create expanded national capacity to deal with monetary stability (a goal that was never the aim of the Civil War legislation) and national coordination.

Capture

The final type of relationship between public and private organizations results in neither an expansion of capacity nor an accomplishment of statutory missions. The example most

⁸⁷ Phillip Cagan, "The First Fifty Years of the National Banking System – An Historical Appraisal," in *Banking and Monetary Studies*, ed. Deane Carson (Homewood, IL: Richard D. Irwin, 1963): 20.

⁸⁸ Cagan, 40-41.

⁸⁹ Gary Walton and Hugh Rockoff, *History of the American Economy*, 10th edition (Thomson South-western, 2005): 385-7.

commonly given in the literature of this type of relationship is that between the Interstate Commerce Commission and railroad companies in the first half of the twentieth century. Instead of meeting a broad goal of “fair and impartial regulation” of all modes of transport, the commission was seen as unfairly biased towards railroad companies. Part of the bias stemmed from the change in regulatory goals which required commission collaboration with the companies in the regulatory process.⁹⁰ While the relationship initially helped the ICC stave off threats to shift some or all of its responsibilities to other departments, the perceived link between the two groups led to political hostility which was met by diminished funding, a bruised reputation in government and the citizenry, and a transfer of functions.

Hypotheses

The classification of public-private relationships helps one make predictions about the circumstances that lead to the creation of each type. I contend that the likelihood of certain results can be predicted based on the branch that initiated the partnership. Each branch has different incentives and motivations for initiating partnerships which impact the type of relationship that will result.

Capacity building relationships (associationalism and bureau building) involve the development of resources that are independent of formal allocations given by political principals. These types of relationships are more likely to be pushed by presidents and bureaucrats. Both of these actors have reasons to try to develop administrative capacity that is beyond the resources formally delegated by Congress. Presidents desire mechanisms to achieve their goals that are independent from legislative determinations. As Terry Moe contends, presidents since Franklin Roosevelt have faced higher expectations from the electorate to pursue the public good and take

⁹⁰ Lowi.

control of national governance.⁹¹ My own research as well as that of Stephen Skowronek indicates that presidential incentives cannot be constrained to particular time periods, such as the modern presidency.⁹² Bureaucrats have goals that are independent from their political principals. While scholars are divided on the exact nature of these goals (do bureaucrats maximize budgets or do they try to build their reputations and legitimacy), there is general agreement that bureaucrats have agendas outside of legislative determinations.⁹³

The benefits of capacity building relationships are not limited to a gain in resources. Those involved also gain expanded networks of allies that can be used for information or as leverage for other goals. Innovative program development that originates in the executive branch provides citizens with solutions to national problems beyond congressional legislation.

Building capacity requires innovation and entrepreneurship. Ironically, bureaucrats in a structurally weak agency may be much more active in seeking new and creative ways to tackle problems even if they lack of the formal tools of organization, authority, and treasury. Weak bureaus also have more slack and uncertainty in their environment which Adam Sheingate argues are crucial components to entrepreneurial innovation.⁹⁴ On the other hand, failing to build capacity does not necessarily imply that the bureau is not strong; it simply means that the bureau does not gain new resources because of the partnership. In fact, I would predict that bureaus with many tools and resources are less likely to put forward the effort to innovate and

⁹¹ Terry Moe, "The Politicized Presidency," in eds. John Chubb and Paul Peterson, *New Direction in American Politics* (Washington, D.C.: The Brookings Institute, 1985): 238-9.

⁹² Ruth Anne French-Hodson, "New Economics of Organization and Nineteenth-Century Bureaucracies: A Study of the Bureau of Indian Affairs," MPhil thesis, Politics Department, University of Oxford, 2007; Stephen Skowronek, *The Politics Presidents Make* (Cambridge, MA: Harvard University Press, 1997).

⁹³ For budget maximization arguments, see William Niskanen, Jr., *Bureaucracy & Representative Government* (New Brunswick: AldineTransaction, 1971, first paperback edition 2007); and for the opposing view that bureaucrats try to maximize their reputations, see Daniel Carpenter, *The Forging of Bureaucratic Autonomy* and Daniel Carpenter, "The Evolution of the National Bureaucracy in the United States," in *Institutions of American Democracy: The Executive Branch*, ed. Joel Aberbach and Mark Peterson (New York: Oxford University Press, 2005): 65.

⁹⁴ Sheingate, 185-203.

bargain for capacity building while this behavior would be more typical in weak, hamstrung bureaus.

Capture and mercenary relationships are more likely to be required by legislative principals. Legislators look unfavorably on the innovation that leads to capacity building because they no longer are in full control of agency capacity. Delegation is plagued with divergent actor preferences and information asymmetry leading to problems laid out in principal-agent theory.⁹⁵ Political principals try to combat the problems of moral hazard and adverse selection by establishing *ex ante* requirements on the bureaucracy. These include mechanisms to respond to public concerns, monitoring, civil service requirements on appointments and promotion as well as direct and indirect rewards and punishments. With these mechanisms, legislators actively try to contain and control bureaucratic mechanisms. Despite attempts to structurally determine bureaucratic outcomes from the outset, the history of bureaucratic development shows legislators cannot perfectly use structure to determine outcomes and control bureaucrats.⁹⁶

Mercenary relationships may be attractive to legislators because they takes resources and authority out of the hands of the bureaucracy. While delegation is still occurring, the purchasing of private capacity has several appeals. First, for a polity that has an intellectual and ideological tradition of anti-statism, legislators have incentives to solve problems without expanding state capacity. Second, much of the literature on contracting implies that private companies unlike bureaucrats are accountable to the free market which will help check delegation problems. While this assumption is questionable and subject to many critiques, it provides a defensible argument available to those favoring non-state solutions.

⁹⁵ Terry Moe, "New Economics of Organization," *American Journal of Political Science* 28 (1984): 739-777.

⁹⁶ Carpenter, 357-9.

Even with the problems involved in delegation, it cannot be said that all members of Congress want weak agencies but only that these problems provide incentives for legislators to design *ex ante* requirements and to monitor. Legislators may delegate broad enforcement and investigation powers and still not want bureaucrats to expand their capacity. The growth in capacity could be a growth in policy-making influence that Daniel Carpenter highlights with respect to the Post Office and Department of Agriculture at the turn of the century. These strong agencies were able to use relationships to build the necessary autonomy to push their desired policies on reluctant legislators.

Despite the extensive literature of the mid-twentieth century, capture relationships are the least likely because agencies have little to gain from them. Because these relationships damage the reputation and legitimacy of agencies without a corresponding increase in capacity, this type of relationship seems possible when either a bureau improperly manages a bureau-building initiative or when political principals attempt to hamstring an agency and a substantive mission. Ironically, capture relationships may be more likely in partnerships that are congressionally initiated. While bureaus may have little to gain, legislators potentially have more to gain from pushing for favoritism for constituent groups. These groups can provide resources, from funding to electioneering, which can enhance reelection chances. For these reasons, it might come as no surprise that congressional committees responsible for monitoring agencies make up one of the corners of the notorious iron triangles of the early to mid-twentieth century.⁹⁷

Finally, one of Sheingate's requirements for entrepreneurial innovation by bureaucrats is the necessary slack to be creative. It seems possible that capacity static relationships (mercenary and capture) are also more likely in cases of greater congressional and executive oversight which diminish slack. With stricter *ex ante* requirements to follow and more congressional testimony

⁹⁷ Lowi, *The End of Liberalism*.

and documentation, bureaucrats have less room to maneuver to find alternative ways to achieve a desired outcome. In addition, the theoretical work of Michael Levine and Jennifer Forrence suggests that a lack of slack accompanied by legislators that are concerned with servicing special interests can determine bureaucratic priorities to please these interests.⁹⁸

A special word must be said about bureaucrats and their incentives to use partnerships. The motivations of bureaucrats is far from settled with the formal theorists leaning more towards William Niskanen's budget maximization theory while more historically aware political scientists, such as Daniel Carpenter, stress reputations as a guiding force in bureaucratic behavior. My theoretical argument on partnerships originating from bureaus seems to predict that the motivations for innovation will differ depending on several factors, foremost of which is agency capacity. For example, bureaus with large grants of capacity and resources may be intent on maintaining their authority and must be forced by the legislature to join partnerships to provide services more economically and efficiently through contracting. On the other hand, weak agencies may try to build their reputations and networks to capitalize on private capacity for innovative solutions. Of course, agency capacity is only one part of this complex discussion. As Daniel Carpenter's work has demonstrated, even strong agencies can have incentives to build broad networks. The initial predictions of the thesis seem more in line with the historical nuances built into Carpenter's argument.

Partnerships and Autonomy

⁹⁸ Michael Levine and Jennifer Forrence, "Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis," *Journal of Law, Economics, and Organization* 6(1990): 167-198. The article also posits the alternate hypotheses as well: in times of little slack but with public interested legislators, bureaucrats will meet this model; in times with lots of slack, bureaucrats are more likely to follow their own motivations. For Levine and Forrence, bureaucrats are unlikely to have motivations that are not private oriented and thus biased toward special interests. Capture in their model is also likely without slack. While I find this possible, the work of Carpenter and others has convinced me that bureaucrats have an interest in maximizing their reputation and legitimacy which leads to different outcomes than those presumed by Levine and Forrence.

While much of my analysis of the innovation in the executive branch focuses on building relationships with private groups to achieve particular aims, there are some sharp distinctions between this thesis and that of Daniel Carpenter.⁹⁹ The major difference is that Carpenter focuses solely on autonomy. While the relationships necessary for autonomy to occur are forms of public-private partnership, they are only an extreme end of the spectrum of possible relationships. This thesis takes a more expansive view of partnerships by examining the circumstances under which both strong and weak agencies use partnerships for a variety of purposes. Second, bureaucratic autonomy, as outlined by Carpenter, requires established administrative capacity. Again, my analysis is more expansive because it considers how administrative capacity is built in non-traditional ways or borrowed from private actors.

Because this work seeks a more expansive understanding of partnerships, it avoids being constrained to a specific historical period. Carpenter's analysis works well for the state-building that occurred during the Progressive era, but he lays out serious reasons why conditions for autonomy did not exist prior to the era and points to modern constraints that limit autonomy in the American state after the time period. Autonomy, Carpenter admits, is "rarely achieved in American political history."¹⁰⁰ By investigating alternative ways bureaus might use partnerships, the typology developed here allows one to look at how Carpenter's variables of reputation, differentiation, and capacity are negotiated over time to varying degrees of success. The predictions made by the typology also may point one to reasons why autonomy is so rare. Autonomy occurs when agencies, which are endowed with resources and administrative capacity, build diverse and multiple networks in an attempt to set the policy agenda and state

⁹⁹ Carpenter, *The Forging of Bureaucratic Autonomy*.

¹⁰⁰ Carpenter, 16.

goals. However, one would not expect this entrepreneurial behavior from agencies that already are strong.

Conclusion

I set out in this chapter to address more systematically the role of public-private partnerships in building state capacity. To do so, I created a typology that categorizes these relationships along two variables – mission accomplishment and capacity. The two dimension lead to four different types of partnerships: associationalism, bureau-building, mercenary, and capture. This framework allows me to make predictions about when in state-building the various types of relationships will be seen. Because the different branches of government have different motivations and preferences, I contend that one should use the source of partnership as an explanatory variable. The resulting hypotheses about partnerships will provide a means with which to affirm or reject my theory. To test these hypotheses, I now move to my four case studies, all of which examine different values on the independent variable.

Chapter 2 – Trade and Intercourse with American Indian Tribes: Establishing American Interests

Almost twenty years after the federal government had decided to enter as a participant in the continental fur trade, the public component of the system faced a grave threat from congressmen interested in eliminating the government competition to private trading companies and, in turn, minimizing the size of government bureaucracy. The arguments advanced by Senator Thomas Hart Benton and other opponents of the publicly owned fur companies sound strikingly similar to modern complaints about bureaucratic management and government market participation. One of Benton's main arguments was that the government had been "purchasing goods at improper places, and at extravagant prices."¹⁰¹ He examines powder kegs purchased in Georgetown at a high price while ignoring sources of powder in Kentucky. "So it seems that Kentucky powder is too bad for Indians... It does for the riflemen of the West, but will not do for the Indians!"¹⁰² He goes on to ridicule the purchase of silk, tea, stockings, and Jewsharps for the Indian trade – objects he thinks are totally unnecessary purchases since American Indians could never want these items.¹⁰³ The rhetoric is not far from the cries in the 1990s against military accounts which showed purchases for \$529 seat cushions, \$435 hammers, and \$74,265 ladders.¹⁰⁴

Benton's impassioned speech succeeded in convincing Congress to end government trading posts in 1822. Despite the exit of the federal government from direct trading with tribes as a means of regulating the market, the government had instituted a system of private licenses and regulations which dated to the First Congress. This system provided both a means of control

¹⁰¹ *Annals of Congress*, 17th Cong., 1st sess., 322.

¹⁰² *Annals of Congress*, 17th Cong., 1st sess., 323.

¹⁰³ *Annals of Congress*, 17th Cong., 1st sess., 319.

¹⁰⁴ Andy Dworkin, "Bolting from Waste," *Dallas Morning News*, March 27, 1997, Lexis-Nexis (March 7, 2010).

and also a tool to gain resources from private companies in the field. The following chapter examines the system of trade with American Indian tribes developed by the federal government. It sought to place mandates on and gain cooperation from private firms as a means to achieve broad goals for trade and the governance of the territories. I begin with an examination of how a licensing system fits into my framework, then I look at the study of trade relations by scholars of American political development, and finally I present descriptive and analytic sections on the particular policy.

Trade Policy as a Public-Private Partnership

At first glance, trade policy might not appear to be a traditional public-private partnership. An attempt at government-owned trading posts went alongside regulation and licensing of private trade. However, a more expansive view of state tools reveals how this dual system, especially the licensing program, aimed to use private capacity to accomplish state objectives. Tokens of a government's authority, such as licenses, indicate that the government sanctions a particular person or business to engage in an activity that might otherwise be prohibited or more strictly controlled. In this sense, licensing reveals "government at its most government-like, deploying its rather special resources of legal or official authority."¹⁰⁵

Because licensing involves a direct mandate from a government, it is traditionally viewed as one of the coercive tools of government.¹⁰⁶ Licensing at its core is a way of controlling the participants in a market. A government may use licenses purely to limit numbers or to ensure that each participant meets particular standards. In the case study that follows, the government chose to use licenses because it could neither monopolize the market nor directly oversee trade

¹⁰⁵ Hood, *ToG*, 71.

¹⁰⁶ Lester Salamon, "Economic Regulation," in *The Tools of Government*, ed. Lester Salamon (Oxford: Oxford University Press, 2002): 119-20.

interactions because of administrative and ideological limitations.¹⁰⁷ In these types of cases, a government chooses private sector representatives that it can imbue with an aspect of the state's authority. These private organizations become quasi-state agents. Because of their direct nature, licensing requirements often directly relate to the goals for the particular policy. Licenses can specify exact criteria that an organization must meet in order to avoid revocation. While licenses involve clear requirements, they also give regulated entities broad discretion about how to act within the parameters.¹⁰⁸ Through licensing schemes, private entities gain governmental sanction for a broad range of activities as long as the entity meets the basic requirements of the license.

Licensing is often paired with administrative monitoring in order to make the grant of a license effective. However, a system of licensing can also provide incentives for private licensees to help in the monitoring. For this reason, Christopher Hood contends that limited-edition type licensing systems can be attractive to governments. This is especially true for governments that do not have full consensus because licensing gives those in the system incentives to be involved in policing.¹⁰⁹ The early American government also had reasons to select powerful private firms for two reasons. Affirmatively, they could help to police if they bought into the system. On the other hand, if they were excluded from the system, the large traders had the ability to use monetary resources and social ties to threaten government legitimacy. Recognition of the system by insiders builds the government's authority by giving it increased legitimacy.

¹⁰⁷ See, for example, Salamon, 145: "[T]he choice of economic regulation is in some sense culturally determined. The American political culture in particular, with its hostility to government, and hence to government enterprise, has built a veritable political wall around the most natural alternative to regulation – public ownership of key industries... Because of the powerful ideological norms against government ownership in this country, economic regulation, which leaves ownership in private hands and guarantees a rate of return sufficient to cover costs, has been the preferred response to apparent economic exploitation."

¹⁰⁸ Salamon, 120.

¹⁰⁹ Hood, *ToG*, 59, 70.

By the 1820s, the large private trading companies, such as the American Fur Company, worked along with the government to patrol unlicensed trading as well as questionable white behavior in the western territories. From the beginning, American politicians hoped that domestic traders would push out foreign companies and build American influence with tribes. To do so, the American government was required to diminish the influence of foreign traders which it first did through the public trading houses and later with a ban on foreign traders. Later in this chapter, I will evaluate this partnership for its ability to accomplish these goals but at this time it is sufficient to say that the system was designed with the intent to encourage private enterprise and harness private capital to accomplish state goals. The government in the late eighteenth century had few of the governmental resources of European states and thus had to be much more creative in the way it used its resources and partnered with outside organizations to control the fur trade.

Trade and American Political Development

The idea of studying the impact of trade on internal political development is not an entirely novel idea for political scientists. However, the study of these interactions has just begun to develop in the field of American political development. Few scholars of American political development even begin to consider how foreign powers and the periphery influence the shape of policy and institutional development. For most scholars, these issues, including relations with indigenous tribes, make up a terrain that is easily divided from other policies and nation-building efforts. One important book, *Shaped by War and Trade* edited by Ira Katznelson and Martin Shefter, questions this divide and illustrates international factors that have influenced American political development. The authors in the volume seek to remedy a weakness in the

American political development literature. The editors argue that “the degree and character of influence exercised by international factors on American political development remains remarkably unprobed, and too tight a restriction of attention to domestic factors continue to produce conclusions biased by an artificially limited universe of variables.”¹¹⁰

Despite its groundbreaking nature, this edited volume only superficially deals with indigenous communities and completely ignores the role of the fur trade in early state development. The thesis of the edited volume - that researchers studying American political development should be interested in issues such as war and trade - is correct but the authors miss one of the most significant examples: the fur trade. The volume does make mention of indigenous communities but without delving into the complicated relationships and interconnections beyond interactions with the military. For example, in his chapter, Aristide R. Zolberg characterizes the American military as a “one-sided instrument of white imperialism” focusing solely on President Jackson’s actions toward the Cherokee during his term in office.¹¹¹

Robert Keohane uses federal Indian policy to illustrate his point that treaties with tribes were simply a matter of expediency rather than a moral obligation. First, he examines the ability of the nation to keep treaty commitments by examining America’s inability (and lack of desire) to uphold treaties with American Indian tribes. He focuses on Chief Justice Marshall’s decision in *Worcester* acknowledging Cherokee sovereignty and the inability to uphold the decision by

¹¹⁰ Ira Katznelson and Martin Shefter, eds., *Shaped by War and Trade: International Influences on American Political Development* (Princeton, NJ: Princeton University Press, 2002).

¹¹¹ Zolberg discusses Jackson’s decision to remove troops protecting Cherokees in 1828, his refusal to uphold Chief Justice John Marshall’s decision in *Worcester*, and his deployment to round up Cherokee on Trail of Tears. Aristide R. Zolberg, “International Engagement and American Democracy: A Comparative Perspective,” in *Shaped by War and Trade*: 35.

national political leaders.¹¹² Keohane talks about Trade and Intercourse Acts only as a means to discuss boundary lines where new rules applied and Indian rights were theoretically protected.¹¹³

One of the most historically aware and accurate chapters is that contributed by Ira Katznelson. Again, the focus is almost solely on the American military force and its relationship with tribes. Katznelson argues that the American military may not have looked like the large European forces that defined a large state but in their own way the Americans were highly effective. He examines the military establishment built by then Secretary of War John Calhoun, who sought to have an ‘expansible military’ that was “in normal periods, small and deployed in garrisons on the frontier, yet capable of rapid growth if the United States were to be involved in an international war.”¹¹⁴ Katznelson examines the military’s role in defining boundaries on the frontier and in removing tribes in the southeast as evidence of flexible effective military.¹¹⁵

The contributors in the Katznelson and Shefter edited collection almost exclusively describe relationships with tribes in military terms: building alliances with different nations, engaging in battles, negotiating for peace, and enforcing military removals. However, the relationship involved much more complex interactions with the new nation using a variety of means including trade to build relationships. With a weak military and little respect from tribes, the new nation could not force or even persuade tribes to make treaties of friendship. Trade became an eighteenth-century means of winning hearts and minds. As Royal Way explains, “The United States, failing more or less completely in attempts to perfect binding treaties with the Indians, at last resorted to the policy of her rivals of winning them by trade. The year 1775 saw the first beginning of the slow evolution of a government system for trade with the Indians,

¹¹² Robert Keohane, “International Commitments and American Political Institutions in the Nineteenth Century,” in *Shaped by War and Trade*: 65-71.

¹¹³ Keohane, 66-7.

¹¹⁴ Ira Katznelson, “Flexible Capacity and Early American Statebuilding,” in *Shaped by War and Trade*: 97.

¹¹⁵ Katznelson, 90-1.

when a committee of Congress was appointed to devise a plan of operation. In the next year the purchase of goods for the trade was ordered and all unlicensed trade was prohibited.”¹¹⁶

This is not to say that trade was purely a benevolent institution meant to strengthen the nation and tribes. Instead, both traders and the government were attempting to determine the best way to exploit this cash-rich trade. The introduction of capitalism to traditional tribal communities changed indigenous people’s relationship with the environment, property, and each other.¹¹⁷ The implications for the environment were just as shocking. The beaver, a keystone species, was nearly eradicated which contributed to ecological changes throughout North America.

The fur trade deserves increased consideration for its impact on American political development. Katznelson and Shefter have nudged the discipline in a positive direction by encouraging scholars to examine the role of foreign affairs in domestic politics and state-building. However, by ignoring the role of the fur trade in early American political development, the authors miss an institution that had profound impacts on the nation. The public-private system of trade helped the new national government consolidate its authority over its territories and gain acceptance with tribal communities as the power with which to negotiate. This particular system also gave trading companies enormous influence over related matters of internal and external affairs from the content of licensing restrictions to the sites of frontier forts. The politics of trade also had a significant impact on the structure and development over one of the largest and most influential sections of the federal bureaucracy, the War Department. This in turn led to the autonomous creation of the Office of Indian Affairs. Finally, this trade opened the

¹¹⁶ Way, 223.

¹¹⁷ See, for example, Ted Steinberg, *Down to Earth: Nature’s Role in American History* (New York: Oxford University Press, 2002): 17-18, 31-34; Harold Demsetz, “Toward a Theory of Property Rights,” *American Economic Review* 57(1967): 347-359.

way for westward expansion that was crucial to the meaning of American democracy and the character of national development. By defining relationships with indigenous tribes as purely a military relationship (and simply one of white domination), the contributors to the volume miss a more interesting narrative about the involvement of American Indians in American political development.

Philosophy behind Trade

Early American Indian policy had two major ideational influences. First, as with all parts of the federal government, the development and administration of policy was done in an anti-statist tradition that reacted strongly against a standing army and large bureaucratic departments. Second, Enlightenment thought influenced many of the founders of early American policy, especially Thomas Jefferson. The Enlightenment led men, such as Jefferson and George Washington, to posit that the American Indians were equal in intellectual capacity to white Americans and they only had to be given the proper ‘instruction’. Instruction would also insure assimilation which would minimize conflict with white settlers.¹¹⁸

These two intellectual traditions, unfortunately, ran counter to one another and the second was often completely incongruous with trade policy. In order to ensure fair treatment of American Indians, the federal government required a much larger military and civilian force in the vast expanse of western territory to control white settlers and the fur trade. Second, while assimilation stressed the transition to agriculture and a sedentary lifestyle, the fur trade depended on making the hunting and trapping way of life incredibly lucrative. These conflicting ideational traditions left American Indian policy in the eighteenth century far from coherent and often at odds with itself.

¹¹⁸ Prucha, 48-51.

What was the policy?

One central component to asserting dominance over America's western territories was controlling the lucrative fur trade. Fur traders would set out west to barter with American Indians and European frontiersmen who were skilled in hunting and collecting furs, especially beaver furs, and then bring them back to sell for the European market. Most European countries ran near monopolies and the wealth they realized from the trade gave them a reason to continually expand across the continent and work against American stability and expansion. As Royal B. Way relates, almost from founding American officials recognized the importance of trade: "During the infancy of the new United States government the schemes and intrigues of these countries with their individual or collective attempts to win over the Indians to alliances against the United States were serious obstacles to the realization of the promise of American independence."¹¹⁹

European state-run fur monopolies controlled the purchase and sale of furs in lands under their influence. The American system was different from its beginning. Initially, the new American government had hoped to control trade through a series of licensing and criminal laws for its territories known as the Trade and Intercourse Acts. Trade and intercourse with tribes was regulated by four acts from 1790 to 1802. These laws established a licensing system for trade with American Indians, outlawed private purchase of American Indian land, and established a criminal code for white settlers in Indian country.¹²⁰

¹¹⁹ Way, 220.

¹²⁰ "An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace of the frontiers," in *Statutes at Large*, 1st Congress, 2nd session, July 22, 1790, p. 137; 2nd Congress, 2nd session, March 1, 1793, p. 329; 4th Congress, 1st session, May 19, 1796, p. 469; 5th Congress, 3rd session, March 3, 1799, p. 743; 7th Congress, 1st session, March 30, 1802, p.139.

Despite hopes for American enterprise to push out European traders, small American traders did not seem capable of challenging the large European companies, such as the Hudson Bay Company, for primacy over the American northwest. To counter this problem, the Congress began considering public trading houses at the urging of the President. Alongside the licensing system, the federal government developed a government-run factory system in order to promote honest dealings in trade, provide an alternative market to British traders, and to cash in on the lucrative fur trade. In 1806, Congress created the Office of Superintendent of Indian Trade to oversee the system.

The 1796 legislation authorized the President to set up factory trading houses which would provide American Indians with essential goods and to purchase furs from them at a fair price. As the Senate considered the measure, it was apparent throughout the discussion that the preference would be for private enterprise to control the trade but that government intervention might be necessary to counter the resources of the British traders. Senator Swanwick contended:

In general I am friendly to let commerce take its own level, without Governmental interference; but the little influence our traders have yet obtained, shows plainly enough defective capital or a defective extent of trade; both are to be apprehended. So many objects of speculation offer in this country, that individuals may not pay sufficient attention to this branch, in which they have so powerful a British interest to contend with. Government, alone, can do this in the infancy of the commerce. Let the experiment be made; we can lose little by it; we may gain a great deal.¹²¹

The factory system established by Congress also had a humane element. By offering trade goods at a fair price, the government hoped to gain allies among the tribes and develop a reputation as a fair dealer.

Senator William Vans Murray made it clear that the experiment in government monopoly was intended to be temporary. Once the way had been cleared for private enterprise by eliminating foreign traders, it then would revert to private enterprise. “By a sum appropriated by

¹²¹ *Annals of Congress*, 4th Cong., 1st sess., 231.

Government to the object, however large the capital in competition in Canada, the Government will be able to beat down the trade of this company [the British Canadian Hudson Bay Company] and place it in American hands; and in a few years after the competition has ceased, the Government may then withdraw its agency, and leave it to private capitals, to which the field will then have been rendered easy.”¹²² An absence of established, competitive private companies as well as a desire to prove itself as a fair and honest broker with tribes led the government to become a direct merchant in the fur trade at the end of the eighteenth century.¹²³

Despite the initial intentions for a temporary system that would facilitate the growth of private trade, the government system quickly took on an enhanced mission over the whole of the spectrum. President Jefferson, one of the biggest advocates for the government’s role in trade, argued that the factory system was necessary for a humane approach to the fur trade. “Private traders, both foreign and domestic, were undersold and driven from the field, and the nation was ridding itself of a class of men who constantly endeavored to excite the Indian mind with suspicions, fear, and irritations toward the Americans.”¹²⁴ This expansion in mission directly pitted the governmental efforts against those of private traders. Despite the legislators’ intention to create a harmonious trade system, this dual system often led to more conflict between the different parties in the field. In his report to the Secretary of War, Colonel Atkinson wrote of the problem, “Instead of carrying on a liberal, open, and fair trade with the Indians, and impressing them with a proper sense and respect for the character and views of Government, everything is made to lend to an underhanded backbiting policy. Each trader endeavours to impress the Indians with a belief that all other traders have no object but to cheat and deceive them, and that

¹²² *Annals of Congress*, 4th Cong., 1st sess., 231-2.

¹²³ *Annals of Congress*, 4th Cong., 1st sess., 229-232.

¹²⁴ Prucha, 36.

Government intends taking away their lands by sending troops into their country.”¹²⁵ Despite the conflicts, for almost thirty years, both the government and private systems of trade grew in terms of geographical scope and scale of resources.

By the beginning of the 1820’s, American fur trading companies, especially John Jacob Astor’s American Fur Company (hereafter, AFC), had extended across the nation, brought in huge profits, and helped push the British out of American territory. The success of the AFC came in part from a change in the trade and intercourse acts to forbid trading by non-Americans in the western territories and the executive’s enforcement of the provision. The AFC had the monetary and organizational capacity at that moment to quickly fill the void of uncertainty in much of the north-western territories. David Lavender’s description of Astor’s philosophy makes it clear why he had such success in this area: “Save for one upheaval, his disastrous transcontinental leap to the mouth of the Columbia River just before the War of 1812, [John Jacob Astor] was not an innovator. He preferred a volume turnover, where he could exercise his superior abilities at squeezing pennies, to the risks inherent in stampeding for virgin ground... [Astor] never let him [Ramsay Crooks] expand until after the paths had been securely marked by someone else’s feet. Then they moved in with their vast concentrations of capital and sought to control the fields which others had opened. No, it was not glamorous. But it was effective...”¹²⁶

Despite an emphasis on the rhetoric of free enterprise, the government system of licensing and enforcement was far from laissez-faire. In fact, it was shaped and designed to favor large companies, especially in the underpopulated mountain west. In a report to Congress,

¹²⁵ Colonel Atkinson to John Calhoun, Secretary of War, November 26, 1819, letter attached to Calhoun’s Report on the Senate resolution respecting trade and intercourse with the Indian tribes, February 16, 1820; CIA (SEN 16A-D6); 16th Congress; Records US Senate, RG 46; NA I. Colonel Atkinson recommends vesting a monopoly over trade to either the government or one company to avoid the bitter and violent competition that existed at the time.

¹²⁶ David Lavender, *The Fist in the Wilderness* (Garden City, NY: Doubleday & Co., Inc., 1964): x.

the Secretary of War John Calhoun concluded that the best way to counter foreign traders in the Rocky Mountains and west was to vest all power in one firm. Calhoun wrote that:

The united influence and combined efforts of the fur companies referred to [British fur companies], can be met successfully, it is believed, only by an equal concentration of influence, and efforts on our part; the jealous rivalry of independent traders, with its fatal consequences, can be obviated only by removing the diversity of interest by which it would be excited, and the danger of collision, on our southern limits, by subjecting the trade completely of the will and control of the government. The mode then which I would propose, would be to vest the trade in a company with sufficient capital; for the privilege of exclusive trade and to be subject in like manner as private traders, to such rules and regulations as may be prescribed. The efforts of the company, undisturbed by rival interests, would be directed to establish its control over the various tribes of Indians to exclude foreign adventurers.¹²⁷

While the government never formally vested power in an individual firm, their treatment of the American Fur Company often mimicked this proposed system. By setting higher bonds for licenses and granting exceptions to larger firms for hiring foreign traders and transporting alcohol, the government attempted to limit the number of firms and to encourage only those with large amounts of capital.¹²⁸

The growing power of the domestic fur industry foreshadowed the coming battle over the role of government in controlling and assisting the fur trade. At this time, the fight began over the continuation of the government-run factory system. Despite objections that ending the system would eliminate the only possible alternative for tribes to receive a fair and honest deal, Congress abolished the factory system in 1822 while also updating the Trade and Intercourse

¹²⁷ John Calhoun to the Speaker of the House of Representatives, December 5, 1818, (NA Microfilm Publication 220, roll 1); Reports to Congress, February 3, 1803-January 20, 1829; Reports to Congress from SW, 1803-1870. Records of the OSW, RG 107; NA.

¹²⁸ The 1790, 1793, 1796, 1799 and 1802 Trade and Intercourse Acts set the bond at \$1000. "An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace of the frontiers," in *Statutes at Large*, 1st Congress, 2nd session, July 22, 1790, p. 137; 2nd Congress, 2nd session, March 1, 1793, p. 329; 4th Congress, 1st session, May 19, 1796, p. 471; 5th Congress, 3rd session, March 3, 1799, p. 745; 7th Congress, 1st session, March 30, 1802, p. 142. In 1834, the bond was set at \$5000. "An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace of the frontiers," in *Statutes at Large*, 23rd Congress, 1st session, June 30, 1834, p. 729.

laws with stronger measures for keeping liquor out of the trade with tribes and tightening restrictions on licensing of traders.

Assessment

This mixed public-private system of trade provided the new national government with an expansion of resources and a distinct system for interacting with tribes. The new system appealed to government officials because it could be implemented immediately without much organizational capacity; and, for those opposed to a large state and supporters of the use of private capacity, it avoided a large growth in governmental bureaucratic capacity. Despite a strong reliance on private traders, the government itself saw an expansion in its access to information, authority over the territories, and its organizational capacity. In addition, the system of trade ensured that the Americans gained control over the western territories from the British and French. But in its attempt to provide a system of law and protection for indigenous communities the system was a failure due to a lack of enforcement officers in the field and a territorial system of justice that upheld trader and settler interests above honest agents and military officials. The system also gave enormous advantages in terms of bargaining power in the hands of private individuals and corporations. Thus the system of trade allowed trading companies control and influence over a vast array of domestic and foreign policy choices.

Substantive mission

National politicians passed the trade and intercourse laws and its amendments with the purpose of better controlling the western territories and relations with American Indian tribes. The legislation aimed to end the purchase of land in Indian territory and control settlements, establish a criminal code for Americans in the area, set up a licensing system that would limit the

number of fur traders and control the introduction of liquor into the area. The legislation for factories was written to provide tribes with at-cost merchandise and a fair price for their goods. The factories were not to operate at a profit.

The government trade policy accomplished very little in terms of controlling trade. Illegal trading, and especially the liquor trade even by licensed traders, was prevalent. In part, the problem stemmed from the lack of resources given to Indian agents and ex-officio superintendents of Indian affairs as they attempted to combat the problem over the wide expanse of territory. However, the problem was exacerbated by exceptions given to the largest companies. In addition, the territorial lines where white settlement was prohibited were largely ignored. White settlers continued to spill into the area and territorial courts were reticent to actually give out convictions when they broke the criminal code.¹²⁹ The fur trade actually encouraged the settlement by creating centers of commerce in the territories and sending back information about the new lands under American control. Americans were drawn to the region with tales of vast wealth, quick profits, adventure, and a growing commercial infrastructure.¹³⁰

The factory system did not completely fail in its original mission to provide affordable goods. However, the factories were often bypassed because they could not give credit or liquor which private traders could promise.¹³¹ The end of the factory system came less from the failures of factories, although the system failed to cover its own costs in an incredibly lucrative market, but instead from an attitude against public ownership and the strength of private companies in pushing trade policy. The factory system, like the licensing system, failed to make

¹²⁹ Prucha, 42-3.

¹³⁰ For a discussion of the fur trade in the development of Missouri, see Richard E. Oglesby, "The Fur Trade as Business," in *The Frontier Re-examined*, ed. John Francis McDermott (Urbana: University of Illinois Press, 1967): 114.

¹³¹ Way, 228.

a lasting contribution to controlling the avaricious influences originally highlighted and against which legislators had aimed the legal framework.

The trade system was successful in achieving an overarching substantive goal: wresting control of the region from other European powers. Trade policy was important because of its implications for foreign policy and security. However, by the 1840s, there was little doubt to American supremacy in claiming authority over the trade and the residents, both native and settlers, in the western territories. Dominance was achieved by a combination of military force, new legislation, and commercial drive. Royal Way explains the influence of trade policy and its enforcement through licensing and the military: “The influence of France, Great Britain, and Spain among the Indians was diminished during the first two decades of the nineteenth century by force of arms and by diplomatic and legal procedure. The rapid rise after the war of 1812 of private American traders, well fitted to follow in the footsteps of the foreign ones then expelled, reduced the necessity for the continuance for commercial purposes of an inadequately supported government system.”¹³² Despite a failure on other counts, the establishment of American authority over the large geographical space adjacent to the eastern states was never a certainty and much of the success of other parts of the new nation depended on this security.

Capacity

As the American state began to assert its priorities in new policy and geographical realms, it required resources to accomplish its new mission. But like most areas under national control, the federal government had few resources at the end of the eighteenth century to handle trade with American Indians. The following section examines how the state’s resources were expanded, supplemented, and stymied in its attempts to control the fur trade in the western territories. I assess each the resources available to the state according to Hood’s tools of

¹³² Way, 234-5.

government – nodality, authority, treasury, and organization – as well as the reputational capacity available to the Office of Indian Affairs. The following analysis will demonstrate how the government had a difficult time exploiting the licensing system for trade, especially when divorced from the factory trading houses, because of the resource advantage held by private trading companies.

When examining the information that the government was able to glean through contacts with private traders, it is important to first note the baseline of government information about the western territories in this period. With only scattered military posts in the western territory, very little reliable information made its way to federal officials. It was not until the Lewis and Clark expedition in 1804 that the government organized a systematic mission to review the territory and establish contact with distant tribes.

In terms of information, the government clearly gained resources during the period through its trade policy. The expeditions sent out into newly acquired territory as well as reports from Indian agents in the field gave Washington administrators and legislators better information. However, traders still had more extensive and involved contact with many tribes. Lavender points out, “Presidents, premiers, governors and generals found themselves listening to the men who, through intricate chains of debt and supply, controlled the traders who in turn controlled the Indians. These considerations, and not the mysterious emanations of corruption, explain why Astor was able to gain the ears of Jefferson, Madison, and Monroe.”¹³³ The information coming to the government from trading companies was often colored with particular objectives in mind. Agents and officers of the American Fur Company were often making note of the desperation of tribes that did not get their annuities before the winter. As Ramsay Crooks, at this time president of the AFC, wrote to Hon. James D. Doty:

¹³³ Lavender, xi.

While at Washington you will also do us good service if you will represent to Gov. Cass the suffering entailed upon the Indians the past season by the payment of their annuities so unnecessarily late, and urge the propriety of payments being made every where, early. The middle of August, or even sooner, would be a suitable time, but they may not on any account be delayed beyond the 1st of September. The Winnebagoes & Menomenies will make little or rather no hunt this season, and if some of them die of hunger (which is not at all impossible) their deaths are justly chargeable upon the Government.¹³⁴

The letter provides an illustration of how Crooks filtered information from the field through policy recommendations. Without annuities, tribes could not buy goods from the traders and the Indian trappers might be delayed or prevented from going out into the field without these supplies. While the government received information from private trading companies, the information was given to achieve particular purposes and could not be seen as a comprehensive picture of the western territories. The national office received the most complete and reliable information where it had agents and superintendents stationed and not from their connections with private traders.

The flow of monetary resources available to accomplish a substantive mission constituted an important second element of federal capacity. The enforcement of trade and intercourse laws were not granted a special apportionment of funding but were simply an additional responsibility of the War Department and territorial officials. When the factory system was first introduced as a pilot program, it was given \$50,000 and the next year it was formalized by law and given an increased budget of \$150,000. While a significant amount of money, John Jacob Astor of the American Fur Company estimated that he lost \$200,000 on one failed outpost on the Columbia River.

Undoubtedly, the War Department administered substantial financial resources for intercourse with American Indian tribes.¹³⁵ Dispersing treaty annuities, controlling factory

¹³⁴ Ramsay Crooks letter to James D. Doty, Papers of the American Fur Company, vol. 2 (letters from 1831-1836), Manuscript Collection, New York Historical Society Library, New York City.

¹³⁵ Leonard D. White, *The Jeffersonians* (New York: Free Press, 1951): 507-10.

inventory, and setting up posts in the territories all required substantial capital. However, the governmental treasury faced obstacles especially with debt from the War of 1812.¹³⁶ Private investors, such as John Jacob Astor of the AFC, held many of the war bonds that kept the government afloat after the war. Because of his financial assistance, Astor expected special treatment and exceptions for trade and intercourse rules.¹³⁷

A licensing system gives private groups few incentives to use their personal finances to explicitly support the government's regime. The American Fur Company or other fur companies never directly funded program requirements. Instead, when private money did flow to the government it was in the form of bonds for which the company expected a monetary return as well as indirect control of government policy.

Compared to information and funding, the federal government had more initial resources in the realm of authority. While the federal government has struggled with states throughout American history to define the proper scope and role of each level of government, trade with American Indians was one of the few delegated responsibilities given exclusively and explicitly to the national government in the Constitution. With the settlement of state and territory boundaries, federal authority was theoretically supreme.¹³⁸ However, as mentioned previously, the influence of foreign nations with tribes diminished American authority. Additionally, the vast territory created challenges for enforcing any national priority. The national government used a licensing scheme (an enablement) and general regulations (general constraint) as tokens of their authority in their attempt to control the fur trade. Gradually the government's licensing scheme became an accepted form of governmental intervention. Large companies, in particular, sought licenses to avoid harassment by Indian agents and the military. Between 1796 and 1822,

¹³⁶ White, 9.

¹³⁷ Lavender, 202.

¹³⁸ Prucha, 14.

the government placed greater constraints on companies and individuals who applied for licenses. Part of the reason for greater restrictions came from an unwillingness of traders to obey the spirit of the law (such as the limitations on liquor in Indian territory). There was little consensus on the necessity of this type of regulation because it made negotiations less lopsided for traders.¹³⁹ With the growth in unlicensed trading and rule-breaking by licensed traders, the government sought ways to maintain the value and legitimacy of their authority.

The government continued to increase the number of agents and military officers stationed in the western territories and gave them the authority to police the licensing and regulatory system. But the area in question was too large, and the government increasingly relied on large licensed fur companies to help police the industry. As Indian agents and military personnel confiscated the property and refused to license foreign traders, American companies quickly filled in the gap by extending their trade. These companies not only pushed out foreign operatives. They also provided information on the land in the western territory, set up trading posts, and pioneered navigation routes that were crucial in the future white settlement of the area. The impact of this relationship on the government's organizational resources will be discussed later in this section but it is important to note at this point that this relationship had serious implications for the government's authority.

The relationship with the American Fur Company and the American government provides an interesting case study in the contours of governmental authority. The company found it necessary to obtain a license to engage in the fur trade. While unlicensed trading did occur, it was mostly by individuals. The AFC had such a large volume that it would have been impossible to trade unlicensed without detection. However, their resources in terms of the other

¹³⁹ Hood provides a discussion of the way in which the type of authority tokens the government uses shift with varying degrees of consensus. Hood, 69-71.

tools (information, money, and personnel) allowed them considerable room to bargain for leniency with the government. The AFC bargained for special conditions and their resources made it almost impossible for the government to revoke their licenses regardless of the severity of transgressions.

The American Fur Company, by far the largest and most influential company at the time, worked closely with national officials. They encouraged tribes to negotiate with the American government and worked to promote the supremacy of federal law in the territories. The AFC often had selfish motives for this behavior and their assistance often came at a cost in terms of policy and administration to the government.

In terms of administration, the American Fur Company expected exceptions and leniency with regard to many of the trade rules, especially regarding the employment of foreign traders. The Company supported upward review of local agents' decisions to both territorial superintendents and Monroe administration officials, where they maintained considerable personal influence.¹⁴⁰ As David Lavender explains in his book on the company, "The channels were so routine that after 1819 or so Astor went off to Europe on extended visits and left government interfering largely to Ramsay Crooks, who visited the wilderness every year, clashed personally with the Indian agents and military men, and came back knowing at first hand which particular screw in Washington ought to be given a particular twist."¹⁴¹

Local agents were not always receptive to AFC demands and in some cases took possession of the Company's property for violations of trade and intercourse laws.¹⁴² In most

¹⁴⁰ William Clark, superintendent for St. Louis, was formerly the head of the Missouri Fur Company while Lewis Cass, governor of Michigan Territory, was a close friend of John Jacob Astor and the AFC. Astor was also a personal friend and financial benefactor to President James Monroe.

¹⁴¹ Lavender, xi.

¹⁴² See Klunder, 32-3; and Thomas McKenney to Henry Johnson, Chairman of the Senate CIA, February 27, 1822; CIA (SEN17A-D7, f. 8-9); 17th Congress; Records US Senate, RG 46; NA I.

cases, agents were directed to rescind their decisions. One agent wrote to Thomas McKenney about violations by the American Fur Company to the licensing regime:

The governor of Michigan Territory...had received a letter from the Secretary of War, stating that Mr. John Jacob Astor had purchased the whole of the interest in the late S.W. Company, & wishing every facility to be given him, in carrying on his trade with the Indians; in consequence of which, the governor directed the said agent, to license all persons that the agent of Mr. Astor should name to him. Mr. Astor's agent is a Mr. Crooks, a known and professed British subject, who named to the agent at Mackinac a number of persons, all British subjects, whom the agent licensed.¹⁴³

When the local agent confiscated the property of several of Crook's men for violating trade and intercourse laws, an investigation was opened that led to the agent's dismissal while the AFC agents and property were reinstated.¹⁴⁴

Beyond simple administration, the company also requested specific policy from the terms of treaties to the content of trade and intercourse laws.¹⁴⁵ Astor, and later Ramsay Crooks, relied on stringent trade and intercourse policy and implementation because it discouraged and hindered competition. When replying to Astor's request for different locations for agencies, Thomas McKenney wrote, "I am directed by the Secretary to state...that every disposition is felt to accommodate our enterprising citizens who are engaged in the Fur Trade whatever facilities may be considered by them to be necessary for the promotion of their interests..."¹⁴⁶ Company officials frequently appealed to the president and the Secretary of War to push their interests. But they also supported the upward review and control through legislation. In 1822, the trading

¹⁴³ Matthew Irwin, factor at Green Bay, to Thomas McKenney, September 29, 1817; CIA (SEN17A-D7, f. 9); 17th Congress; Records US Senate, RG 46; NA I.

¹⁴⁴ Willard Klunder, *Lewis Cass and the Politics of Moderation* (Kent, OH: Kent State University Press, 1996): 32-3.

¹⁴⁵ For numerous examples of requests for particular Indian agents, new forts, terms of treaties, timing of annuity disbursements, see *Papers of John Jacob Astor*, vol. 1 (1813-1843), Manuscript collection, New York Historical Society Library.

¹⁴⁶ Thomas McKenney to William Astor, AFC, July 22, 1825; p. 98-99 (M No. 21, roll 2); Letters Sent, Volume 2, May 4, 1825-May 31, 1826; Records OIA, RG 75; NA I.

interests were critical in stopping an amendment to the Trade and Intercourse Acts that would have given agents discretionary authority in issuing licenses.¹⁴⁷

Because the government had to resort to bargaining with the AFC to maintain their participation in the licensing scheme, threats to their authority increased. The licensing scheme itself was hardly seen as the solution to the problems of the fur trade. The government maintained strict constraints on individuals and small companies that threatened the monopolies of large companies. But it was often difficult to catch this illegal trading. Secretary of War Calhoun clearly recognized the problems with policing small traders across the large territorial expanse. In his recommendations to Congress, he encourages a licensing system which favors large companies for these reasons:

Both of these effects, the diminution of the number of traders, and the increase of the capital, would add greatly to the control of the government over the trade. It would be almost impossible to inspect the conduct, and consequently control the actions of the multitude of traders, with small capitals, diffused over the Indian country, and settled at remote and obscure places. The greatest vigilance, on the part of the superintendent and his agents would be unequal to the task. By diminishing the number, and bringing each more permanently before the view of government, a due inspection and superintendence becomes practicable. Again, what control can the government have over the conduct of a trader, with a capital of a few hundred dollars only? Suppose he should violate the express injunctions of law and regulations; what serious loss would he sustain by revoking his license, or by putting his bond in suit? To him it would be nothing to wind up his business, and give his capital another direction; and as to the bond, in such distant and obscure transactions, he might pretty safely calculate on escaping its penalty. Very different would be the case, with the trader of a large capital. To revoke his license, would be a serious evil, which must subject him to certain loss; and should he break the conditions of his bond, he would be much more in danger of feeling its penalty.¹⁴⁸

Calhoun believed it would be easier to control large traders than small traders because their licenses were worth more and could be threatened. In practice, the government rarely had

¹⁴⁷ Prucha, 34.

¹⁴⁸ John Calhoun to the Speaker of the House of Representatives, December 5, 1818; Reports to Congress from the Secretary of War, Volumes 1-2, February 3, 1803-January 20, 1829, 1826; Records OIA, RG 75; NA I.

the political capital or courage to pick a fight with the largest traders. In fact, the large traders, whose illegal trading could easily be identified, used their clout to bargain for advantageous enforcement. As Christopher Hood explains, this bargaining seriously diminishes the government's authority: "If [an] order has failed to have any effect, we may switch to bargaining, to the extent that we are left with any authority at all... It may try to do deals with influential groups. But at the point when orders are merely a prelude to bargaining, government may be on very thin ice. Its tokens are becoming 'tokens of no authority.'"¹⁴⁹ While this system may have created a stronger position for government through easy inspection, instead a system emphasizing large traders led to exceptions and underhanded dealings because the government rarely had the power to counter these traders.

It is undeniable that the government gained authority in the western territories from its position at the end of eighteenth century. Instead of looking to European powers, traders and tribes looked to the American government for these tokens of authority. And with increasing personnel in the field, the licenses and regulations had some meaning. However, the inability to watch over the whole of the trade and the willingness to bargain with large companies both worked to limit the extent the government's authority could expand in the region.

The effectiveness of governmental authority depended in part on the personnel allotted to enforce and administer federal directives. But in the early American state, the manpower allocated to oversee the use of the funds and the regulation of the licensing system was an even larger hamstring than the small operating funds allotted to the Office. In the federal offices, control was given to the Secretary of War who was supported in the whole operation of the department by an accountant and several clerks to copy figures and letters.¹⁵⁰ The central office

¹⁴⁹ Hood, 71.

¹⁵⁰ White, 215.

had almost exclusive control of the factory system with direct correspondence and orders to factors at their posts. In 1806, with the reauthorization of the factory system, Congress also appointed a Superintendent of Indian Trade. By 1811, Congress had given the superintendent the authority over annuities and payments in the area. In the field, territorial governors were ex-officio superintendents of Indian affairs and were in charge, along with Indian agents who reported to them, of the day-to-day operations of the licensing system and regulating trade. Each of these sides were supported by the military troops in the field who were often called upon for duties such as policing the liquor traffic or even beating pelts that came into factories.¹⁵¹

While the government gained information and authority in the region, congressional leaders, especially those with fur companies in their districts, pushed for a diminished federal bureaucratic capacity to regulate and control the fur trade.¹⁵² The organizational resources of the Department were hindered in 1822 when Congress eliminated the Office of the Superintendent of Indian Trade along with the factory system. The work done by the office as well as additional requirements from new Trade and Intercourse Act amendments fell on the Secretary of War, John Calhoun, without a corresponding increase in funds or personnel.¹⁵³ This situation, along with Calhoun's personal goal to pursue administrative reform across the War Department, created an impetus for change. In his annual report to the president, Calhoun pointed out that "the administration in relation to Indian Affairs...is not as perfect as that of the Military branch of the Department, nor can it be made so, unless rendered equally perfect in its organization. It is impossible, under the present arrangement, that the minute and constant attention to its details,

¹⁵¹ Prucha, 36-7.

¹⁵² Martin van Buren of New York and Thomas Hart Benton of Missouri advocated strongly against government factories and regulations on behalf of the American Fur Company and the Missouri Trading Company respectively.

¹⁵³ Hemphill, xxxiii.

which is indispensable to a perfect administration, can be bestowed.”¹⁵⁴ When the Chairman of the Committee on Indian Affairs requested Calhoun’s views on the administration of trade and intercourse with American Indians, Calhoun urged Congress to appoint a national superintendent for more effective governance.¹⁵⁵ While Congress did not act upon his request, Calhoun felt so strongly about the necessity of a national superintendent that he took the matter into his own hands.

In order to decrease his personal workload and focus his attention on military reorganization, Calhoun unilaterally created the Office of Indian Affairs in 1824. Having little discretionary funding, he had to wait until a low-level clerk position opened and then appointed the controversial former superintendent of Indian trade and personal friend, Thomas McKenney, to the position on March 10, 1824.¹⁵⁶ Calhoun gave McKenney charge over appropriations and accounting for Indian Affairs as well as an audit of the accounts, administration of the Civilization Fund, examination of the laws governing intercourse, and responsibility for correspondence with Indian Superintendents, Agents and Sub-Agents.¹⁵⁷

While Calhoun solved his personal work overload that resulted from having to deal directly with American Indian affairs, he was forced to sacrifice one of the clerk positions in his department. Lacking congressional authorization, this new organization received no monetary support or authority. The success of this entrepreneurial action depended in large part on the dedication of Thomas McKenney to the successful administration of Indian affairs because he accepted a clerk’s salary for a much more demanding job. Most importantly for trade policy, the

¹⁵⁴ John Calhoun to President Monroe, November 29, 1823; Volume 2, January 7, 1820-February 26, 1833; LSP, 1800-1863; Records OSW, RG 107; NA I.

¹⁵⁵ Calhoun to Cocke.

¹⁵⁶ John Calhoun to Thomas McKenney, March 10, 1824 in *Papers of John C. Calhoun*, ed. Clyde Wilson (Columbia, SC: University of South Carolina Press, 1959-2003): 574.

¹⁵⁷ Calhoun to McKenney, March 11, 1824 in *Papers of John C. Calhoun*, 575-6.

new office did not have authority over the licensing system.¹⁵⁸ So while this administrative move brought increased order to the fields of American Indian policy that the War Department had firm control over, trade policy existed in a no-man's-land with little control from either national or regional administrators.

To enhance the understanding of these formal allocations, one must also understand the reputational resources that bureaucrats have. Scholars like Daniel Carpenter and Adam Sheingate emphasize that federal bureaucrats have scope to capitalize on their status to enhance formal allocations. In this time period, bureaucrats in control of Office of Indian Affairs were slowly building the necessary reputational resources. Because the regulation of trade with American Indians was one of the first duties taken on by the national government and the War Department, the institutions had very little in the way of enhanced status or reputation to tap into; on the other hand, they were not weighed down by an adverse status either. The first reputational hurdle faced by American officials was that the tribes in the territories were already familiar with agents from other foreign nations with whom they already had friendly relationships. The expansion of American influence from both factories and private groups especially after the ban on foreign traders in 1816 provided the decisive break with foreign influences.

At times attempts to find the best policy for trade with the tribes created reputational problems with Congress. The reputation of the department was damaged in the fight over the factory system. Opponents of government factories pointed to sloppy accounting and questioned the motives of top administrators. McKenney faced congressional investigation after the office of Superintendent of Indian Trade was ended. In addition, some territorial officials and western

¹⁵⁸ Calhoun to McKenney, March 11, 1824 and John Calhoun to John Coker, December 12, 1823, (NA Microfilm Publication 220, roll 1). Reports to Congress, February 3, 1803-January 20, 1829. Reports to Congress from SW, 1803-1870. Records of the OSW, RG 107; NA.

politicians pushed the idea that the factory system diminished tribal respect for the federal government.¹⁵⁹ The reputation of the office was one of the reasons Congress refused to grant Calhoun's request for a bureau-level official to deal with Indian affairs. Despite these problems, Congress clearly saw the War Department and Office of Indian Affairs as experts on federal Indian policy by the end of the 1820s. In 1826, Representative Cocke, Chairman of the House Committee on Indian Affairs, requested McKenney draft legislation for the office. Additionally, Thomas McKenney frequently worked with Henry Southard, chair of the Committee on Indian Affairs, to develop policy for the education and civilization of the tribes.¹⁶⁰

In 1832, Congress established a Commissioner of Indian Affairs under the Secretary of War. The creation of the Office along with the passage of the bill written by former regional superintendents for Indian Affairs – Lewis Cass and William Clark – and Thomas McKenney occurred in the spring of 1834, ten years after Calhoun originally started the unofficial organization. By 1834 when the Congress approved the Office and standard operating procedures formally, legislators had few questions about the capability of the Office to administer federal Indian policy.¹⁶¹

Overall Assessment

After slightly more than 25 years of a public-private system and a much longer use of a private licensing and regulatory system, one can look back at the fur trading system by the 1840s and assess the system's benefits and costs to the capacity of the national government. Again, the

¹⁵⁹ Cass to Calhoun, Sept.14, Oct. 1, 1818, RG 1818, Cass to Calhoun, May 23, July 18, 1822, RG 107 in Willard Klunder, *Lewis Cass and the Politics of Moderation* (Kent, OH: Kent State University Press, 1996): 32.

¹⁶⁰ Prucha, 54-5.

¹⁶¹ The congressional debates reveal no congressional hesitations about the office or its authority which is starkly different from the debates that happened a decade earlier. See *Senate Journal*, 22nd Cong., 1st sess., Feb. 27, 1832, 107; May 29, 1832, 309-10; May 20, 1832, 313.

assessment appears mixed. The national government, in large part due to the partnerships, was able to achieve some of their lasting on-the-ground goals but in the end the government itself gained in little in the way of resources.

Trade policy was exceptionally important because of its implications for foreign policy and security. The advantages that other foreign powers had in regards to trade and relations with American Indians proved dangerous to the new nation. However, by the 1840s, foreign traders had been pushed out of the western territories and American traders, such as the American Fur Company, dominated the business.¹⁶² There was little doubt to American supremacy in claiming authority over the trade and the residents, both native and settlers, in the western territories.

As Indian agents and military personnel confiscated the property and refused to license foreign traders, American companies quickly filled in the gap by extending their trade. The American Fur Company, by far the largest and most influential company at the time, worked closely with national officials. They encouraged tribes to negotiate with the American government and worked to promote the supremacy of federal law in the territories. The AFC often had selfish motives for this behavior and their assistance often came at a cost in terms of policy and administration to the government.

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¹⁶² Prucha, 34.

property for violations of trade and intercourse laws.¹⁶³ In most cases, agents were directed to reconsider their decisions. When replying to Astor's request for different locations for agencies, Thomas McKenney wrote, "I am directed by the Secretary to state...that every disposition is felt to accommodate our enterprising citizens who are engaged in the Fur Trade whatever facilities may be considered by them to be necessary for the promotion of their interests..."¹⁶⁴

Beyond simple administration, the company also requested specific policy from the terms of treaties to the content of trade and intercourse laws. Astor, and later Ramsay Crooks, relied on stringent trade and intercourse policy and implementation because it discouraged and hindered his competition. As David Lavender explains in his book on the company, "The channels were so routine that after 1819 or so Astor went off to Europe on extended visits and left government interfering largely to Ramsay Crooks, who visited the wilderness every year, clashed personally with the Indian agents and military men, and came back knowing at first hand which particular screw in Washington ought to be given a particular twist."¹⁶⁵

Much of the disparity in influence in this partnership can be explained by the uneven balance in resource distribution. With regard to tools, reputation, and ideas; the American Fur Company often had superior capacity to use as bargaining chips while the government had to rely on many of those resources with less of their own for bargaining. The national government held the most influence in the authority and presence it gained by the end of the period in the western territory. But there was also no doubt by the end of the 1820s that even in sensitive

¹⁶³ William Clark, superintendent for St. Louis, was formerly the head of the Missouri Fur Company while Lewis Cass, governor of Michigan Territory, was a close friend of John Jacob Astor and the AFC. Astor was also a personal friend and financial benefactor to President James Monroe. See Klunder, 32-3; and Thomas McKenney to Henry Johnson, Chairman of the Senate CIA, February 27, 1822; CIA (SEN17A-D7, f. 8-9); 17th Congress; Records US Senate, RG 46; NA I.

¹⁶⁴ McKenney to Astor.

¹⁶⁵ Lavender, p. xi.

areas, loosely licensed private enterprise and not public ownership would be the preferred method of regulation.

Because of the decline in international presence in the western territory, the American government enhanced its authority to set the terms of engagement in the area. However, the territory was still large; and with few increases in budget or organization, the enforcement of trade and intercourse laws was far from complete. In addition, as mentioned above, policing of the rules were not even between those on the inside of the system and those on the outside.

The system of trade and its regulation reflects a more general affirmation of the anti-statist ideational tradition in America.¹⁶⁶ Lewis Cass, governor and ex-officio superintendent of Indian Affairs for Michigan Territory, wrote Calhoun on the trade issue: “A great abundance of American capital has been diverted into this channel, and it would be a reflection upon our national character to suppose, that enterprize [sic] could not be found to distribute this capital, or skill to employ it.”¹⁶⁷ These views won out over public ownership.

However, the argument cannot be made that the trade system was one of pure laissez-faire capitalism. Fur trading companies relied on the federal government for access to the market by banning foreign traders, providing military support, and setting terms of treaties that were conducive to trading interests. An assessment of the licensing system shows that the national government received some benefits from partnerships with trading companies including the establishment of primacy and authority in western territories. But because the resource balance was tipped in favor of the private companies, the substantive goals that the trade and intercourse laws were designed to achieve were not met and the government gained little in terms of capacity through the system.

¹⁶⁶ White, 498.

¹⁶⁷ Cass to Calhoun, Sept.14, Oct. 1, 1818, May 23, July 18, 1822, RG 107.

Evaluation

The system of trading with tribes in the late eighteenth and early nineteenth century provides an interesting case study to test the hypotheses laid out in the initial theoretical chapter. The partnership appears to fall in either the mercenary or capture categories. In terms of capacity, the Department of War and the Bureau of Indian Affairs saw little gain. The trading system by the 1820s had less organizational capacity than it had at the beginning of the nineteenth century. The Office of Indian Trade as well as the entire factory system had been abolished and Secretary of War Calhoun had to sacrifice a clerk's position in order to hire Thomas McKenney on to take control of the department's business relating to tribes. While more information from the west was flowing to the department because of private traders, it was often filtered through the policy desires of those groups. In terms of authority, by the start of the 1830s, there was little dispute that American federal government held primacy in the territorial west. This was in part due to American traders acting as quasi-federal agents to monitor and report on foreign activity and to build relationships with tribes to the exclusion of the British and the French. Congress had also granted the department more powers to regulate alcohol and foreigners in the territorial west. While this grant of authority was rarely backed up with the money or manpower to make it fully effective, it did indicate a legislative willingness to recognize the possibility of a larger federal role. By the 1830s, an assessment of the capacity of the Office of Indian Affairs shows that it had gained an authoritative status of being the proper place in government to handle federal-tribal affairs. But it was given almost none of the resources to actually accomplish any of its goals.

The observation that American federal supremacy was gained in the territorial west, in part with the help of private traders, also gives some insight into the role of the partnership in helping achieve the substantive goals of the system. With respect to American supremacy, the private traders were crucial in pushing out French and British traders and helping establish ties between the American government and tribes in the territorial west. However, this was not the only goal of the system. From the days of the Continental Congress, the “outrages of whites” because of “avaricious desire” for tribal lands had been noted as a threat to the very principles of federal-tribal policy and peace and stability on the frontier.¹⁶⁸ The system in theory hoped to maintain peace on the frontier and stable, good relations with tribes by controlling white settlement, the introduction of alcohol, and placing limits on harmful practices by private fur traders. None of these goals were accomplished. In fact, the expansion of trade led to more white settlement in the territories. Exceptions for large companies and lack of enforcement meant that little control of the liquor trade was ever accomplished.

Whether the partnership is termed as a mercenary or capture relationship depends on how one classifies the substantive accomplishments. If the overriding goal was simply to push out European government agents and traders, then the partnership was important. However, if one takes the legislation at face value and remembers that the impetus for legislation was Secretary of War Knox’s report on white outrages, the federal government was far from successful on those fronts. What is clear from either interpretation is that the government was most successful when its goals were in line with those of private traders. Private traders had their own personal and business interests for pushing out foreign powers. However, the interests of the government and private groups diverged and were often in opposition over the strict trade

¹⁶⁸ Henry Knox, “Report on White Outrages to the Continental Congress,” July 18, 1788, in *Documents of United States Indian Policy*, 11.

regulations. In the end, the clientele that was best served by the policy was the private fur companies and not the tribes.

The partnership fits the hypotheses that were developed about relationships that fail to build capacity. I had predicted that these types of relationships would most likely originate in Congress. Legislators, because of control and monitoring problems, might want to take resources and authority out of the hands of the bureaucracy. Early state legislators showed little trust in bureaucrats and had an ideological interest in not expanding the bureaucracy. A licensing system was attractive because it both empowered private capital and provided incentives for trading companies to help with enforcement and building relationships with tribes. The licensing system originated in Congress and was renewed and expanded periodically for more than forty years by that body.

The one component of the system that did, for a period, build capacity was the factory system. President Washington repeatedly urged Congress to establish government owned trading houses as he noted, “[T]he establishment of commerce with the Indian nations in behalf of the United States is most likely to conciliate their attachment.”¹⁶⁹ Because of Congress’s hesitation, it was initially set up as a pilot program and did not get expanded until President Jefferson again pushed Congress for an expansion. The capital outlay from Congress then stayed stagnant until the program was ended. As predicted in the theoretical chapter, Congress is wary of bureaucratic autonomy and resources (especially in this time period). While the program was initially authorized by Congress, legislators saw it as a limited program that would push out foreign traders so that a domestic private enterprise could take over the field. When this goal

¹⁶⁹ President George Washington, “On Government Trading Houses,” Fifth Annual Message to Congress, December 3, 1793, in *Documents of United States Indian Policy*, comp. Francis Paul Prucha (Lincoln: University of Nebraska Press, 1975): 16.

was accomplished, it only took several congressmen with powerful trading companies in their district to end the public trading component.

Finally, the partnership easily fits many of the predictions made for capture relationships. As noted in the theoretical chapter, capture can happen when legislators have powerful groups in their district to serve. This was true of the two senators that most ardently pushed for the end of the government-run trading system, Senators Thomas Hart Benton of Missouri and Martin Van Buren of New York. In addition, Benton joined the Senate Indian Affairs committee and was involved in drafting legislation and providing oversight of the Office of Indian Affairs. While Congress on paper seemed open to strict regulation of territorial trade, legislators failed to allocate appropriate resources or authorize expansion that would allow the War Department to actually make good on these goals. It seems plausible that legislators were attempting to hamstring the office's ability to accomplish its goals when they diverged from the interest of the trading companies. In terms of ending the alcohol trade or cutting of white settlement, a constituent interest did not align with a more general presidential goal of maintaining peaceful relationships with frontier tribes.

Conclusion

The early American state faced challenges with establishing its authority and developing a coherent trade policy. The models available for accomplishing these goals came mainly from Europe. The federal government, through Congress and the President, consciously rejected the monopoly charter model pioneered in Europe. The system that developed expanded federal authority and presence through a licensing system and some public trading houses for a period but it also relied heavily on private companies. This partnership capitalized on a shared interest

in American supremacy and pushing out foreign competition. In this area, the partnership was successful. However, the system failed to reach its full potential because of the lack of resources to enforce the strictest provisions. In addition, the relative power of the largest private companies kept the government from effectively controlling the relationship. As predicted, partnerships that fail to build capacity are often congressional projects. The trade and intercourse acts were designed by Congress and maintained through legislative reauthorization and the abolition of the public system. The trading system provides interesting insights into a condition for potential successful relationships – aligning private and public interests – and potential pitfalls – insufficient resources to monitor the relationship, divergent interests, and a heavy reliance on private companies.

Chapter 3 – Civilization? Sending Religious Schools to the Tribes

From America's founding onward, tribes were rarely left alone. Traders traveled to the interior of the country seeking out American Indians who were skilled at gathering furs and pelts. But profit was not the only motive that took white Americans into Indian territory. Church missionary groups also were interested in gaining access to tribes for different reasons – religious conversion and agrarian education. One side brought capitalism, the other brought paternal cultural imperialism. Like traders, missionaries sought and received the aid of the federal government in their efforts.

Early presidential administrations stressed their interest in education and the assimilation of American Indians into American society. While there were no official programs for education at the time, early missionaries often were able to convince the government to help provide funding for schools that provided academic and technical training for particular tribes. These schools built evidence for the notion that civilization efforts could be effective in meeting both religious and state goals but the limited, ad hoc funding prevented any large scale efforts or dedicated parishioner giving. This changed in 1819 when President Monroe administration, with the help of the religious community, convinced Congress to pass the Civilization Fund Act which provided yearly funding for agricultural training and basic education for American Indians. The President and Secretary of War distributed this fund to support efforts by religious organizations. The Act and subsequent regulations were instrumental in institutionalizing this public-private partnership.

This chapter examines the partnership between the federal government, especially executive officers, and missionary groups for “civilization” efforts in Indian territory. The first section deals with the intellectual and philosophical origins of the policy and then the specific

details of how the policy was put into place. The second section assesses how the policy fared in aiding the government's substantive mission and capacity.

A Partnership for Civilizing American Indians

One of the most enduring and notorious aspects of federal Indian policy was the attempt to civilize American Indians through schools, churches, and model farms. The Civilization Fund Act, which provided the majority of the funding for the government efforts, authorized agricultural instruction for tribes and education for the children focused on reading, writing, and arithmetic. As well as the basic policy aims, the act also emphasized that this instruction should be provided by those of "good moral character."¹⁷⁰ Civilization efforts took a variety of forms but at a minimum included training in agriculture and mechanical arts for males and domestic arts (including spinning, weaving, and sewing) for the females as well as basic education for children. However, many of the examples of civilization efforts lauded by politicians also included religious conversion and model farms (staffed with "model" families). Some even included the beginnings of alternative industries, such as sawmills, that could provide steady employment on tribal lands.

The policy of civilization developed from two distinct strains of thought: Enlightenment and evangelical Christianity. Despite different foundations, each philosophy viewed American Indians as needing the aid of white Americans in advancing their civilization. These paternal efforts relied on active involvement with tribes to model and teach what was viewed as the correct behavior.

¹⁷⁰ Civilization Fund Act, March 3, 1819, in *Documents of United States Indian Policy*, comp. Francis Paul Prucha (Lincoln: University of Nebraska Press, 1975): 33.

Many of the founders of the American republic subscribed to Enlightenment thought. Enlightenment thought required a belief in the humanity of all peoples, regardless of time, place, or race; and that all societies proceeded in a linear fashion. For Enlightenment theorists, less advanced cultures would inevitably progress through the same stages as European culture. Many of the nation's founders thought it was necessary to help American Indians progress more rapidly through these stages to avoid extinction at the hands of a white society. While setting out principles for territorial expansion, the Northwest Ordinance, passed by the Congress of the Confederation in 1787 and confirmed by the U.S Congress in 1789, affirmed this sentiment in its third article which states, "Religion, Morality *and knowledge being necessary to good government and the happiness of mankind*, Schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed toward the Indians..."¹⁷¹

George Washington, America's first president, and Henry Knox, his secretary of war, two of the most important Americans for initiating federal Indian policy, believed that the nation's humanity required an effort to educate and civilize American Indians. Henry Knox set out the case for national efforts in Enlightenment terms in his correspondence to President Washington in 1789:

That the civilization of the Indians would be an operation of complicated difficulty; that it would require the highest knowledge of the human character, and a steady perseverance in a wise system for a series of years, cannot be doubted. But to deny that, under a course of favorable circumstances, it could not be accomplished, is to suppose the human character under the influence of such stubborn habits as to be incapable of melioration or change – a supposition entirely contradicted by the progress of society, from the barbarous ages to its present degree of perfection.¹⁷²

¹⁷¹ "Northwest Ordinance," July 13, 1787, in *Documents of United States Indian Policy*, 9-10.

¹⁷² Henry Knox, "Gen. Knox, Secretary of War, to the President of the United States, in continuation," 7 July 1789, *American State Papers: Indian Affairs* 1:53.

Washington's third annual message shows evidence that the President had taken the advice of his Secretary of War as he calls for an Indian policy based on the principles of religion and philanthropy.¹⁷³

Knox believed that the government could best achieve their aims by enlisting religious organizations as partners in their efforts:

Missionaries, of excellent moral character, should be appointed to reside in their nation, who should be well supplied with all the implements of husbandry, and the necessary stock for a farm. These men should be made the instruments to work on the Indians; presents should commonly pass through their hands, or by their recommendations. They should, in no degree, be concerned in trade, or the purchase of lands, to rouse the jealousy of the Indians. They should be their friends and fathers. Such a plan, although it might not fully effect [sic] the civilization of the Indians, would most probably be attended with salutary effect of attaching them to the interest of the United States.¹⁷⁴

Washington and Knox were not alone in their belief about the best course for federal policy.

Thomas Jefferson extended the Enlightenment thought on American Indians through numerous writings on the need for education to help tribes transition from the hunter-gatherer life to the agrarian state with private property.¹⁷⁵ Despite this theoretical support over the next several decades, no general fund was set up but certain treaties required civilization efforts and several missionaries approached the state and received funding for schools and training academies on tribal land.¹⁷⁶

The amendment in the Bill of Rights requiring the separation of church and state seemed to have little relation to federal Indian policy in the eyes of the founders or churches. As

William McLoughlin explains, "Knox was from Puritan New England and Washington from an

¹⁷³ George Washington, "Third Annual Message," October 25, 1791 in *Documents of US Indian Policy*, 16.

¹⁷⁴ Knox, 54.

¹⁷⁵ For example of Jefferson's view of American Indians, see Thomas Jefferson, *Notes on the State of Virginia* (Richmond, VA: J. W. Randolph, 1853): 62-9, 215-18.

¹⁷⁶ "A Treaty between the President and the Cherokee nation of Indians," 2 July 1791 [Treaty of Holston], *American State Papers: Indian Affairs* 1:124-5; "A Treaty between the President and the Creek nation of Indians," 7 August 1790, *American State Papers: Indian Affairs* 1: 82; Annuity of the Five Nations, 1792, *American State Papers: Indian Affairs* 1: 229. Small grants were given to the Presbyterians and Moravians out of the contingency funds of particular agents. In 1803, Secretary of War Henry Dearborn instructed the agent for the Cherokees to build a schoolhouse for Presbyterian missionary, Gideon Blackburn, and to provide aid from his discretionary fund. Cyrus Kingsbury, missionary for the ABCFM, received similar aid in 1816 for his efforts with the southern tribes.

Episcopal background. Neither seemed to doubt that the church should act as an arm of the state in Indian matters.”¹⁷⁷ There were also few reservations from religious organization about accepting governmental funds.

Early proponents of civilization programs were not motivated purely by altruistic motives. Assimilation through civilization programs that encouraged small private land holdings and agricultural livelihoods was seen as an alternative to force in the quest to gain tribal land claims and peace on the frontier. Hunting and gathering required large amounts of land to support even small tribes; whereas, consolidation onto small farms would free up frontier land for westward expansion of the nation.¹⁷⁸

But a far greater influence on the growing movement for mission work assisted by the government was the rise of evangelical Christianity in the United States. The second Great Awakening revived interest in religion, especially evangelicalism, and the role of individuals in reforming society to meet God’s plan. Similar to Enlightenment philosophers, churchgoers believed that God created all humans in his image and that it was their duty to bring Christianity and western civilization to America’s indigenous population.¹⁷⁹ As churches began sending missionaries throughout the world to preach the gospel, they also turned their attention to the non-Christians in America as well.¹⁸⁰ American Indian tribes, especially those in the East, were attractive targets for missions because of their proximity to churches and their link with the national morality.

Many evangelicals of the time believed that God had blessed their American political experiment. This special link between God and the nation, however, also brought responsibility.

¹⁷⁷ William G. McLoughlin, *Cherokees and Missionaries, 1789-1839* (New Haven: Yale University Press, 1984): 34.

¹⁷⁸ McLoughlin, 2.

¹⁷⁹ Prucha, 51.

¹⁸⁰ R. Pierce Beaver, *Church, State, and the American Indian* (St. Louis: Concordia Publishing House, 1966): 62.

To some, the nation's past relations with tribes were a blot on the national character. However, penance could be offered for these sins by supplying tribes with education in civilization and Christianity. A memorial to senators and representatives at the outset of the fund for civilization efforts best captures the argument:

The history of our intercourse with Indians, from the first settlement of this country, contains many facts honorable to the character of our ancestors, and of our nation. Many, also, too many, which are blots on this character, and which...cannot fail to fill us with regret and with concern, lest the Lord of nations, who holds in his hand the scales of equal and everlasting justice, should in his wrath say to us "As ye have done unto these Indians, so will I requite you." We here allude to the neglect with which these aboriginal tribes have been treated in regard to their civil, moral and religious improvement – to the manner in which we have, in many, if not most instances, come into possession of their lands, and of their peltry – also to the provocations we have given, in so many instances, to those cruel, desolating and exterminating wars, which have been successively waged against them – and to the corruptive vices, and fatal diseases, which have been introduced among them, by wicked and unprincipled white people. These acts can be viewed in no other light, than as national sins, aggravated by our knowledge, and their ignorance, our strength and skill in war, and their weakness – by our treacherous abuse of their unsuspecting simplicity, &, especially, by the light and privileges of Christianity, which we enjoy, and of which they are destitute. In these things we are, as a nation, verily guilty, and exposed to the judgements [sic] of that just Being, to whom it belongs to avenge the wrongs of the oppressed; under whose perfect government the guilty, who remain impenitent, can never escape just punishment. The only way, we humbly conceive, to avert these judgements [sic], which now hang, with threatening aspect, over our country – to secure the forgiveness and favor of Him whom we have offended, and to elevate our national character, and render it exemplary in view of the world – is happily, that which has been already successfully commenced, and which the Government of our nation, and Christians of nearly all denominations, are pursuing with one consent, and with their combined influence and energies.¹⁸¹

To religious Americans, the providence blessed upon America by God required more honorable actions toward those who were trammled in the nation's quest for greatness.

Beyond the belief in the inherent humanity of all people and a progressive view of culture, early statesmen and evangelicals also shared a belief in what it meant to be an American. For these early Americans, one's nationality was not determined by birth but instead by adherence to set of ideological principles that were seen as distinctly American. Because American Indians were viewed at the time as being in a natural state, advocates of civilization

¹⁸¹ American Board of Commissioners for Foreign Missions, Memorial to the Committee on Indian Affairs, March 3, 1824; Committee on Indian Affairs, Petitions and Memorials, Resolutions of State Legislatures, and Related Documents which were referred to Committees (HR18A-F7.1); 18th Congress; Records U.S. House of Representatives, Record Group 233; National Archives, Washington D.C.

efforts saw them as unformed clay that could be molded to fit the image of the ideal American. Civilization efforts stressed agricultural lifestyle, English language, private property, Christianity, and a patriarchal society. Becoming an American was less about where one was born, but the possession of particular ideological beliefs.¹⁸²

Proponents, including George Washington, often saw the final goal of civilization programs as possible citizenship for American Indians. One proposal even advocated the consolidation of all tribes into one separate state that could apply to join the Union.¹⁸³ In a report to the House of Representatives, Horace Everett made this very case while arguing for continued civilization efforts in the face of the imminent removal of the Five Civilized Tribes of the southeast, “If the grand experiment succeeds which has been put into operation by our government, these tribes may become highly civilized, and be by degrees prepared, not only for self government, but to become a constituent part of this great confederacy; and their representatives be admitted on the floor of Congress, to enjoy equal rights and privileges with the other members; but if the experiment should fail, then the Indians will be thorns in our sides, and by their perpetual conflicts with one another, will gradually waste away; or be exterminated by the armies of the United States; which, may a protecting Providence prevent!”¹⁸⁴

Details of the Government’s Civilization Policy

When the federal government looked to churches and mission groups to help achieve state goals, they were borrowing older ideas from European powers. There had long been a relationship between empire building and missionaries. Because European powers had state churches, converting souls became a competition that had implications for each country’s power

¹⁸² This would remain true throughout American history. However, as freed slaves, later immigrants, and American Indians would find, ideas of whiteness and race would complicate attempts at becoming “American”.

¹⁸³ McLoughlin, 2.

¹⁸⁴ Horace Everett, “Report on Indian Affairs. Presented to the House of Representatives of the United States, on the 20th of May, 1834,” *Princeton Review* 10(4): 535.

in the new World. Protestant countries, like Great Britain and even the New England colonies, were especially interested in countering Catholic influence being spread by the Spanish and French and in turn thwart the power of those countries in establishing supremacy in a region. As R. Pierce Beaver explains, “The new nation inherited from the colonial era, and particularly from the New England colonies, a common assumption that the Indian missions were the proper concern of the state and were beneficial to the welfare of the state.”¹⁸⁵

Despite early pronouncements by George Washington, Henry Knox, and Thomas Jefferson, very little was done over the nation’s first thirty years to advance civilization efforts as government policy. No mass movement for civilization occurred until the late 1810s after most northeastern tribes had been pushed west by war or settlers. As tribes dwindled in that region, a movement out of the northeast developed to save remaining tribes across the United States from extinction. Civilization efforts, however, received their biggest boost from a policy entrepreneur, Thomas McKenney. McKenney highlighted the success of the mission schools and rallied religious mission organizations to lobby Congress for a dedicated fund for civilization.

The small grants that were given to entrepreneurial missionaries who lobbied Congress for specific projects did help jumpstart the civilization initiative. As Daniel Carpenter has shown, small pilot projects that allow entrepreneurial activity to grow incrementally are crucial to successful innovation.¹⁸⁶ In this case, small grants of money and the construction of buildings for schools and farms on tribal land by the federal government allowed proponents to counter the argument that American Indians could not make progress in the metrics of western civilization. The successful schools of Cyrus Kingsbury and Gideon Blackburn on the Cherokee lands were used as models for civilization efforts. The outreach of mission groups early on also set the

¹⁸⁵ Beaver, 53.

¹⁸⁶ Carpenter, 31-2.

precedent for the government providing buildings and equipment while the societies would provide the personnel for the initiatives.

Thomas McKenney, the superintendent for Indian Trade from 1816 to 1822, was the largest proponent of civilization efforts. He lobbied the Secretary of War, the President, and politicians. His grand vision was for a national school system for American Indians to advance civilization efforts with profits from the factory system. He enlisted the chairman of the House Committee on Indian Affairs, Henry Southard, to promote the idea.¹⁸⁷ McKenney's efforts received validation as President Monroe urged action on civilization efforts in his second annual message and the House compiled a report pursuant to the President's message.¹⁸⁸

McKenney, like the bureaucratic entrepreneurs described by Daniel Carpenter, did not rely solely on political lobbying but instead rallied a coalition of groups to unleash a barrage of petitions on Congress urging funding for education and civilization efforts. The petitions came from a variety of denominations and spread across the nation countering the claim that the effort was supported only by New Englanders. In their petition, the Quakers of the Midwest call attention to the current state and then press for action:

When we compare the condition and progressive state of improvement of the tribes which have been this assisted, with that of others who are destitute of such advantages, we cannot but deplore the lack of means to diffuse more extensively the inestimable blessing of Civilization. We therefore respectfully petition, that Congress take into consideration the deplorable condition of these children of the wilderness, and appropriate funds to open schools among them, and furnish them with farming utensils, and other necessary implements, and this assist them in the prosecution of those advances in Civilization which are essential to human Happiness.¹⁸⁹

¹⁸⁷ Prucha, 54.

¹⁸⁸ James Monroe, "Second Annual Message," November 16, 1818, *found in* John T. Woolley and Gerhard Peters, *The American Presidency Project* [online]. Santa Barbara, CA: University of California (hosted), Gerhard Peters (database). Available from World Wide Web: <http://www.presidency.ucsb.edu/ws/?pid=29460>.

¹⁸⁹ Friends (Quakers) of Indiana, Ohio & Illinois, Memorial to the Committee on Indian Affairs, December 23, 1818; Select Committee on Indian Affairs, Petitions and Memorials, Resolutions of State Legislatures, and Related Documents which were referred to Committees (HR15A-G6.2); 15th Congress; Records U.S. House of Representatives, Record Group 233; National Archives, Washington D.C.

The Baptists in Indiana put forward concrete proposals for congressional legislation: – “Your petitioners further pray, that Congress would make such provisions and appropriations, for educating the Indians, males and females, in the English language, and instructing them in the useful arts and manner of civilized life, as the importance of the case demands.”¹⁹⁰

While Congress rejected a national school system controlled by the government, they started the most influential program for early civilization efforts. The Civilization Fund Act of 1819 provided an annual appropriation for civilization efforts that was independent of the intercourse law and individual treaties. The initial provision was for \$10,000 annually to be used at the President’s discretion to “to employ capable persons of good moral character, to instruct the Indians in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic, and performing such other duties as may be enjoined, according to those instructions and rules as the President may give and prescribe for the regulation of their conduct, in the discharge of their duties.”¹⁹¹

When considering the origins of the law, later legislators would credit the activity of the religious communities in the creation of the fund. Congressman William McLean noted:

The passage of this law was called for by many of the people in the most populous and influential sections of our country. Their wishes were made known in language that evinced a deep interest – an interest not produced by a momentary excitement, but the result of much reflection and a high sense of moral duty. It may be said, emphatically, that the passage of this law was called for by a religious community. They were convinced of the correctness of the policy in a political point of view, and, as Christians, they felt the full force of the obligations which duty enjoined.¹⁹²

Without the continual push by church groups throughout the country, the Civilization Fund Act may not have been adopted by Congress.

¹⁹⁰ Blue River Association of Indiana, Petition to the Committee on Indian Affairs, December 15, 1818; Select Committee on Indian Affairs, Various subjects (HR15A-G6.1; 15th Congress; Records U.S. House of Representatives, Record Group 233; National Archives, Washington D.C.

¹⁹¹ Civilization Fund Act, March 3, 1819, in *Documents of United States Indian Policy*, comp. Francis Paul Prucha (Lincoln: University of Nebraska Press, 1975): 33.

¹⁹² William McLean, “Civilization of the Indians,” 23 March 1824, *American State Papers: Indian Affairs* 2:458.

How the partnership worked

While Congress passed the law setting up the annual fund, they left the decision of how to distribute the money to the discretion of the President. The Secretary of War, likely with the input of McKenney, decided to distribute the funds directly to benevolent associations for work they were already conducting or that might be stimulated by the availability of funds. Before distributing any money, Secretary of War Calhoun sent out a circular to ascertain if there was any interest in the religious community and assess existing initiatives. As the circular explains, “In order to render the sum of \$10,000, annually appropriated at the last session of Congress for the civilization of the Indians, as extensively beneficial as possible, the President is of the opinion that it ought to be applied in co-operation with the exertions of benevolent associations, or individuals, who may choose to devote their time or means to effect the object contemplated by the act of Congress... In proportion to the means of the Government, co-operation will be extended to such institutions as may be approved, as well in erecting necessary buildings, as in their current expenses.”¹⁹³

The benevolent associations were not simply given carte blanche to use the money; instead, they were required to submit initial proposals which were screened and the accepted institutions gave annual updates to the Secretary of War which outlined what schools were established, how many children were educated, and the type of instruction received. While both the act and the circular gave general guidelines as to the intent of civilization policy, religious organizations had broad latitude to develop their specific plan of education to be approved by the government. Thus the federal government provided funding to projects that were approved by

¹⁹³ John Calhoun, “Progress Made in Civilizing the Indians,” 17 January 1820, *American State Papers: Indian Affairs* 2:201.

the executive branch but religious groups had to raise additional capital and supply the majority of the manpower for the initiatives.

Not only did the federal government of the time lack the necessary employees or capital to run schools and other educational institutions, there was a general distrust of government employees from both the religious community and the government. Many of the churches had been born out of the reformation movement and the rise of evangelicalism in Europe which historically had been persecuted by the state. A Methodist publication of the time calls on missionary groups to take up the government's aid to the group's efforts to civilize the Indians, because "at the same time that I consider these relations favourable to missionary enterprise, I am fully persuaded that the conversion of these Indians under God, *depends almost entirely upon the exertion of individuals*. State policy has seldom embraced the conversion and salvation of the souls of men. In every age of the world the prevalence of true religion has depended more upon the zeal of individuals than upon national authority and influence."¹⁹⁴

More surprising is the resistance within government to non-religious education, a congressional report on schools in the Indian country reported that "concerning the government schools, we have found nothing satisfactory, in this report. As their schools are instituted and conducted, to the exclusion of religious education, we suspect that it will turn out a failure."¹⁹⁵ Government officials also appear to have been concerned that the education and civilization efforts not appear to be biased by ulterior motives. In Henry Knox's original proposal, he stressed that missionaries should not be involved in trade or land deals but instead act as friends and fathers to American Indians.¹⁹⁶

¹⁹⁴ Joshua Soule, "Religious and Missionary Intelligence," *Methodist Magazine*, January 1822, 31-2.

¹⁹⁵ Horace Everett, "Report on Indian Affairs. Presented to the House of Representatives of the United States, on the 20th of May, 1834," *Princeton Review* 10(4): 533.

¹⁹⁶ Knox, 54.

Despite an unwillingness to entrust education efforts to government employees, the government showed little preference between the different religious organizations. At this point in time, almost all of the money went to Protestant groups; but by the end of the nineteenth century, Catholic missions received the majority of state funding. In both the early and late cases, the government rarely chose projects based on religious tenants but instead the groups that were willing to start and staff more projects received more funding. In 1820, during one of the first surveys of the state of education and civilization amongst the tribes and the use of government funds by benevolent associations, Congregationalist pastor Jedidiah Morse reported that government funds were being used by the Congregationalist, Reformed, Presbyterian, Moravian, and several inter-denominational mission groups.¹⁹⁷

Achieving the State's Substantive Mission

The federal government started the annual fund with the aim to promote civilization and Christianity among American Indian tribes. The proponents of the plan also pointed to other salutary effects they hoped the civilization effort would bring to federal relations with American Indian tribes. First, almost all statesmen of the time hoped for decreased conflict between the tribes and white settlers. However, there were differing opinions on the best way to achieve the goal. Supporters of civilization efforts offered their plan as an alternative to costly wars aimed at the extermination of American Indians. In a report supporting the passage of the fund, Representative Henry Southard contended that “in the present state of our country, one of two

¹⁹⁷ Jedidiah Morse, *A Report to the Secretary of War of the United States on Indian Affairs* (New Haven: S. Converse, 1822): 392-6.

things seem [sic] to be necessary: either that those sons of the forest should be moralized or exterminated. Humanity would rejoice at the former, but shrink with horror from the latter.”¹⁹⁸

In 1824, a congressional effort to end the Civilization Fund was defeated and part of the defense was its ability to guard against conflicts. Ohio representative William McLean, the chair of the House Indian Affairs committee, argued:

So far the benefits of this policy are extended, will this feeling be cherished; and it affords the safest guaranty against future wars. To say nothing of the valuable lives which have been lost in the Indian conflicts we have had, how much treasure has been expended in our defence! More money was expended, in protecting the exposed parts of our country from Indian depredations, during the late war, than would be required, if judiciously applied, to secure the great plan of Indian civilization.¹⁹⁹

Federal officials championed the continuance of the Civilization Fund not just out of Christian mission but because they saw it as key to decreasing conflict.

Along with decreased conflict, proponents hoped that civilization efforts would help American Indians assimilate into American society. By encouraging agricultural livelihoods, individuals would embrace private property and establish claims to small plots of land which would allow the government to incorporate large sections of unused tribal land into the American territory. While civilization proponents abhorred the idea of mass killings, they strongly supported the extinction of communal living and tribal ways of life that required extensive land holdings such as hunting, gathering, and migratory life-styles. Regardless of treaty promises, by the 1820s few statesmen thought that settlers pushing west could or should be restrained. The government hoped that civilization efforts would minimize the inevitable tensions between tribes, settlers, and state governments by transforming American Indians into individuals with similar values and motivations of Euro-Americans.

¹⁹⁸ Henry Southard, House Committee on Indian Affairs, “Trade, Intercourse, and Schools,” 22 January 1818, *American State Papers: Indian Affairs* 2: 150-1.

¹⁹⁹ William McLean, “Civilization of the Indians,” 457-9.

Assessment of the partnership in accomplishing the substantive mission

The government successfully increased the number of schools and students during the first ten years that funding was provided to benevolent associations for civilization efforts. Despite the successful increase, the accomplishment of the government's larger goals – decreased conflict and eventual assimilation – was more mixed. Lack of success can be attributed to an inability to educate all youths, a lack of understanding about the cultural meanings of tribal life, and a lack of inclusion of educated American Indians by whites and state governments. The broader goals of assimilation were never fully realized.

Three years after Congress granted the fund, Jedidiah Morse's survey showed that out of the thirty schools for American Indians, twelve received funding from the government and these schools accounted for 555 children.²⁰⁰ Four years later, Thomas McKenney, now the Superintendent of Indian Affairs, happily reported that 32 schools were receiving funding and educated 916 children.²⁰¹ By 1830, 52 schools were in operation and these held 1512 students.²⁰² Over a ten year period, the fund increased the number of schools by over four times and the number of students almost tripled. Scholars of the period credit the fund with spurring this growth. R. Pierce Beaver contends, "This partnership with government, involving as it did substantial financial aid, was the most potent stimulus of all to enlargement and maintenance of Indian missions. The indications are that without it Indian missions would have received scant attention from most denominations. The heavy demands made by the home mission church extension throughout the vast territory from the Appalachians to the Pacific coast on the one hand, and the attractiveness of overseas missions on the other, might easily have led to complete

²⁰⁰ Morse, 392-6. When calculating the number of students educated, I always used the higher end of the estimates.

²⁰¹ Thomas McKenney to John Calhoun, November 24, 1824; Annual Report, Office of Indian Affairs, Secretary of War, 1824. p. 106-7 (National Archives Microfilm Publication 997, roll 5, frame 156). Annual Reports 1822-1833. Annual Report of the War Department 1822-1907, Record Group 107. National Archives, Washington D.C.

²⁰² Prucha, 57.

neglect of the Indians had not the government's challenge and aid kept the mission boards attentive."²⁰³

The steady increase in schools had government and religious reformers enthusiastic about the prospects of civilization efforts. In his annual report, McKenney noted, "The Reports of the Superintendents are highly satisfactory. They certainly demonstrate that no insuperable difficulty is in the way of a complete reformation of the principles and pursuits of the American Indian. Judging from what has been accomplished since the adoption, by the Government, in 1819, of the system upon which all the Schools are now operating, and making due allowances for the tardy advancements of the first two or three years, which were for the most part consumed in the work of preparation, and in overcoming the prejudices and apprehensions of the Indians, there is good reason to believe, that an entire reformation may be effected, (I mean among the tribes bordering our settlements, and to whom those benefits have been extended,) in the course of the present generation – it being with *the children* of the Indians that those have to do, who have undertaken this work of reformation."²⁰⁴

Despite the enthusiastic outlook at the beginning of the project, the numbers of children educated at religious schools never remotely approached universal education. Francis Paul Prucha provides one of the more negative evaluations of the project: "Because of the small number of schools provided, only a few children in each tribe could be educated, and they were not enough to influence the character of the whole tribe. Even those who enrolled in school often did not profit because at the completion of their studies they had no means and little incentive to pursue a new life."²⁰⁵ Yet Prucha's evaluation glosses over the large variation between different tribes and schools. Some tribes had incredibly high attendance and educated

²⁰³ Beaver, 79.

²⁰⁴ McKenney to Calhoun, 106-7.

²⁰⁵ Prucha, 56.

members of some tribes took on leadership roles. However, his assessment is correct to point out that education efforts rarely transformed whole tribes in the way that Washington legislators and bureaucrats had hoped. Without funding for agricultural implements and initial stocks, even receptive American Indians lacked the means to start their own farms.

The Cherokees are a notable exception to this generalization. Due to the receptivity of the tribe, many mission groups set up schools on Cherokee land including two large schools that received government grants before the Civilization Fund. In part due to these efforts, advances were made toward the goals of the civilization effort in a short amount of time:

Formal education in English-language schools, also, had led to a cadre of leaders – mostly mixed-blood – who could deal effectively with white society. The remarkable invention of a Cherokee syllabary by Sequoyah made it possible for great numbers of Cherokee to learn to read in their native tongue. Assisted by missionaries of the American Board of Commissioners for Foreign Missions, the Cherokees at the end of the decade of the 1820s began to publish their own newspaper, the *Cherokee Phoenix*, which printed material in English and in the Cherokee language and which became an important vehicle for disseminating views of the Cherokees, both within their own nation and to the white world. Some of the Indian leaders, too, had adopted whites' system of black slavery and had established extensive plantations rivaling their white counterparts'.²⁰⁶

Another south-eastern tribe, the Choctaws, also was a model of what the Civilization Fund hoped to achieve. Like the Cherokees, several of the large mission groups established schools on their land. Both the Choctaw Academy run by the Baptists and the schools of the American Board of Commissioners for Foreign Missions (ABCFM) received considerable government support. The Choctaw general council believed so strongly in the need for education that they pledged \$2000 from each year's government annuities to further support missionary education.²⁰⁷ The Baptist Academy was established in Scott County, Kentucky, due to a desire by the tribe to have a school off their lands to increase the influence of white society.²⁰⁸

²⁰⁶ Prucha, 66.

²⁰⁷ Beaver, 73.

²⁰⁸ Prucha, 56.

Despite these government success stories, the application of funds did not always accomplish the government's mission. The use and success of government supported institutions depended heavily on the receptivity of the particular tribe to the efforts. Because schools at the time relied on voluntary attendance, the outlook of tribal families toward education, the government, and Christianity played a role in determining attendance and openness toward government-religious efforts.

Even amongst the Five Civilized Tribes, there was uneven receptivity toward missionary efforts. The Creeks asked the government to remove the superintendent of their school and all missionaries, all representatives of the ABCFM, in the early 1830s.²⁰⁹ At the same time they asked through their agent for a secular school.²¹⁰ The missionary literature of the time places the blame with the government agent:

It is to be feared, that sometimes the government agents, rather foster the prejudices of these savage people against Christianity, than remove them. The aversion of the Creeks to the means of instruction which other tribes have admitted, and by which they have been so greatly improved, was probably infused into them by a former agent, among them; and who took no pains to conceal his hostility to Christianity; and of course his opposition to missionary operations.²¹¹

Reports from the agent and the Creeks point to incapable and inferior missionaries being sent to the schools.²¹² With the large expansion in missionary schools in ten years and the distant location of most tribal lands, it is not hard to imagine that some of the teachers and model farmers sent into Indian Territory were far from model teachers.

Another difficulty faced by the government and missionary associations was how to establish stable relationships with the Great Plains Indians. The mission schools worked reasonably well while dealing with the Eastern and Midwestern tribes, most of which had fairly

²⁰⁹ Everett, 522-3.

²¹⁰ Beaver, 76-7.

²¹¹ Everett, 522-3.

²¹² Beaver, 77.

permanent settlements. However, many of the tribes of the Plains were nomadic. Unconscious of the culture of these tribes, the missionaries would establish a school, church and farm near an apparent settlement. As the seasons changed and the game moved, the tribe would completely move camp and leave the missionaries with no students or congregation.²¹³

Another one of the substantive goals of the government was to decrease conflicts between the tribes, white settlers, and the Army. The two decades after the passage of the Civilization Fund marked a relatively quiet period in relations with the tribes.²¹⁴ However, the decreased conflict cannot be solely attributed to religious schools. The failure to establish a significant system of schools for the Plains tribes demonstrates that the quiet amongst them cannot be credited to the schools. The most important factor seems to be the decreased interaction between American Indians and whites at this point in time. As President Jackson's removal policy eliminated most of the Eastern tribes with substantial claims of land in areas with high population densities, there were simply fewer instances that could cause friction. As Prucha points out, the 1840s saw a rapid increase in tensions as the nation expanded to include Texas, the Mexican cession, and Oregon.²¹⁵ The number of settlers heading to these new territories by the Santa Fe and Oregon Trails was only exacerbated by the California gold rush.

But that is not to say that education efforts did not have an effect on conflict. Education gave some American Indian tribes alternative means of accomplishing their aims. Tribes with long histories of education efforts had become savvy to American political, social, and legal means of redress.²¹⁶ Rather than resort to violence when pushed by white intruders and Georgia

²¹³ Beaver, 77.

²¹⁴ Prucha, 108.

²¹⁵ Prucha, 108-9.

²¹⁶ McLoughlin, 245-6.

state officials to give up their land, the Cherokees used their English language and political skills to gain support for their positions from voters, legislators, and even the Supreme Court.

The irony remains that the Cherokees used their newly-acquired skills to counter removal. Rather than the integration and assimilation promised by civilization efforts, education and political sophistication only increased calls for removal and isolation. The Cherokee's situation pointed to the futility of the Enlightenment dreams of Washington, Knox and Jefferson. Despite substantial progress and a civilization that was likely more sophisticated than the surrounding white settlers, the Cherokees were never treated as equals in the negotiating process. Even their most strident allies, the missionaries and some within the Indian Office, displayed their paternal, ethnocentrism by making their own determinations about what was best for the Cherokees.²¹⁷ In his bid for a permanent position in the Indian Office, Thomas McKenney described the growing complexities of negotiating with educated tribes:

To control and direct those various concerns requires an intimate knowledge both of the character of the Indians themselves, of their relations to each other, and to the Government and Laws of the United States... This has become more delicate, and responsible, since several of the Tribes bordering our settlements, have been improved in Civilization and the arts, and feel themselves, intellectually, and morally, advanced, which disposes them to seek for opportunities of securing to themselves additional respectability and consequence – a feeling no less praiseworthy [sic] in them than honorable to the benevolent efforts of the Government and Citizens of the United States who have contributed to this improvement, and to this more noble bearing of the aboriginal man. Still however, it is a state of improvement on their part which requires, (whilst they retain their present political relation to us) to be treated with both tenderness and firmness. It is necessary to guard upon the one hand against a depression of those using intellectual and moral energies, and upon the other against any collision between them and our political institutions.²¹⁸

While intellectual advancement was honorable, it did not change the relationship between the tribes and the government. The government only became more subtle in its expressions of paternalism or was forced to resort to pure force.

²¹⁷ McLoughlin, 238.

²¹⁸ Thomas McKenney to James Barbour, November 15, 1825; Official Letter, (M No. 21, roll 2); Letters Sent, Volume 2, May 4, 1825-May 31, 1826; Records OIA, RG 75; NA I.

The Civilization Fund provided the stimulus required to get tribal schools started across the country. In percentage terms, the increase in schools and students taught over the time was substantial. However, in absolute terms the effort never approached universal education and little support was provided for students who wanted to continue an agrarian life once they returned to their homelands. On the larger scale, the education efforts were insignificant in decreasing conflicts and rather than assimilate American Indians the national mood turned to separation of the two populations through a removal policy.

State Capacity Building

Using Hood's tools of government framework, the analysis that follows examines the government capacity using measures of nodality, authority, treasury, and organization. By exploring the case over time, I can compare how the passage of the Civilization Fund Act changed the tools available to the government and their ability to affect outcomes.

Similar to the government's tools with regard to trade, the national government had few resources to control the civilization efforts for American Indians prior to the passage of the Civilization Fund Act. The territory inhabited by most tribes was outside of regular government oversight. Missionary efforts received little coordination at this time and thus little information from missions trickled back to the government. Money for education efforts was provided on an ad hoc basis and there were few organizational resources available in the War Department or Office of Indian Trade for more benevolent purposes. The following section outlines the limited capacity the government had on all measures to direct civilization efforts prior to 1819 and the passage of the Civilization Act.

With regard to nodality, the government had little reliable information about the day-to-day activities on tribal lands or in the western territories. The Lewis and Clark expedition provided a glimpse at life in the west but it was not until after the passage of the civilization act that the government commissioned its first study of education efforts aimed at American Indian tribes.²¹⁹ After 1793, agents were stationed with some tribes and their main role during these years was to provide the government with information about the tribes, the surrounding area, and possible violations of trade and intercourse law.²²⁰

There was limited contact between a small number of mission groups and the government. For example, as mentioned previously, schools that received small government grants provided annual reports prior to the passage of the Civilization Act and the institutionalization of this practice by the Secretary of War. When Gideon Blackburn convinced the agent for the Cherokee to provide assistance, he agreed to provide annual reports to the War Department outlining the progress of his school.²²¹

The importance of information gathering should not be underestimated. Based on the information included in the reports the government received from Blackburn, the Cherokee agent arranged an annual subsidy for the Moravian mission school in the area. He then informed them that the funding would require an annual report. William McLoughlin describes the effect of the information sharing: “The Moravians were increasingly consulted by the government for their advice on Cherokee affairs, and they unflinchingly told them that the fullbloods were the backward element in the nation and that it was necessary to stamp out all traces of Cherokee culture. They fully supported government policy on acculturation and the desirability of persuading the Indians to divide their land in severalty. They did not, in their simplicity, believe they were being

²¹⁹ See Jedidiah Morse’s Report to the Secretary of War commissioned in 1820.

²²⁰ Prucha, 58.

²²¹ McLoughlin, 74.

manipulated by the government or that they were in any sense taking sides in the political struggle between the government and the Cherokees' effort to retain their cultural identity."²²²

The information provided in annual reports gave the government proof of the effectiveness of schools that could be used in convincing Congress to pass the Civilization Act. In addition, the extra information that was provided helped form and support overall government policy toward particular tribes by giving up-to-date information about the attitudes and allegiances of both the tribes and missionaries.

Lacking information about the happenings on tribal lands, the national state struggled to maintain its authority over all affairs relating to tribes with education and civilization efforts being no exception. In the quest for imperial supremacy, European powers turned to missionary efforts to cement their power and influence among the tribes. The English, and later the Americans, were especially concerned about countering the spread of Roman Catholicism from Spain, France and Portugal.²²³ Beaver attributes the English mission work with the Mohawks in New York as one of the reasons for their move to Canada after American independence.²²⁴

Several original colonies, especially those in New England, also supported mission work in their colonies and later states. For example, Pennsylvania's charter included a promise to help convert the American Indians within its territory although the colonial government did not directly undertake any efforts.²²⁵ In Massachusetts, the General Court ordered ministers to see to their responsibility in civilizing American Indians in the colony and land was bought by the Massachusetts treasury for mission work. However, unlike trade and treaty relations, the national state hoped to supplement rather than supplant the work already supported by the states.

²²² McLoughlin, 75.

²²³ Beaver, 11-2 and 30.

²²⁴ Beaver, 19-20.

²²⁵ Beaver, 22.

In 1793, Congress voiced its support for civilization efforts in the second Trade and Intercourse Act which expressed approval for executive initiatives and set up the long-lasting system of agents being assigned to monitor and assist tribes: “In order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall and may be lawful for the President of the United States, to cause them to be furnished with useful domestic animals, and implements of husbandry, and also to furnish them with goods or money, in such proportions, as he shall judge proper, and to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think proper.”²²⁶ However, Congress did not allocate any funding for civilization initiatives until 1819. Agents were appointed by the executive and Congress approved their salaries henceforth. In future intercourse laws, the term temporary was ended and the duties assigned to agents expanded.

Despite laws expressing a desire for civilization efforts, little money was going toward civilization efforts from any source before 1819. Some treaties specified a certain amount of a tribe’s yearly annuity would go to education efforts or that the government agreed to buy farming instruments for the tribe as a one time deal for signing the treaty. War Department officials and agents could use some of their discretionary funds to help specific proposals. Gideon Blackburn had approached the Secretary of War Henry Dearborn about his school. Dearborn sent word to the Cherokee agent Meigs to aid Dearborn by helping him with buildings and additional support as necessary. However, the use of departmental funds for mission projects were the exception rather than the rule and mission groups had to rely heavily on other sources of funding because of the limited nature of government grants during this period.

²²⁶ “An Act to Regulate Trade and Intercourse with the Indian Tribes,” March 1, 1793, US Statutes at Large, *found at The Avalon Project*, http://avalon.law.yale.edu/18th_century/na025.asp.

Additionally, churches and mission organizations gave little money toward missions for the American Indians during these years. Gideon Blackburn approached the government after failing to convince his parishioners to give any money to the effort. The Presbyterian General Assembly would pay Blackburn's salary but he had to get government assistance to get the schools started.²²⁷ Through Blackburn's extraordinary campaigning he was able to raise funds from several sources but most missionaries were unable to leave their frontier missions and campaign for money. Before the Revolutionary War, funding for these missions came from the Crown and more importantly from several Scottish and English mission societies. Without local organizations fundraising for the missions, support diminished after the war.²²⁸

The ad hoc nature of funding and authorization for civilization efforts was further hampered by a lack of a bureau specifically designated to handle Indian Affairs. The Office of Indian Trade oversaw the factory system but there was no office to deal with treaties, intercourse, and tribal affairs more generally. These tasks fell to the Secretary of War who "was not only the head of the department, attending as such to the claims of pensioners, the grant of military land warrants, and the supervision of Indian agents; he also had to act in a strictly military capacity as adjutant general, quartermaster general, commissary general, paymaster, and as appellate authority for review of courts martial" as well as dealing with congressional requests and visits.²²⁹ Without a dedicated office, there was little time for the type of policy innovation necessary for new types of administration. Rather the Secretary of War only dealt with problems and requests as they came up instead of creating new systems for civilization policy implementation.

²²⁷ McLoughlin, 56.

²²⁸ Beaver, 53.

²²⁹ White, *The Jeffersonians*, 235.

Despite a lack of staff in the national office, civilization efforts were responsible for one of the staffing breakthroughs at the regional level. As indicated previously, the second Trade and Intercourse Act set up the still present system of agents stationed in the field as direct representatives between the federal government and tribes. The original purpose of the agents was to help promote civilization among tribes friendly to the government. While agents did not have enough time or resources to devote solely to this original mission, the structure set up by the trade and intercourse act provided the groundwork for future developments in policy. By setting up a regional, tribe-based network, the government simply had to add more individuals and resources to these regional hubs to create centers of information and cooperation.

But due to both lack of funds and a revolutionary distrust of large bureaucracies and armies, the Secretary of War did not have enough agents or military officers to achieve their substantive goals. In 1822, there were seventeen agents, twenty-five sub-agents (many working as interpreters), thirty-four interpreters, and twenty-one blacksmiths.²³⁰ These men helped conduct general intercourse between the government and particular tribes but they did not have the time or resources to provide education or enforce trade policy. One of the arguments for a civilization policy rather than a military removal policy toward American Indian tribes dealt with the number of military men and their associated costs. Secretary of War Knox explained that:

If it should be decided, on an abstract view of the question, to be just, to remove by force the Wabash Indians from the territory they occupy, the finances of the United States would not at present admit of the operation... An expedition against them [the Wabash], with the view of extirpating them, or destroying their towns, could not be undertaken with a probability of success, with less than an army of 2,500 men. The regular troops of the United States on the frontiers, are less than six hundred; of that number, not more than four hundred could be collected from the posts for the purposes of the expedition. To raise, pay, feed, arm, and equip 1900 additional men, with their necessary officers for six months, and to provide every thing in the hospital and quartermaster's line, would require the sum of 200,000 dollars; a sum far exceeding the ability of the United States to advance, consistently with a due regard to other indispensable objects.²³¹

²³⁰ *Ibid.*, 508-9.

²³¹ Henry Knox, "Report on the Northwestern Indians," June 15, 1789, in *Documents of US Indian Policy*, 13.

The cost made assimilation rather than removal by force a much more attractive option.

Before 1819, the national government had very little capacity in terms of Hood's variables. Some information on tribes, especially those east of the Mississippi River, made its way back to the executive branch through Indian agents and several mission schools. The early network of Indian agents that would remain the central form of organization for the Indian Office also developed during this period. But there was little money and few staff assigned to a complex and demanding area of national governance. In 1819, as Congress decided to provide \$10,000 in funding for civilization efforts, the executive department had to decide the most strategic way to spend the funds. The full cost of hiring teachers and model farmers as well as providing the infrastructure and implements for even a few tribes would far exceed the allocated funding. The decision to partner with religious mission associations helped counter the need to provide full staffing but it also carried risks. Capital expenses, paid for by the government, would be provided up front before cooperation and assistance from mission groups could be assured. The following section assesses the impact these partnerships had on governmental capacity.

Assessment of governmental capacity

Because of the requirement that all mission groups provide annual reports detailing their work, the government immediately received increased information about tribes, their attitudes toward civilization efforts and the government, and the promises and shortfall associated with the government's policy. The missionaries also provided added legitimacy to the national government. As discussed earlier, the new nation faced many threats to its authority in dealing with tribes even with the constitutional grants through the commerce clause and treaty-making powers. Partnerships with private religious groups created a constituency outside of the national

governmental elite that cared about the location of power in the new republic. Because the government partnered with multiple religious denominations in every region of the country, it created vested interests in civilization policy and more general intercourse occurring at the national level with a variety of groups.

Religious mission groups also seem to be particularly well-suited for the national government's aims with the partnership. After the Revolutionary War, Protestant religion in America helped shape a distinctive nationalism that posited that America was a land chosen and protected by God. The new republic was God's way of showing the model government for all nations. This ideological belief helped extend the federal government's authority as missionaries took on their cause. As McLoughlin points out, "[Missionaries] tended to exalt the federal constitution over states' rights because of the new nation's peculiar covenant with God."²³² The importance of these ideological beliefs and the partnerships between the government and missionaries will be discussed more fully in the following chapter.

In terms of financial investment, the partnership was an enormous success. The government's investment of \$10,000 a year stayed constant throughout the period but the money raised by religious organizations increased rapidly after the government's initial investment. The Committee on Indian Affairs pointed to the fundraising done by the benevolent associations as a reason to continue the policy:

The committee are aware that very considerable aids have been given by different Christian denominations, all of whom feel a deep interest in the paternal views of the Government. But the committee are well persuaded that, had the Government offered no pecuniary aid, very few, if any, of the benefits which have been conferred, would have been experienced by the Indians. The annual appropriation of ten thousand dollars has encouraged the benevolent and pious, in many parts of the country, to form associations and collect donations, with the view of aiding the humane purposes of the Government. Hundreds of such associations are now in

²³² McLoughlin, 4.

active operation; and they much cheered in their exertions by the rapid advances in civilization which the Indians have made.²³³

Without the additional funds provided by religious organizations, the Civilization Fund would have had a much more limited impact. And without results, Congress may have ended the fund completely.

Because the government supplied the seed money for new schools, it had some ability to direct where missionary efforts would be focused. The demand for governmental money and support was so great that the War Department was able to amend its regulations in 1820 to pay less on each project. Instead of paying for the complete cost of buildings, the government in 1820 amended its promise to only pay for two-thirds of the building costs.²³⁴ After the initial investment of building costs, the government paid a stipend based on attendance but the pay of teachers and employees was the responsibility of the religious groups. While slightly exaggerating the quality difference between missionaries and government employees, Beaver pinpoints the benefit to the government, “[The civilization policy] was a cheap way to secure expert workers because their salaries would be provided by the missions, and these persons would bring to their task a quality of devotion and zeal which would seldom be characteristic of government employees.”²³⁵

The Civilization Fund also solved the other major problem the government had in accomplishing civilization efforts previously: the lack of employees necessary for the efforts. The mission groups provided all of the employees for the schools, model farms, and churches that were placed on tribal lands. But both the government and the mission groups viewed these employees as responsible not only to their particular mission groups but also to the federal

²³³ William McLean, “Civilization of the Indians,” 23 March 1824, *American State Papers: Indian Affairs* 2:457-9.

²³⁴ John Calhoun, “Expenditures for the Civilization of the Indians,” February 29, 1820, *American State Papers: Indian Affairs* 2:273.

²³⁵ Beaver, 70.

government. As John Calhoun set out the regulations for the use of the Civilization Fund, this purpose was made explicit:

It is considered to be the duty of all persons who may be employed or attached to any institution, not only to set a good example of sobriety, industry, and honesty, but, as far as practicable, to impress on the minds of the Indians the friendly and benevolent views of the Government towards them, and the advantages to them in yielding to the policy of Government, and co-operating with it in such measures as it may deem necessary for their civilization and happiness. A contrary course of conduct cannot fail to incur the displeasure of Government, as it is impossible that the object which it has in view can be effected, and peace be habitually preserved, if the distrust of the Indians as to its benevolent views should be excited.²³⁶

Robert Meigs, the long-serving agent to the Cherokees, had long believed in the importance of missionaries as the eyes and ears of the government as well as a force to pacify them as factionalism rose.²³⁷

Somewhat surprisingly, a similar sentiment could be found within the religious organizations. In their memorial for Congress to extend the fund, the American Board of Commissioners for Foreign Missions wrote, “The object of the Government and the Board is one, and, indeed, is common to the whole community. We trust, therefore, that the measure adopted by our Board will not be deemed an improper interference with the concerns of the Government, a thing at which our feelings would revolt, but, only as a proper act of co-operation of a portion of the citizens, in effecting a great and interesting national object.”²³⁸ While not surprising that the mission group would expound on the common mission between church and state while requesting continued funding, the actions of the church groups throughout support this claim. After beginning to take federal funding, the Moravians began writing the Cherokee federal agent Meigs to suggest political and economic changes for the Cherokee nation for the

²³⁶ John Calhoun, “Expenditures for the Civilization of the Indians,” 273.

²³⁷ McLoughlin, 74.

²³⁸ American Board of Commissioners for Foreign Missions, Memorial to the Committee on Indian Affairs, March 3, 1824.

type of secular reforms which would be of national service.²³⁹ Reverend Jedidiah Morse, who conducted the most extensive governmental survey of the requirements for peace with American Indians and their education, offered his services to the government and then was funded out of the Civilization Fund.²⁴⁰

Even during times when the government and missionaries did not agree, the religious organizations rarely opposed governmental policy outright. Removal of tribes from the East was one of the most contentious issues between the mission groups and the government. Despite strong disapproval from missionaries that worked directly with the tribes, overall mission groups in the end usually either whole-heartedly pushed government policy or declined to take a position. For example, the Tennessee Methodist Conference passed a resolution in response to local missionary opposition to removal, “That whatever may be our private views and sentiments, as men and free citizens, relative to the sufferings and privations either of the aboriginal nation of our country...or of the policy adopted and pursued by the State authorities or the General Government, yet, as a body of Christian Ministers, we do not feel at liberty, nor are we disposed, to depart from the principles uniformly [sic] maintained by the members and ministers of our Church in carefully refraining from all such interferences with political affairs.”²⁴¹ Despite proclamations by the national boards, the government continued to have suspicions that local missionaries were supporting the anti-government Cherokee faction in its negotiations about land and removal.²⁴² The issues surrounding removal and the church-state partnership will be developed further in the following chapter.

²³⁹ McLoughlin, 77-8.

²⁴⁰ Morse, *Report to the Secretary of War*.

²⁴¹ John B. McFerrin, *History of Methodism in Tennessee*, vol. 3, (Nashville: Southern Methodist Publishing House, 1874), 371ff found in Beaver, 94.

²⁴² McLoughlin, 73-81.

The missionaries' relationship with the federal government also caused suspicions on the side of the tribes. Gideon Blackburn, the Presbyterian missionary who had pioneered schools with the Cherokees, was discredited within the Cherokee nation because of rumors that he was speculating on land that he expect the federal government to take by cession. Blackburn also owned a whiskey distillery in Tennessee. He attempted to transport the whiskey by a water route through Creek and Cherokee land and while the Cherokees had granted water right-of-way, the Creeks had not. McLoughlin notes, "The War Department was ready to claim that trade along navigable rivers must be open to commerce regardless of the Creeks' opposition. Blackburn, it appears, was acting for the government to test the practicability of the route."²⁴³ The scandal over this affair resulted in the Presbyterians giving up their schools in 1810.

Beyond simply providing employees to staff semi-governmental institutions, the Civilization Fund and its administration helped institutionalize the Indian Office in the War Department. As mentioned in the previous chapter, the Secretary of War was responsible with only the help of clerks for the entire business of the department including trade with American Indian tribes and the Civilization Fund. The demands of the office caused then Secretary of War, John Calhoun, to create the Office of Indian Affairs headed by Thomas McKenney to administer intercourse with American Indians that did not involve trade (which was still the remit of territorial governors at this time). As Thomas McKenney explained to Secretary of War, James Barbour, in 1825: "Experience has demonstrated that the head of the War Department is physically [sic] incompetent to sustain these widely extended duties, and attend at the same time to the weighty affairs of the Department proper and yet...responsibility...possible for him to obtain even so much of the details of our Indian relations, as to be able with wisdom

²⁴³ McLoughlin, 78-9.

and with energy, to direct the whole. It was the weight of these concerns, added to their importance which led to the creation, by the Executive, of this office.”²⁴⁴

With the existence of a new office, the procedures for handling national Indian policy began to be formalized. The new civilization policy, in particular, required the government to make decisions about how funding decisions would be made and the money distributed to private groups. In his first annual report, McKenney explains this systematization in his section on schools: “Since the establishment of this Office, in March last, the rules and regulations for the government of Indian Affairs have been revised, and greatly enlarged. Among the measures first taken were those which were deemed to be essential to secure a prompt rendition of accounts; and these, it is believed, will, in the course of the present year, result in ensuring the utmost promptitude and accuracy: the necessary checks, it is believed, are provided.”²⁴⁵

Despite the creation of the Indian Office in the War Department, it did not receive congressional authorization for almost ten years. During this time, McKenney lobbied continuously for the formalization of the office. The attention required for the civilization effort frequently was used as a reason for the office. As he explains to the new Secretary of War Barbour, “The extension of the plan for the rescue of the unfortunate people from the destiny which has swallowed up so many of the Tribes, and for their improvement in Civilization and Christianity, will demand the unremitting attention of some head, at the seat of General Government.”²⁴⁶ The correspondence, accounting, and advocacy required to maintain the government’s civilization policy were under the direction of the unofficial Commissioner. As

²⁴⁴ Thomas McKenney to James Barbour, November 15, 1825; Official Letter, (M No. 21, roll 2); Letters Sent, Volume 2, May 4, 1825-May 31, 1826; Records OIA, RG 75; NA I.

²⁴⁵ Thomas McKenney to John Calhoun, November 24, 1824; Annual Report, Office of Indian Affairs, Secretary of War, 1824. p. 106-7 (National Archives Microfilm Publication 997, roll 5, frame 156). Annual Reports 1822-1833. Annual Report of the War Department 1822-1907, Record Group 107. National Archives, Washington D.C.

²⁴⁶ McKenney to Barbour, November 15, 1825; Official Letter.

this office became increasingly relied upon by Congress, agents, superintendents, and the tribes themselves, there was little contention in Congress for authorization along with a new set of rules and regulations for the Office's governance.²⁴⁷

Overall, the partnership with benevolent groups dramatically increased the government's capacity for dealing with American Indian tribes. In terms of tools, the government was able to leverage a monetary investment and the government sanction (authority) to build on tribal lands in order to receive additional funds, information, and a new source of labor from religious organizations. These new tools at the government's disposal at the end of the 1830s gave the government the ability to use less coercion and fewer federal employees to accomplish its goals.

Due to the annual reports and established contacts in the field, the government had increased information on both the progress of tribal youth toward white civilization goals and the overall mood of the tribe toward the federal government. Because religious organization favored the American national government over other rival sources of authority, tribal members received validation of the national government's authority and the government established supremacy for dictating education policy for tribes. The massive fundraising conducted by the religious organizations helped extend the set allocation given through the government. However, since the government promised start-up capital for buildings, groups often came to the government first for authorization of the placement and constituency for the schools. Finally, the Department of War was able to establish the program without hiring additional staff and the missionaries often functioned as semi-governmental employees providing insight and advice to the Secretary and currying favor for the government with the tribes. The increased activity in the Office due to the Civilization Fund also helped institutionalize the Office and its Commissioner for Indian Affairs.

²⁴⁷ *H. R. Doc. 117*, 20th Cong., 2nd Sess. (1829)

Overall Assessment

The partnership outlined between the government and religious associations in the provision of education and civilization efforts built government capacity while failing to fully accomplish the substantive mission of the government. This case falls in the bureau-building category of my original framework. One could make the case for placing it in the associationalist category based on the results in the schools that were established. However, too few students out of the entire indigenous population were educated and because the government failed to provide the means for graduated students to take up an agrarian life the results were muted in many cases.

The case fits the first hypothesis about capacity-building relationships: that they will be pushed by executive department officials. Upon the urging of the President, Congress passed the allocation of funding for the civilization effort but simply left the details of implementation to the President's discretion. John Calhoun, the Secretary of War, decided that the money would be best used if it was leveraged by giving grants to private benevolent groups at the President's discretion. The regulations for how this partnership would work, including the government's promise to pay for buildings and require progress before funding, were all innovations of the executive department rather than congressional mandates.

As hypothesized, the benefits of this capacity-building partnership include a network of private allies that push for a continuation of the policy and authority for the executive department. One of the most enduring aspects of the policy was the lobby it created within religious organizations. While religious groups had petitioned the government previously, it was never to the scale or intensity as afterwards. Many of the petitions related to continuing or

increasing the civilization spending. The following passage is representative of the many petitions the House received in 1823 as it considered the future of the fund, “The Synod [of Philadelphia of the Presbyterian Churches] most earnestly hope and pray that the Congress of the United States will not only continue to make the usual annual appropriation, but feel constrained by a sense of humanity, to enlarge a bounty that seems calculated to save from utter extermination an unhappy portion of our race, and to prepare the way for their future incorporation with the American People.”²⁴⁸ Over time, they began to deal increasingly with other issues of national Indian policy. The Department of War, mainly through Thomas McKenney, was active in encouraging these groups to lobby Congress. McKenney began his coordination of bureau and private lobbying in 1818 for the passage of the Civilization Fund Act. Similar to the modern interest groups studied by Jack Walker, the early religious organizations that flourished and found influence had a government patron who encouraged their activity and helped generate government funds to support their missions.²⁴⁹

Both the Office of Indian Trade, where McKenney was located in 1818 while lobbying for the fund, and the Office of Indian Affairs that was created in 1824 faced uncertainties that made them weak offices. The actions taken to establish a national civilization policy without any large grant of funding or personnel from Congress were innovative and creative. Because of McKenney and Calhoun’s bold entrepreneurship, the new Office also created a powerful constituency to support its continuation. This was particularly important since the Office had originally been created by secretarial order without congressional authorization. As predicted,

²⁴⁸ Synod of Philadelphia of the Presbyterian Churches, On Civilization fund, December 17, 1823; Committee on Indian Affairs, Petitions and Memorials, Resolutions of State Legislatures, and Related Documents which were referred to Committees (HR18A-F7.1); 18th Congress; Records U.S. House of Representatives, Record Group 233; National Archives, Washington D.C.

²⁴⁹ Jack Walker, *Mobilizing Interest Groups in America* (Ann Arbor: University of Michigan Press, 1991).

because of the office's uncertainty and weakness the departmental chief and bureau head pushed for innovative solutions to build their reputation and accomplish their mission.

A final word can be said about the motivation of bureaucrats in this case study. Calhoun and McKenney rarely act as budget maximizers in their pursuit of a civilization policy and enhanced bureaucratic capacity. Instead of insisting on the funds and personnel to handle the Civilization Fund internally, these champions used the set amount of money to contract with private organizations. In addition, Secretary of War Calhoun sacrificed a clerk position in order to give McKenney an unofficial job tending to intercourse with American Indian tribes. Calhoun ended up with one less clerk and a bureau head working at a clerk's pay rather than waiting for Congress to authorize the additional position and salary. However, the Department of War's reputation under Calhoun depended on how smoothly and orderly the department's business was handled. Without McKenney to take charge of federal Indian policy, the bureau would have found neglect and disorganization under Calhoun. Because Calhoun had ambitions for the Presidency, he believed that he must prove that he could effectively administer law.²⁵⁰ The reputation that he built for himself and the office was apparent at the end of his term. The foremost historian of the federal administration, Leonard White, describes the War Department after Calhoun such: "Eight years under Calhoun had transformed an administrative wreck to a well-managed, smooth-working, and acquisitive organization."²⁵¹

Conclusion

The partnership between the federal government and religious organization for the civilization of the American Indian population never reached its lofty goals of assimilation and

²⁵⁰ White, *Jeffersonians*, 246.

²⁵¹ *Ibid.*, 249-50.

peaceful coexistence. However, it did satisfy both of the partners. As R. Pierce Beaver assesses, “State and church made common cause in the civilizing and Christianizing of the Indians for two and a half centuries. The state gained political and sometimes even military advantage from its patronage of the Indian mission. The missionary agencies on their part were quite sure that they were contributing to the welfare of the country. Moreover, the missionaries and the directors of their societies and boards were grateful for whatever financial support the state might give, for without it the work would often have been curtailed since the church members gave rather meagerly.”²⁵² In addition, the executive branch of government made significant gains in capacity through the partnership, successfully building the bureau. Despite the benefits brought to the two direct parties in the relationship, the clients – the tribes – were never recognized as potential partners or holders of valid opinions on the policy. But as partners in a paternalistic venture, the government had found the ideal contractor.

While the Civilization Fund was the beginning of this partnership, the relationship would develop further in later years to include administration of reservations and much of federal Indian policy as detailed in the next section. This early partnership with church groups for the administration of federal policy presages the modern faith-based initiatives which were started by President George W. Bush as a means of expanding social service provision by giving funding to private religious initiatives that met the government’s objectives. The combination of moralizing with provision of services to the American underclass is certainly not new and continues to be a relevant model of governmental action.

²⁵² Beaver, 85.

Chapter 4 - President Grant's Peace Policy: Religious Administration of Tribal Reservations

In January 2001, President George W. Bush established a system of faith-based initiatives to aid religious organizations providing social services. The *Washington Post* noted that the initiative “could be an unprecedented collaboration between the government and nonprofits...many of them with religious ties.”²⁵³ The initiative, however, was not unprecedented. During the administration of President Ulysses S. Grant, religious organizations took on a much larger role to help meet the president’s desire to combat political patronage and re-establish federal control of the field service from parochial, congressional interests. At the height of Grant’s administration, major religious organizations were in charge of the administration of most American Indian reservations.

These partnerships, part of what is now called Grant’s Peace Policy, helped cement national authority in government-tribal relations and were the foundation of a paternal racial order with regard to American Indians. However, the partnerships also involved devolution of responsibilities to organizations outside of the ordinary government accountability mechanisms. The denominational organizations had different levels of capacity which led to varying administrative success from tribe to tribe.

This chapter examines the dynamics of the relationships between the national government and private organization during the Peace Policy. The traditional view in the history literature either looks at the implications for the separation of church and state, the cultural hegemony of the policy, or describes the policy as a complete abdication of government responsibility for federal policy implementation. This study aims to take a different approach to

²⁵³ Dana Milbank, “Bush Unveils ‘Faith-Based’ Initiative,” *Washington Post*, 30 January 2001, A1.

examine if capacity was built through the partnerships and how the policy affected substantive results in the field. In addition, this case study centers on a more general question: How can public-private partnerships expand state capacity? The case begins by laying out the use of partnerships in post-Civil War interactions between the federal government and American Indian tribes. The focus is then narrowed by considering whether these partnerships expanded state capacity to dictate the terms of engagement and the content of racial orders. When these partnerships expand capacity, the researcher must explore the ways in which this state goal was accomplished. However, one must constantly be aware of the potential for partnerships to both fail to build capacity or become merely means to service a private interest.

The Peace Policy provides a particularly interesting case study on public-private partnerships because the government simultaneously partnered with twelve different religious organizations. Each of these religious organizations had different internal structures, accountability devices, and pre-existing commitments with tribes. This variation in organizational structure and capacity was matched with differing success in administration. Because of the variance, the case study provides unique insight into the conditions that promote effective public-private partnerships and more general perspective on accountability devices and organizational structure.

This chapter sets out to answer these broader questions about political development by exploring a particular case study. To do so, I will start with a description of Grant's Peace Policy. Next, I will provide a comprehensive analysis of the involvement of religious organizations and their interactions with the tribes and federal government. Finally, I will assess the policy by accounting for the variance in administrative success depending on the religious organization.

President Ulysses Grant's Peace Policy

When Ulysses S. Grant became President in 1869, the problems relating to American Indian policy required, in his mind, a new approach. The Grant years were marked with trial and error efforts aimed at changing the administration of the Indian Office. Grant's efforts often met political opposition for reasons involving both ideology and spoils. The Peace Policy refers to Grant's general philosophy toward American Indians which in turn guided federal Indian policy and administration over the next decade.

Grant's Peace Policy was best articulated by Columbus Delano, Secretary of Interior, in 1873. First, Indians should be placed on well-supplied reservations "as rapidly as possible" with strict punishment for American Indians who "persistently refuse to go upon a reservation." As part of the policy, the government would also rely on religious organizations to lead civilization and education efforts as well as ensuring the integrity of Indian agents.²⁵⁴ The president and his Secretaries of Interior took action on this policy by successfully establishing a Board of Indian Commissioners with joint control of American Indian appropriations, the apportionment of agency appointments to churches and military officers, the creation of Indian Inspectors to act as an independent check on agents, the end of treaty-making, and the creation of Indian police forces. President Grant's policies garnered the name "peace policy" because of their determination to solve problems before they resulted in conflict. As Henry Waltmann notes, "Despite strong pressure from those demanding military action, Grant decided to 'conquer the

²⁵⁴ Columbus Delano, *Annual Report of the Secretary of the Interior* (1873).

Indians with kindness' by protecting them on limited reservations, promoting their advancement, and renovating the corrupt and irresponsible Indian service."²⁵⁵

The Peace Policy in Academic Literature

Political science scholarship has often placed interactions with American Indian tribes as a realm distinct and separate from larger questions of American law. Rather than think about the implications of interactions with tribes as a lens for understanding the growth of political institutions, questions of federal Indian law often focus solely on the implications for racial and cultural hegemony. The racial and cultural imperialism as well as the stark injustices of the system are undoubtedly the most important story that can be told about federal-tribal relations throughout American history. However, a disservice is done by confining discussion of these policies and their administration. These policies and their administration are part of a larger narrative of the challenge of government and administration in a nation with less personnel and a greater territorial expanse than the European models.

The literature analyzing President Grant's Peace Policy repeats this shortcoming of analysis. I found no political science articles that examined the Peace Policy. In the legal and historical literature, the Peace Policy gets more attention but the analysis is still limited. First, authors cite it in analyses of the free exercise and establishment clauses in the First Amendment.²⁵⁶ The policy has obvious implications for the First Amendment because the

²⁵⁵ Henry G. Waltmann, "Circumstantial Reformer: President Grant & the Indian Problem," *Journal of the Southwest* (1971): 325.

²⁵⁶ See, for example, Deborah Jones Merritt and Daniel Merritt, "The Future of Religious Pluralism: Justice O'Connor and the Establishment Clause," *Arizona State Law Journal* (2007): 895; Ashley Young, "Continuing an American Legacy of Racial and Cultural Injustice: A Critical Look at *Bonnichsen v. United States*," *DePaul-LCA Journal of Art and Entertainment Law* (2006): 1; John Ragsdale, "The Chiricahua Apaches and the Assimilation Movement, 1865-1886: A Historical Examination," *American Indian Law Review* (2005-2006): 291; Rebecca Tsosie, "The Challenge of 'Differentiated Citizenship': Can State Constitutions Protect Tribal Rights?" *64 Montana*

government both sets out religious organizations as state agents and used the policy to suppress native religions. The second category is articles that analyze the state of American Indian education and indigenous languages by looking through a historical lens.²⁵⁷ The Peace Policy represented a massive expansion of previous government support for religious schools to serve tribes and set the path for government contract schools (mainly religious) which predominated at the end of the nineteenth century and part of the twentieth century. Religious instruction paired with government objectives of acculturation through Christianity, English language, and vocational trades.

There are several articles that examine the Peace Policy in the context of larger arguments about the executive branch and policy administration. Despite the fact that the Peace Policy could provide interesting insights into the questions presented, these authors fail to comprehend the policy's implications because of lack of historical analysis. The first article in this category is striking in its almost willful ignorance of the implications of the Peace Policy on its larger arguments. Steven Calabresi and Christopher Yoo are known for the outspoken advocacy of the theory of the unitary executive. Their book and law review articles attempt to confirm their theory with historical data by looking at the practices of presidents from Washington to Bush II.²⁵⁸ When discussing President Grant, Calabresi and Yoo focus on his

Law Review 199 (2003); Louis Fisher, "Indian Religious Freedom: To Litigate or Legislate?" *American Indian Law Review* 26 (2001-2002); David Wilkins, "A Constitutional Conundrum: The Resilience of Tribal Sovereignty during American Nationalism and Expansion," *Oklahoma City University Law Review* 25 (2000): 87.

²⁵⁷ See, for example, Allison Dussias, "Indigenous Languages Under Siege: The Native American Experience," *Intercultural Human Rights Law Review* 3 (2008): 5; Allison Dussias, "Let No Native American Child Be Left Behind: Re-envisioning Native American Education for the Twenty-First Century," *Arizona Law Review* 43 (2001): 819.

²⁵⁸ Steven Calabresi, "Concluding Thoughts—Symposium: Presidential Power in Historical Perspective: Reflections on Calabresi and Yoo's *The Unitary Executive*," *University of Pennsylvania Journal of Constitutional Law* 12 (2010): 651-658; Steven Calabresi and Christopher Yoo, *The Unitary Executive: Presidential Power from Washington to Bush* (New Haven: Yale University Press, 2008); Steven Calabresi, Christopher Yoo, and Anthony Colangelo, "The Unitary Executive in the Modern Era, 1945-2004," *Iowa Law Review* 90 (2005): 601; Steven Calabresi, Christopher Yoo, and Laurence Nee, "Unitary Executive During the Third Half-Century, 1889-1945,"

philosophy toward policy administration.²⁵⁹ They claim that he acted as a strong executive as evidenced by his push for the repeal of the Tenure of Office Act which allowed him to review and remove subordinate officials.²⁶⁰ Calabresi and Yoo also stress that Grant had a military style of delegation in all matters of governance that stressed delegation to subordinates. In the same section, they mention that Grant initiated the Peace Policy and the policy “revolutionized” federal-tribal relationships.²⁶¹ But here the analysis looks solely at Grant’s racial views: “Grant’s empathy with African-Americans in the South specifically carried over to the Indians.”²⁶² However, there is no discussion about the use of essentially private contractors in order to achieve a faithful execution of the laws, a role that Grant no longer thought federal employees in the Indian Service could perform. The policy could have provided an interesting illustration of Grant’s delegation style and experimental, results-oriented approach. But Calabresi and Yoo missed the connection.

The final article provides the most in-depth treatment of the Peace Policy. In her article, “Free? Exercise,” Marci Hamilton looks at the First Amendment implications of government interactions with religious groups.²⁶³ One of her three case studies is Grant’s Peace Policy. She claims that the policy is a prototypical example of government grant-making to religious organizations without accountability.²⁶⁴ She discusses how a lack of congressional and

Notre Dame Law Review 80 (2004): 1-109; Steven Calabresi and Christopher Yoo, “The Unitary Executive During the Second Half Century,” *Harvard Journal of Law & Public Policy* 26 (2003): 667-802.

²⁵⁹ Steven Calabresi and Christopher Yoo, “The Unitary Executive in the Second Half-Century,” 26 *Harvard Journal of Law and Public Policy* 667 (2003).

²⁶⁰ Calabresi and Yoo, “Second Half-Century” at 761.

²⁶¹ *Id.* at 760.

²⁶² *Id.*

²⁶³ Marci Hamilton, “Free? Exercise,” *William and Mary Law Review* 42(2000): 823. Hamilton provides extended analysis in Marci Hamilton, “Panel Two Commentary, Symposium on The Legal Frontier of Religious Freedom: Religion and State in the Twenty-First Century,” *New York University Annual Survey of American Law* 57 (2000): 49-56.

²⁶⁴ Hamilton, “Free? Exercise,” 852.

executive interest in the policy created gaps in oversight and led to tragic results. She claims that government withdrawal from the realm of Indian affairs was devastating.²⁶⁵

The problem with Hamilton's study is it involves very little historical research and, more problematically, little understanding of the basic structure of the policy. Hamilton's main claim is that the policy provided religious organizations with money and then the government exercised no oversight. This analysis ignores both congressional and executive measures throughout the delegation to control the religious organizations. In addition, the basic assumption is that the executive and Congress had control of government-employed Indian agents prior to the Peace Policy. Hamilton's analysis ignores the organizational structure of the Indian Office during this period. The Office was largely controlled by regional superintendents and the Indian agents were prime patronage jobs. In part, because of the corruption of local and regional officials, the Indian Office prior to the Peace Policy was known for scandals and abuses of power. It was in part the lack of accountability of federal employees that prompted Grant to institute his Peace Policy.

The historical literature also generally fails to document the experiences that religious organizations had in administering federal Indian policy. The dominant trend is to examine why President Grant made the decision to apportion the agencies, the difficulties that administrators at the federal level had with the policy, and the eventual abandonment of the policy.²⁶⁶ The analysis centers almost entirely on the policy from the level of the federal government with little treatment of the day-to-day experiences of religious societies in administering the policy. The

²⁶⁵ *Id.*

²⁶⁶ Henry G. Waltmann, "Circumstantial Reformer: President Grant and his Indian Problem," *Arizona and the West* 13 (Winter 1971): 323-42; Paul Stuart, *The Indian Office: Growth and Development of an American Institution, 1865-1900* (Ann Arbor, MI: University Microfilms International, 1979); Henry Fritz, *The Movement for Indian Assimilation: 1860-1890* (Philadelphia: University of Pennsylvania Press, 1963); Francis Paul Prucha, *The Great Father*.

preeminent scholar of federal Indian policy, Francis Paul Prucha, described the apportionment in this manner: “Specific government functions were handed over to church groups, a development that indicated not only the failure of the governmental processes in regard to the ‘Indian question’ but also the pervasive moral and religious influences on the national outlook.”²⁶⁷ There are several books that provide insight into the organization and administration of agencies by religious organizations.²⁶⁸ While these books are helpful from a historical standpoint, they provide little analysis of the implications for accountability and public-private partnerships.

This study will both shed light on issues of constitutional importance and examine an administrative question: what can the Peace Policy tell students of administrative and constitutional law about the possibilities and problems of partnering with private organizations? This study provides an examination of both the structural and cultural norms that were used for accountability and to gain capacity. In doing so, I will put Grant’s policy into a larger context of federal Indian policy and federal administration before and after its implementation.

The Use of Religious Organizations to Administer Federal Indian Policy: 1869-1882

When Ulysses S. Grant was elected president in 1868, federal-tribal relations were tense. In the 1850s, the federal government embarked on concerted treaty-making with Western tribes.²⁶⁹ These treaties pledged funds, rations, and military protection that the federal government often failed to deliver. The unmet promises, accompanied by confinement and

²⁶⁷ Francis Paul Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900* (Norman, OK: University of Oklahoma Press, 1976): 33.

²⁶⁸ Rayner W. Kelsey, *Friends and the Indians, 1655-1917* (Philadelphia, 1917); Peter Rahill, *The Catholic Indian Missions and Grant’s Peace Policy, 1870-1884* (Washington, 1953); Beaver, *Church, State, and the American Indian*; Robert Keller, *American Protestantism and United States Indian Policy, 1869-1882* (Lincoln: University of Nebraska Press, 1983).

²⁶⁹ Francis Paul Prucha, *The Great Father*.

increased white settlement across the West, fueled unrest. The Civil War only exacerbated the problem. Federal troops were often crucial in maintaining some separation between white settlers and tribes and these troops were withdrawn from the frontier in order to fight the Confederacy.²⁷⁰ In addition, Presidents Lincoln and Johnson paid more attention to the Civil War and Reconstruction than to the administration of federal Indian policy.²⁷¹ The result was that the period after the Civil War marked a “decade or more of desperate fighting in the West.”²⁷²

For many Americans, unease in the West was made worse by the feeling that the Indian Office was mired in corruption and problems with political patronage. Almost all positions were chosen by Presidential appointment from the head of the Indian Office to agents in the field. The only non-political appointees were sub-agents chosen by the agents and not the Washington administrative office.²⁷³ Positions in the Indian Office provided numerous, lucrative sources of political spoils.²⁷⁴ As Charles Schurz noted almost fifteen years later, “The Interior Department is the most dangerous branch of the public service. It is more exposed to corrupt influences and more subject to untoward accidents than any other...It is a constant fight with the sharks that surround the Indian bureau, the General Land Office, the Pension Office and the Patent Office, and a ceaseless struggle with perplexing questions and situations, especially in the Indian service.”²⁷⁵

Patronage and corruption were not the only problems facing the office. The structure of the agency and its relation to regional and local units created more difficulties in administration.

²⁷⁰ Stuart, 16-17.

²⁷¹ See, for example, Stuart, 17.

²⁷² Francis Paul Prucha, *The Great Father*, 168.

²⁷³ Stuart, 27.

²⁷⁴ Prucha, *The Great Father*, 162-3.

²⁷⁵ Carl Schurz to President-elect Garfield, Jan 2, 1881, *Speeches, Correspondence and Political Papers*, IV (New York: G.P. Putnam's Sons, 1913): 81-82.

One problem of administration was common to all federal agencies that administered policy across the rapidly expanding nation: distance and communication. As Paul Stuart explains, “Since the local units of organization, the Indian Agencies, were many and far-flung, separated from each other and from the Central Office by considerable distances, and since transportation and communications were slow, obtaining information about activities at the agencies and exerting control over these activities presented a formidable problem for the Indian Office.”²⁷⁶ Simply getting annual reports from Indian agents was occasionally difficult. Larger problems could easily go unnoticed and unreported for years. The main system of local accountability came from the rivaling political machines. Accusations of corruption and fraud were political tools more than purely altruistic aid to the government and tribes.

Even when federal officials wanted to assume more direct control of regional or field administration, the organizational structure of the office prevented concerted action. The Commissioner of Indian Affairs and his employees had little authority to control field officers as Paul Stuart explains: “Washington officials, who were supposed to control organizational activity, did not control the appointment of field or supervisory personnel. They had little activity designed to direct or coordinate the behavior of subordinates.”²⁷⁷ Most of the important decisions in the administration of federal Indian policy came at the agency level with the Indian agents and regional superintendents making most of the decisions about implementation and accountability. The Indian Office had a role in collecting annual reports and acted as a focal point for general dissatisfaction.

During the years before and after the Civil War, the Indian Office also came under threat from rival administrators: the War Department. The army had always played a crucial role in

²⁷⁶ Stuart, 73.

²⁷⁷ Stuart, 13.

managing federal Indian policy. Forts had historically been centers of trade and supplies. As white settlers moved into territorial America, troops also helped maintain peace on the frontier. Until 1849, the Indian Office was located in the War Department. The Interior Department was created in 1849 as an amalgamation of unwanted bureaus from existing departments.²⁷⁸ By the 1860s, army officers felt the ineptness of the Indian Office was responsible for the increased conflict which strained military resources. Some army officers, bureaucrats in the War Department, and congressional supporters actively pushed a bill to transfer the Indian Office back to the War Department for over a decade. In his annual report Major General H. W. Halleck suggests that the “only way in which this murderous frontier war can be terminated within a limited period, is to remove the Indians to some large and well-defined reservation, placed entirely under military authority, and to exclude all white settlers therefrom... The fault is in the system itself, and no efficient remedy can be applied so long as that system is continued.”²⁷⁹ The military solution won further support in October 1868 when the Peace Commission reversed its earlier decision to reject transfer in light of increased hostilities.²⁸⁰

The threat to the Office’s reputation as well as its turf led to a rapid and strident response from the Commissioner of Indian Affairs N. G. Taylor. In his annual report, Commissioner Taylor laid out eleven different arguments against removal including an appeal to the expertise of the department, a critique of the War Department’s record on spending, and several attacks designed to play on the nation’s fear of a standing army in peace time. He concluded by promoting a recommendation of the Peace Commission report of January 1868: the creation of a Department of Indian Affairs separate from both War and Interior. He writes, “In his [the head

²⁷⁸ See, French-Hodson, “New Economics of Organization and Nineteenth-Century Bureaucracies.”

²⁷⁹ H. W. Halleck, “Report,” in “Report of the Secretary of War Ad Interim,” *ED No. 1*, 40th Cong., 2nd Sess. 74 (1868).

²⁸⁰ Prucha, *The Great Father*, 177.

of a Department of Indian Affairs] hands ought to be placed all the power necessary for the prompt, vigorous, and efficient discharge of the duties imposed upon him by law in the conduct of all Indian affairs... With such an organization, having a competent head, well versed in Indian character and the history of our Indian affairs, holding in his own hands all necessary powers for prompt and vigorous action, the nation might confidently expect peace and prosperity on our borders.”²⁸¹

Taylor’s suggestions, however, made little headway. Presumably neither the Departments of Interior nor War was interested in surrendering complete control of Indian affairs. Moreover, while Grant was not pleased with the administration of Indian affairs, his solution, the Peace Policy, looked to the military and religious organizations for reform. At this time, Congress gave the President room to experiment with American Indian policy while its focus was on southern Reconstruction.

Few in Grant’s administration questioned the political nature of the Indian Office problem.²⁸² But even with that knowledge, it was not readily apparent how to fix the problem. Qualified individuals from the East were unlikely to want to move to isolated reservations to take up a low paid position as an Indian agent. Presidents had little choice but to rely on congressmen for recommendations on qualified individuals. Grant almost immediately called attention to the problems with administration of federal Indian policy. In his first State of the Union speech, he announced a desire for a new approach: “From the foundation of the Government to the present the management of the original inhabitants of this continent – the Indians – has been a subject of embarrassment and expense, and has been attended with continuous robberies, murders, and

²⁸¹ N. G. Taylor, “Report of the Commissioner of Indian Affairs,” November 23, 1868, in “Report of the Secretary of the Interior,” *ED*, 40th Cong., 3rd Sess. 475 (1869).

²⁸² Beaver, 124.

wars.”²⁸³ Grant did not come into office with a definite plan. Instead, as the historian Robert Utley explains, “Grant remained pragmatically open minded on Indian policy as he did on other issues confronting his administration. He did not consciously craft the Peace Policy as an instrument of radical change.”²⁸⁴

In fact, Grant did not originally intend to give a large role to religious groups. Grant may have been unwilling for so drastic a change as transferring the Indian Office to the War Department. But as a military man, President Grant had a deep faith in the character and expertise of military officers.²⁸⁵ Grant initially planned to appoint military officers as Indian agents. The plan was not original. In the appropriation of funds for the Medicine Lodge treaty signatory tribes, Congress required that the half-million dollar fund be spent under the direction of General William T. Sherman.²⁸⁶ When the Quaker leadership had a meeting with President Grant after his election, the President argued that “military agents would be more reliable because they had a greater stake in maintaining peace with the tribes.”²⁸⁷

The initial view of Grant’s administration was that military control would be forthcoming. However, President Grant was pragmatic and willing to try other approaches to end the corruption in the administration of federal Indian policy. Grant’s Commissioner of Indian Affairs, Ely Parker, advocated for a small experiment with agency management by religious groups.²⁸⁸ In addition, the Indian Peace Commission had recommended that missionaries and benevolent societies should be invited to “this field of philanthropy nearer

²⁸³ Ulysses S. Grant, “First Inaugural Address,” March 4, 1869, found at http://avalon.law.yale.edu/19th_century/grant1.asp.

²⁸⁴ Robert Utley, *The Indian Frontier of the American West 1846-1890* (Albuquerque: University of New Mexico Press, 1984): 130.

²⁸⁵ There is also some evidence that President Grant, like other military officers supported transfer and military appointments in order to maintain steady employment for veterans.

²⁸⁶ Utley, 136-7.

²⁸⁷ Waltmann, 332.

²⁸⁸ Waltmann, 332.

home.”²⁸⁹ Several Quaker delegations also visited Grant at the beginning of his tenure to advocate a more benevolent Indian policy.²⁹⁰ The Hicksite Friends prepared “an address to the national government expressing the readiness of the Friends to undertake without compensation such service as would benefit the Indians.”²⁹¹

Again, this was not an unprecedented move. The federal government had distributed its entire Civilization Fund to religious organization with churches and schools on tribal land since 1819.²⁹² Congress had also more recently experimented with distribution of funds through religious groups as a way to prevent fraud. In the summer of 1868, Congress appropriated \$45,000 in relief to Sisseton and Wahpeton Sioux in the hands of Episcopalian Bishop Whipple without consulting him. He initially refused. But he was informed that the tribes would lose the funds if he did not accept. Whipple took on the mission and purchased goods at fair prices and instituted a work program. The experiment was seen as a great success.²⁹³

In the end, Grant chose a middle road. He appointed only 18 civilians, all of whom were Quaker, as superintendents or Indian agents. The other 68 positions went to military men.²⁹⁴ The Quakers had been approached by Commissioner of Indian Affairs Parker to provide names of Friends who would be willing to take on responsibilities in the Northern and Central Superintendencies. His letter stated:

General Grant, the President elect, desirous of inaugurating some policy to protect the Indians in their just rights and enforce integrity in the administration of their affairs, as well as to improve their general condition, and appreciating fully the friendship and interest which your Society has ever maintained in their behalf, directs me to request that you will send him a list of names, members of your Society, whom your Society will endorse as suitable persons for Indian agents.

²⁸⁹ Prucha, *The Great Father*, 156.

²⁹⁰ *Ibid.*, 157.

²⁹¹ Beaver, 126.

²⁹² *See*, Beaver.

²⁹³ Beaver, 128-9.

²⁹⁴ Waltmann, 332.

Also to assure you that any attempt which may or can be made by your society for the improvement, education, and Christianization of the Indians under such agencies will receive from him, as President, all the encouragement and protection which the laws of the United States will warrant him in giving.²⁹⁵

The Orthodox Friends took charge of nominations for the Central Superintendency which included most of the tribes in Kansas and the Indian Territory. The Liberal Friends took over nominations for the Northern Superintendency which covered much of Nebraska.²⁹⁶

Grant's mixed system of nominations created enemies on both sides of the aisle. In 1870, Congress struck a blow to the President's plans for military administration. The ban on military appointments was supported both by those desirous of patronage appointments and many religious reformers who distrusted the military influence.²⁹⁷ Using the nationwide negative publicity that followed an army assault on a smallpox-infested Piegan village in Montana, the anti-army legislators were able to vote down a bill to transfer the Indian Bureau to the War Department and push through a measure prohibiting army officers from holding civilian positions. As Henry Waltmann contends, the denial of military nominations "had a profound effect on the direction Grant was to take in Indian administration."²⁹⁸

Grant was determined not to allow the measure to disrupt his reform of the Indian Office. General Sherman reports that when the Congress banned military officers from civilian posts, President Grant quietly replied, "Gentlemen, you have defeated my plan of Indian management: but you shall not succeed in *your* purpose, for I will divide these appointments up among the religious churches, with which you dare not contend."²⁹⁹ Vincent Colyer, an Episcopalian, had hoped this would be Grant's reaction. While advocating for a military ban, Colyer had also

²⁹⁵ Kelsey, 169.

²⁹⁶ Waltmann, 325.

²⁹⁷ Prucha, *American Indian Policy in Crisis*, 50.

²⁹⁸ Waltmann, 334.

²⁹⁹ William Tecumseh Sherman, *Memoirs*, vol. II (ed. 4) (New York: Charles L. Webster & Co., 1892): 437.

actively recruited other denominations to avoid a return to the patronage system if army supervision was ended.³⁰⁰

Grant asked Colyer to put together a proposal of how the apportionment of agencies should proceed. Colyer hurriedly put together a proposal that theoretically based apportionment on existing mission locations and commitment to the tribal cause. The government sent invitations to the Missionary Society of the Methodist Episcopal Church, the American Baptist Home Mission Society, the Board of Foreign Missions of the Presbyterian Church in the USA, the American Missionary Society (Congregational), the Board of Foreign Missions of the Reformed Church in America, the American Unitarian Association, the Protestant Episcopal Church's Board of Missions of the Domestic and Foreign Missionary Society and the American Church Missionary Society (an unofficial, voluntary Episcopal organization). All accepted except the last although the Presbyterians, Episcopalians, Reformed, and Methodist officers expressed reservations.³⁰¹ The Catholics were also approached through the chief clerk of Interior and were included in the initial allocation. However, they felt that their allotment of seven agencies was far below their commitment to missionary work. While they took responsibility for these agencies, they refused to cooperate with the Board of Indian Commissioners or the Indian Office over the next decade.³⁰² There were also accusations that Colyer had ignored the Southern religious organizations which had strong presences among the Five Civilized Nations. As R. Pierce Beaver explains, "The three large regional churches of the South – the Methodist Episcopal Church, South, the Southern Baptist Convention, and the Presbyterian Church in the

³⁰⁰ Prucha, *American Indian Policy in Crisis*.

³⁰¹ Beaver, 136.

³⁰² *Ibid.*

United States – were completely ignored, although they, despite small mission programs after the war, probably had more Indian members than all other Protestant churches together.”³⁰³

The task that the religious organizations were asked to take on was far from small. As Francis Paul Prucha writes, “What the government wanted from the churches was a total transformation of the agencies from political sinecures to missionary outposts. The religious societies were expected not only to nominate strong men as agents but to supply to a large extent the subordinate agency personnel.”³⁰⁴ The President officially only asked religious organizations for names of qualified people to nominate. However, because of the structure of the Office of Indian Affairs, control over the superintendencies and agencies gave churches almost complete control and authority over the tribes they were allocated. The success of the experiment depended largely on the commitment of the religious organizations and the structures they developed to create accountability and oversight.

Board of Indian Commissioners

The other major problem targeted by the Peace Policy was corruption in the purchasing of supplies. While dishonest agents exacerbated this problem, even with honest agents, purchasing supplies created enormous problems. Contractors were often dishonest about the quantity or quality of their goods. Bids were rigged. And when the goods reached the remote reservations, the agent often had to decide between taking substandard shipments and having nothing for the oncoming winter. The problems inherent in the system were exploited by shrewd and dishonest businessmen. Local politicians and community members often overlooked the

³⁰³ Beaver, 138. Beaver argues that this division reflected a larger bitterness over Reconstruction politics.

³⁰⁴ Prucha, *American Indian Policy in Crisis*, 54.

fraud because the costs came at the expense of the government and tribes while the benefits to businesses often resulted in kickbacks to politicians and economic activity in the territories.³⁰⁵

Francis Paul Prucha emphasizes the enormity of the problem when President Grant took over: “Supplying goods to the Indians – a multimillion-dollar business by the 1870s – was the chief arena for illegal and unjust economic gain at the expense of the government and the Indians.”³⁰⁶

In order to counter the fraud and deception in purchasing and supplying for the tribes, President Grant again turned to religious organizations, although less directly. In early 1869, Congress threatened to cut off appropriations for tribes and agencies due to the widely reported problems with fraud. Grant convinced them to continue the funding but to also grant him the authority to appoint a board to aid the Secretary of Interior in assessing Indian expenditures which amounted to over \$2,000,000 annually.³⁰⁷ The Indian Appropriation bill of 1869 authorized the President “to organize a board of commissioners, to consist of not more than ten persons, selected from among men eminent for their intelligence and philanthropy, to serve without pecuniary compensation, and who, under his direction, shall exercise joint control with the Secretary of the Interior over the disbursement of this large fund.”³⁰⁸ The board, named the Board of Indian Commissioners, represented another entry of private groups into the oversight and governance of American Indian affairs. However, the advocates of the policy saw it as a less drastic proposal than the alternative – an end of funding.³⁰⁹

³⁰⁵ See generally Prucha, *American Indian Policy in Crisis*, 41.

³⁰⁶ Prucha, *The Great Father*, 192.

³⁰⁷ Waltmann, 325-6.

³⁰⁸ "Report of the Commissioner of Indian Affairs," pp. 445-1058. In U.S. House. 41st Congress, 2d Session. *Report of the Secretary of the Interior, 1869* (H.Ex.Doc.1, Pt. 3). Washington: Government Printing Office, 1869. (*Serial Set* 1414).

³⁰⁹ See, Waltmann, 335.

The president immediately began to recruit individuals for the Board of Indian Commissioners. The nine members were eminent business and professional leaders who had demonstrated previous commitment to American Indian civilization efforts. The appropriation bill made no mention of the religious affiliation of the board members, and President Grant never set out an official apportionment scheme for the positions. But in practice each member represented one of the major religious organizations involved in tribal missionary work at the time.³¹⁰ There was one conspicuous exception. The board had no Roman Catholics. Their absence was significant given that they were “heavily involved in Indian missionary work” and as Prucha notes, “[I]t seems reasonable to suppose that [no Catholics] would have been welcome.”³¹¹

Grant purposefully chose the men appointed to the board for their religious connections and previous experience. One of the ongoing roles of the Board was to act as a liaison between the executive branch and their respective religious organizations. The connections between the board and the religious organizations proved mutually beneficial especially as the denominations began appointing and administering federal Indian policy on reservations. One Quaker Indian Agent noted, “I am of the opinion the Board of Commissioners needed the help of the religious denominations as much as they stood in need of aid from the commission.”³¹² The board relied on the information from the field from the religious agents and for publicity and public relations support for the overall mission of the Peace Policy from missionary boards. But without the board, religious organizations administering federal policy would be helpless to counter forces

³¹⁰ See Prucha, *The Great Father*, 159; Fritz, 75. And when a new board was appointed in 1875, they claimed that they had received their nominations from their particular churches and had a duty to those organizations as well. Prucha, *The Great Father*, 159.

³¹¹ Prucha, *The Great Father*, 159.

³¹² Cyrus Beede to Enoch Hoag, January 14, 1875; Box 2 (Letters), Hoag Indian Papers, 1865-1883, Ms. Coll. 1034; Haverford Special Collections, Haverford, PA.

off the reservation. And as Prucha notes, the board “brought the churches into closer association with men who helped to formulate Indian policy and furnished a substantial platform from which to preach the reforms devised.”³¹³

The board’s most important assignment was the ability to inspect all accounts, vouchers, and receipts related to Indian appropriations. They were also authorized to assist the government in purchasing supplies, travel through Indian country, and prepare reports on policies and programs of the Indian Office.³¹⁴ In July 1870, Congress expanded the board’s purview to include the inspection of all goods purchased for the Indians.³¹⁵ The board made immediate changes to the purchasing system: “The experienced businessmen who made up the committee on purchases recommended changes in the method of purchases in order to secure strict impartiality in the acceptance of bids and rigid inspection of the goods delivered to see that they conformed to the samples supplied.”³¹⁶

The biggest question that continually plagued the board was the extent of their authority to take action independently and to be consulted on all matters. In practice, the Secretary of Interior and the Indian Office sometimes bypassed the board when making decisions about disbursements and contracts.³¹⁷ By 1874, the board had become frustrated by the number of times their authority had been flaunted and with the organization of the Indian Office. They developed a proposal for immediate reform that called for the creation of a separate Indian Department independent from Interior. Their proposal was ignored. In protest, the entire board resigned.³¹⁸ As the biographer for the first chairman of the board wrote, “[The original Board of

³¹³ Prucha, *American Indian Policy in Crisis*, 43.

³¹⁴ Prucha, *The Great Father*, 159.

³¹⁵ Prucha, *American Indian Policy in Crisis*, 41

³¹⁶ Prucha, *American Indian Policy in Crisis*, 41

³¹⁷ Prucha, *American Indian Policy in Crisis*, 43-4.

³¹⁸ Prucha, *American Indian Policy in Crisis*, 45.

Indian Commissioners] freely gave of their busy lives for the sake of the Indian, but when they found repeatedly during the last year that their recommendations were ignored, that bills, laboriously examined by them and rejected by them, were paid, that gross breaking of the law in giving contracts was winked at, and that important matters were not submitted to them at all, then they decided that their task was as useless as it was irritating.”³¹⁹

President Grant appointed new board members less inclined to question departmental and executive decisions. The board members all still had connections with various religious organizations and felt strongly about their role in bringing religious sentiment to federal Indian policy and administration. The Board continued operating until 1934 but more as a consultative body than an independent force.³²⁰

The religious organizations’ control over regional and reservation administration did not last as long. By the end of Grant’s presidency, both the government and missionary societies had become dissatisfied with the arrangement. Charles Schurz became the new head of the Interior Department under Rutherford Hayes. Schurz hoped to use the Interior Department to put in place his ideas about the civil service and religious administration was not part of that scheme.³²¹ For the religious groups, the task was enormous, the government rarely provided adequate funding, and Eastern congregations were more interested in overseas missions than those in America. Missionaries were unsurprised that the new president would change tactics. In the run-up to the election, James Rhoads, secretary of the Associate Executive Committee on Indian Affairs for the Orthodox Friends, noted, “It seems to me probable that the President will continue the present management of Indian Affairs, so long as he is in power. Another President would

³¹⁹ Charles Lewis Slattery, *Felix Reville Brunot: 1820-1898* (London: Longmans, Green, and Co., 1901): 219.

³²⁰ See, Fritz, 83.

³²¹ Prucha, *American Indian Policy in Crisis*, 61.

probably find himself so indebted to partisans for his election, that he would be compelled to give the nominations of Agents to the Senators & thus restore the care of the Indians to political agents as formerly.”³²² By 1882, the partnership had basically ended for two reasons: in some cases, the government stopped asking certain religious organizations and, in others, the missionary groups simply withdrew out of disillusionment with the government.³²³

Evaluating the Peace Policy: Mission Accomplishment

When the government turned to religious organizations to help implement the Peace Policy goals, the President and cabinet heads had high hopes for radical transformation. Government officials hoped that missionary administration would end corrupt dealings and prepare tribes for contact with white settlers through a process of “civilization” which involved religious and vocational trade instruction. The President and Congress intended for the Board of Indian Commissioners to regularize and oversee appropriations to the Indian Office. The program goals were ambitious; and, while religious organizations made progress on some accounts, systemic problems were never fully alleviated.

Religion and Education Programs

The missionary organizations were perhaps most comfortable in their role as missionaries and educators. Protestant and Catholic organizations had been involved in missionary work among American Indian tribes from the arrival of European settlers in the Americas.³²⁴ Since 1818, the federal government had been providing \$10,000 per year to support educational efforts

³²² James Rhoads to Enoch Hoag, April 1, 1876; Box 2 (Letters), Hoag Indian Papers, 1865-1883, Ms. Coll. 1034; Haverford Special Collections, Haverford, PA. For biographical information on Rhodes, see Henry Hartshorne, “Memoir of James E. Rhoads, M.D. LL.D.,” *Proceedings of the American Philosophical Society* 34 (Dec. 1895): 354.

³²³ Prucha, *The Great Father*, 163-4.

³²⁴ Beaver, 7.

of the religious organizations on tribal land.³²⁵ This past experience provided the initial rationale for asking religious organizations to take control of tribal reservations. As Commissioner of Indian Affairs Francis Walker explained, the government hoped the religious organizations “in and through this extra-official relationship” would “assume charge of the intellectual and moral education of the Indians” and bring the accomplishment of this goal “within the reach of their influence.”³²⁶

At the outset of the Peace Policy, the religious organizations quickly expanded their work on reservations, especially in the area of schools. In 1869 at the start of the policy, there were only 15 Protestant missionaries, 10 schools, 17 teachers, 594 pupils among American Indian tribes. By 1873, there were 69 mission schools, 86 teachers, 2690 pupils, 30 church buildings.³²⁷ One of the largest increases in effort came from the Quakers. In the Central Superintendency, the number of schools increased from 4 to 15 and the number of pupils from 150 to around 1,000.³²⁸ Both the government and religious organizations were optimistic about the efforts represented by these numbers. In 1873, the Commissioner of Indian Affairs, E. P. Smith, wrote the Secretary of Interior in his annual report, “I believe that no year in the history of Indian relations with the Government has witnessed such a marked general movement toward the civilization of the Indian. For three years the appliances of civilization have been brought to bear with increasing force upon the red men of the country, and the results produced are gratifying and most hopeful for the future.”³²⁹ On the other side, the religious organizations were also hopeful for the result of their efforts. When Enoch Hoag resigned as Superintendent of the

³²⁵ Beaver, 68.

³²⁶ *Annual Report of the Commissioner of Indian Affairs* (1872): 72.

³²⁷ Beaver, 153. Both of these figures exclude mission and education work among the Cherokees. The 1869 figures omitted these numbers so Beaver left them out of the 1873 numbers. Because there were always strong religious and educational efforts among the Cherokee, the inclusion of these figures would have increased both sets of numbers.

³²⁸ Beaver, 153.

³²⁹ E.P. Smith, *Annual Report of the Commissioner of Indian Affairs to the Secretary of Interior* (1874): 3.

Central Superintendency, he wrote to the Associated Executive Committee of Friends on Indian Affairs for the Orthodox Friends:

All the agencies are now provided with the requisite comforts and conveniences for the advancement of the Indians in all their interests – and the Reports of the several agents just issued indicate an advanced and very encouraging result of our labor. And I believe that a faithful and energetic continuance of the same a few years more will leave the tribes of this Superintendency in a condition to manage their own interests without any other reliance on the General Government than...protection under their Treaty rights.³³⁰

However, the optimism of official reports was hardly matched by results. The government hoped that training in English and manual trades would turn tribal reservations into industrious, American-style communities which could peacefully coexist with the rapid onslaught of white settlers pouring into the region. But in actuality, the 1870s was one of the most violent on the Plains.³³¹ While schools and training undoubtedly went some distance to meeting the government's goals, the number put through the program were never enough to fully achieve the goal. When historian Henry Fritz reviewed the impact of Grant's policy, he wrote, "The question of how much the 'Peace Policy' accomplished toward the assimilation of Indians is uncertain, but it seems doubtful whether anything in that direction was achieved at most agencies."³³² At the end of the 1870s, most tribes still relied heavily on annual annuities to pay for food and goods for the year rather than gaining self-sufficiency through agricultural cultivation (which still only represented a small portion of tribal lands).³³³

Some of the problems with the program of assimilation could be linked with religious administration. However, the majority of the shortcomings could be tied to the congressional failure to appropriate adequate funds for such a massive undertaking and more systemic

³³⁰ Enoch Hoag to Edward Earle, November 9, 1875; Box 2 (Letters), Hoag Indian Papers, 1865-1883, Ms. Coll. 1034; Haverford Special Collections, Haverford, PA.

³³¹ Utley, 155.

³³² Fritz, 160-1.

³³³ Fritz, 162.

problems with how the Indian Office administered federal Indian policy at the federal level.³³⁴

While the federal government encouraged administrators to start training in trades and agriculture, Congress failed to provide any funds for the necessary equipment and supplies.

In terms of federal policy, Lawrie Tatum, an Iowa Quaker farmer assigned to the Kiowa and Comanche Agency, recognized early into his administration the larger problems.³³⁵ The Kiowa and Comanche had told him that their next annuity would be smaller than normal because they had “behaved well” during the previous year. They went on to tell him that they only received extra rations and annuities when they went on the war path and the federal government bribed them back onto the reservation.³³⁶ The government annuity for 1869 supported this claim by being smaller. Tatum asked the Indian Office why this occurred and the Commissioner explained that the money for the previous depredations had been taken out of that year’s annuity despite the fact that no depredations had occurred in that year.³³⁷ Tatum also criticized the Indian Office’s policy of paying for the return of captives because it only encouraged more raiding by the tribes under his control.³³⁸ Tatum ended up resigning because of disagreements with the Indian Office and his religious conference on the decision to release a Kiowa chief who had led a massacre in Texas.³³⁹ Regardless of the tactics and funds of missionary organizations, these larger systemic problems made “accomplishment of [assimilation] objectives impossible.”³⁴⁰

The largest problem may have simply been the naïve belief held by many in government and benevolent groups of the East that conflict between tribes and settlers could be solved with

³³⁴ Fritz, 167.

³³⁵ For a description of Tatum’s time at the agency, see, Lawrie Tatum, *Our Red Brothers and the Peace Policy of President Ulysses S. Grant* (Philadelphia: 1899); Aubrey L. Steele, “The Beginning of Quaker Administration of Indian Affairs in Oklahoma,” *Chronicles of Oklahoma* 17 (Dec. 1939): 364-392.

³³⁶ Steele, 372.

³³⁷ Steele, 372.

³³⁸ Steele, 375.

³³⁹ Steele, 391-92.

³⁴⁰ Fritz, 167.

assimilation programs. For the government's initiative to work, the policy would have had to cover almost 100 times the number and required greater coercion to force tribes to adopt an agrarian lifestyle. Even if these two things could be accomplished, the government did nothing to change the views or alter the atrocities committed by white settlers. Even though education and missionary efforts did not seem to make a huge difference in overall policy, many religious organizations kept up their efforts even after they had no responsibility for agency administration.³⁴¹ In part, the continued engagement could be seen as a difference in scale. For the government's vision to be successful, it required a near system-wide acceptance and use of the policy with little interference from outside forces. But for the mission groups, the religious and education mission was successful on a smaller scale through gaining congregants and helping individuals.

Interdenominational Rivalries

In order to secure continued support from Eastern congregations, missionary-agents had to show results and describe the extent of their efforts. Each religious organization had an incentive to take on more responsibility in order to compete for possible converts and claim credit for the efforts. These incentives led to one of the most perverse outcomes in the Peace Policy – fierce interdenominational bickering and fighting which prevented the cooperation necessary for successful implementation of the governmental policy.³⁴² As Prucha laments, “It was unfortunately the case that maintaining a position against a conflicting group was often more powerful motivation than concern for the welfare of the Indians.”³⁴³

³⁴¹ Beaver, 153, 161.

³⁴² In addition, some other religious organizations tried to get an allotment of the Indian Office work in large part because of the prestige. Beaver, 159.

³⁴³ Prucha, *American Indian Policy in Crisis*, 56

While agencies were allotted to specific organizations, it was unclear if other religious organizations could establish missions on those reservations. Fights ensued on the reservations and in Washington over the right to establish missions. Some of the major fights involved Catholics trying to establish missions on multiple reservations.³⁴⁴ The denominational fights were self-absorbed, as R. Pierce Beaver explains: “Neither the Protestant nor the Roman Catholic missionaries and officials were really concerned about the Indian’s right to maintain and defend his own religion, and they were fighting more for freedom of action by the missionary agents.”³⁴⁵

These battles were not just between Protestants and Catholics. One of the most public battles involved an attempt by the Episcopal Church to take the Santee agency from the Hicksite Friends.³⁴⁶ William Welsh, chairman of the Episcopal Standing Committee on Indian Affairs, wrote Secretary of Interior Delano requesting a transfer because the Episcopal Church had established the first mission there and an alleged tribal council had unanimously requested transfer.³⁴⁷ An investigation by the Friend’s Executive Committee found no truth to the claims and the Interior Department refused to accept the transfer.³⁴⁸ These battles took time and resources away from the mission of actually serving tribal communities and accomplishing governmental goals. The problem with partnering with multiple groups was the competition for prestige and funds between those groups.

Ending corruption

³⁴⁴ Beaver, 159. Some of the major battles happened at the Methodist agency at Round Valley, CA, and in the Dakotas.

³⁴⁵ Beaver, 157.

³⁴⁶ Fritz, 152-3.

³⁴⁷ *Ibid.*

³⁴⁸ *Ibid.*

Grant and the Indian Office hoped that the Peace Policy would end corruption in the office through two different means: (1) appointing honest, Christian men and women as superintendents, agents, and employees; and (2) overseeing purchasing and appropriation by creating an independent oversight committee, the Board of Indian Commissioners. The Commissioner of Indian Affairs Francis Walker explained the Presidents thinking: “[T]he Executive was also influenced by the consideration that the general character of the Indian service might be distinctly improved by taking the nomination to the office of agent out of the domain of politics and placing it where no motives but those of disinterested benevolence could be presumed to prevail.”³⁴⁹ Each of these elements made a difference in the office but neither was enough to overcome larger political pressures and decades of mismanagement.

The Board of Indian Commissioners brought the first real independent assessment of purchasing and acquisition for the Indian service. The attempt of government officials to circumvent the Board in some instances is actually a testament to the effectiveness of the Board. The Board reformed contracting and fiscal office practices which led to major savings for the department and actually higher quality goods for the tribes.³⁵⁰ Occasionally, the Board could effectively marshal quick federal action because of their proximity to and influence with important decision-makers. For example, Vincent Colyer, secretary to the Board, convinced the government to bring swift food aid to the Apaches when it was necessary to help the missionary effort at agency administration.³⁵¹ Despite some successful efforts by the Board, the government, pushed by powerful forces, began avoiding Board oversight by 1873. With the resignation of the entire Board and appointment of new commissioners, the Board of Indian Commissioners was able to continue but with less influence. As Francis Paul Prucha laments,

³⁴⁹ *Annual Report of the Commissioner of Indian Affairs* (1872): 72.

³⁵⁰ Prucha, *American Indian Policy in Crisis*, 42; Utley, 153-4; Prucha, *The Great Father*, 192.

³⁵¹ Utley, 139.

“Yet no matter how much the board may have helped, its failure to break through entrenched corruption meant that it was not the solution to the problem.”³⁵²

When filling the seats on the Board of Indian Commissioners, the President was able to offer a position accompanied by prestige, which did not require relocation, and which provided access to influential decision-makers. When religious organizations tried to recruit church members to take agency positions, the offices they offered had none of these characteristics. Instead an agency administrator was sent to a remote location, paid a stipend that had not risen in fifty years (only \$1500 annually), and could only communicate problems to the Commissioner of Indian Affairs or the President through regional superintendencies.³⁵³ The job itself required an individual with many talents and diplomatic capabilities. As Lawrie Tatum, a Quaker Indian agent, explained, the job required an Indian agent to take on five different roles.³⁵⁴ First, the agent was the governor ensuring the laws of the federal government were duly executed. For example, the Indian agent was responsible for licensing Indian traders and policing their actions on reservations.³⁵⁵ Second, the agent was the legislature for the agency. An agent’s orders were treated as laws binding the reservation unless overturned by a regional superintendent.³⁵⁶ Third, the Indian agent was a judge making final decisions in disputes involving both tribal members and white settlers.³⁵⁷ Fourth, the Indian agent acted as sheriff ordering the arrest of individuals who broke reservation or federal law.³⁵⁸ Finally, the Indian agent was an accounting agent keeping track of reservation purchases and making reports to Washington.³⁵⁹ Off the reservation,

³⁵² Prucha, *The Great Father*, 192.

³⁵³ Beaver, 145.

³⁵⁴ Tatum, 88-92.

³⁵⁵ Tatum, 88-9.

³⁵⁶ Tatum, 89.

³⁵⁷ Tatum, 90.

³⁵⁸ Tatum, 90.

³⁵⁹ Tatum, 92.

these jobs would be held by five different individuals, but on the tribal reservations, the Indian agent had to find a way to handle all of these responsibilities.

These characteristics provided persistent challenges to all of the religious organizations trying to fill the posts. In his annual report of 1873, the Commissioner of Indian Affairs conceded that in the past religious organizations had appointed agents and employees that failed to meet the government standards.³⁶⁰ Reports continually surfaced of agents or employees who were incompetent, lacking Christian character, or even corrupt.³⁶¹ Western statesmen and some military men often contended that the religious organizations appointed good Christian men but not businessmen which resulted in poor management of agencies. This view became so prevalent that when President Hayes's new Commissioner of Indian Affairs E. A. Hayt spoke to the joint congressional committee studying the possible transfer of the Indian Office to the War Department, he contended that "he accepted ministers as agents only if they had previous commercial experience; experience in the ministry was insufficient for the proper management of an Indian Agency."³⁶²

Despite the rhetoric from opponents of Peace Policy, the evidence uncovered by historians does not indicate that this was a prevalent phenomenon. Part of the problem may have come from the lack of direction from the Department of Interior initially. Some missionary organizations set up committees from the beginning to set out desirable traits in agents and screen for those characteristics. Other boards, however, just relied on recommendations from local churches and politicians. Commissioner of Indian Affairs, E. P. Smith, noted in his annual report of 1874 the vast improvement in agents after better communication between the Department and the religious groups:

³⁶⁰ *Annual Report 1874*: 3.

³⁶¹ Prucha, *American Indian Policy in Crisis*, 55; Utley, 154.

³⁶² Stuart, 36.

The relation of the Bureau to the several religious societies, in accordance with whose nominations its agents have been appointed, have been harmonious, and, it is believed, mutually helpful. There can be no question but that, as a class, the persons thus secured for the difficult and responsible position of Indian agent are conscientious and faithful men. Exceptions to this statement have been less frequent the past year than heretofore, owing to the increased care of the religious bodies in their selection of nominees, which has probably resulted from a quickened sense of the responsibility assumed by them, and their enlarged information as to the requisite qualifications of an efficient agent.³⁶³

While opponents of the Peace Policy argued that incompetence was a direct result of religious nomination, the mission boards, the Board of Indian Commissioners, the Commissioner of Indian Affairs, and the Secretary of the Interior all countered that the small salary of the agents prevented either the President or the religious organizations from recruiting quality candidates.³⁶⁴ As E.P. Smith explained in his annual report in 1874:

Scarcely any service in the Government is more delicate and difficult than that of an Indian agent. On no Government post of duty is an officer more liable to be approached and manipulated by designing men, and nowhere else are the apparent facilities for undetected fraud so great as in many of these distant and inaccessible fields... And yet the Government offers for such service, requiring such qualifications, the sum of \$1,500 per annum as pay of an agent and the support of his family in a country unusually expensive. Can it be that the Government intends either deliberately to maim and cripple its service, or to wrong honest and efficient officers? I respectfully repeat and urge the recommendation of last year, that the salaries of Indian agents be increased to at least \$2,000 per annum for the eastern agencies, and \$2,500 for the remote.³⁶⁵

Despite the continued pleas for an increase in salary, Congress refused to honor the request. Throughout the period, religious organizations often found it necessary to supplement the salary with their own funds. While supplemental salaries helped the mission boards find candidates, this reliance on outside funding did nothing to enhance the capacity of the Indian Office to recruit personnel. When the Peace Policy was ended, President Hayes still was constrained in finding secular appointees that would agree to the office with such a low salary.

³⁶³ *Annual Report 1874*, 13-14.

³⁶⁴ *Beaver*, 146.

³⁶⁵ *Annual Report 1874*, 14.

In addition, Washington politicians and bureaucrats often still attempted to bring politics into the process. Religious organizations often had a difficult time counteracting these pressures especially if they felt that their participation in the program depended upon taking presidential or agency suggestions. Some of the problems that arose had nothing to do with a lack of political accountability. Instead the problem was often too much political influence.³⁶⁶ It is hardly surprising that the new program faced intense pressures given the huge profits that had been previously reaped through shady deals and political nominations.³⁶⁷ Because nominations still came from the President and many went through the Senate, there was plenty of room for partisan maneuvering. Religious organizations were not always skilled in navigating this process. As Prucha contends, “Missionary boards did not know just how to counteract senatorial pressure for or against confirmation of particular individuals and often gave in rather than fight the issue.”³⁶⁸

Senators and the executive office did not put pressure on all religious organizations in an equal manner. The Orthodox Friends did not feel the political pressure for many years. During the administration of President Hayes, the Orthodox Friends had challenges from politicians to their nominations. After a conference with President Hayes and no improvement, the Orthodox Friends removed their group from the nomination scheme.³⁶⁹ Other denominations felt pressure more immediately. The Baptist executives reported to their committee on American missions that the Commissioner of Indian Affairs had forced their consent to a particular nomination.³⁷⁰ An incident with Methodist appointment made the national news. The Methodist Missionary

³⁶⁶ Prucha, *The Great Father*, 162-3.

³⁶⁷ Prucha, *American Indian Policy in Crisis*, 58-9.

³⁶⁸ Prucha, *American Indian Policy in Crisis*, 59

³⁶⁹ Beaver, 149.

³⁷⁰ Beaver, 149.

Board and the Secretary of Interior had agreed to the appointment of a particular minister as an Indian agent. *The Nation* explains what happened next:

Here, however, Senator Chandler arrives with a new man, also a Methodist minister, but one whom the Methodist Society had dropped for irregularities, and could neither recommend nor employ, and who had consequently gone into 'politics,' and was then actually a candidate for the Michigan Legislature; and the President, at Chandler's request, cancelled the first appointment, and put the new man in the vacant place. Now, General Grant undoubtedly did not know the facts of the man's history; he simply took Chandler's advice and made no enquiry.³⁷¹

The outside political influence was one of the other factors that prevented the success of the Peace Policy. Just as the Department had previously found it difficult to make nominations without bowing to political pressure, it is unfair to think that the religious organizations would not feel the same pressure. Retrospective evaluations vary in their view of missionary culpability. A sympathetic historian wrote that the "explanation is not that the societies picked poor agents but that the system had been largely nullified by political pressures and by the ability of the Indian Office to circumvent the efforts of societies and the Board of Indian Commissioners."³⁷² However, Bishop Whipple, an active participant in the policy and advocate for the American Indian tribes, wrote in his autobiography, "Wherever churches entered heartily into this work, it was a success. Where they used their position to provide places for friends, it was a pitiable failure."³⁷³

When politicians and local members of the "Indian ring" did not or could not influence the nomination process, the other option for getting rid of agents was making accusations of corruption. Politicians and the local partisan press were good at raising these charges and often

³⁷¹ "The "Explanation" in Reply to Mr.Cox." *Nation* 11, no. 281 (November 17, 1870): 324, 325. *The Nation Archive Premium Edition*, EBSCOhost (accessed March 27, 2010).

³⁷² Beaver, 146.

³⁷³ Henry B. Whipple, *Lights and Shadows of a Long Episcopate*, 551 quoted in Beaver at 145.

were successful in pushing denominationally-nominated agents from office.³⁷⁴ Bishop Hare, who had spoken out against corrupt agents, was distressed in 1878 when the Secretary of Interior ordered the Army to forcibly remove several agents that he felt were honest. The partisan press quickly turned on Bishop Hare as well.³⁷⁵ While not all individuals nominated by religious organizations were honest or skilled, many of the corruption allegations were simply part of the political game of the time.

And despite the problems, it is important not to completely judge the Peace Policy in a vacuum against some normative ideal. Instead, the Peace Policy's success should be evaluated against the alternative which was continued political nominations. After five years, Indian Commissioner E.P. Smith conducted this type of evaluation and concluded, "[B]y no plan likely to be adopted is it probable that better men can be secured for this service than the several religious bodies offer on their nominations to the Government."³⁷⁶ Even as Secretary of Interior Carl Schurz was pushing to end religious nomination in favor of civil service reforms, his evaluation of the policy in 1877 looks at the bigger picture: "The present system which permits religious societies to nominate candidates for Indian agencies is, in some respects, undoubtedly an improvement upon the former practice of making appointments in the Indian service on political grounds" but it was "by no means perfect." Schurz hoped to bring civil service reform to the entire Interior Department in order to introduce an "element of stability."³⁷⁷ The Peace Policy undoubtedly had limitations in meeting the immense challenge of complete reformation of the civil service in the Indian Department and also bringing stability to the frontier. However,

³⁷⁴ Beaver at 147.

³⁷⁵ Beaver at 149.

³⁷⁶ Smith, *Annual Report 1874*, 14.

³⁷⁷ Carl Schurz, *Annual Report of the Secretary of Interior*, 1877, House Exec. Doc. No. 1, 45th Cong., 2nd Sess., Vol. 8, xiv.

given the challenges faced by the religious groups, some progress was made on ending corruption on reservations and in purchasing.

Capacity Development

When President Grant decided to partner with religious organization to administer federal Indian policy, he was not only trying to accomplish the substantive goals of peace on the frontier and the end of Indian service corruption. Grant also hoped that the infusion of fresh religious talent would maximize scant departmental resources and help build a stronger Indian Service in the long run. Private religious organizations obviously helped find candidates for the job of Indian agent but they also were often responsible for bringing the agent's wife, schoolteachers, and missionaries to the agencies. The churches in the denomination also sent along offerings to supplement salaries, buy supplies, and support the mission. President Grant had also hoped the Peace Policy would help the Indian Service institutionally by building its authority and strengthening accountability mechanisms. On several of these fronts, religious organizations made a difference. Some of these contributions made a lasting impact on the department while others lasted only as long as religious participation in the Peace Policy.

The Indian Office was never a well-funded executive office. While tribes were given "trust funds" for land sales, Congress still had to annually appropriate what was due to the tribes as well as fund the executive office.³⁷⁸ The Commissioner of Indian Affairs and the Indian agents in the field often complained that congressional delays in appropriating funds resulted in unrest and even violence on the agencies.³⁷⁹ As previously noted, Indian agents were underpaid

³⁷⁸ For an example of the view about annuities at the time, see *Annual Report of the Commissioner of Indian Affairs* (1872): 10. Annuities are "the right of the Indian on account of his original interest in the soil" but distributed "at the discretion of the Government as to the specific objects."

³⁷⁹ See, for example, *Annual Report of the Secretary of Interior* (1876): iv. The report notes that the late appropriations may have encouraged peaceful bands to join with hostile causing problems in the North the previous year.

for the services they provided. To get decent agents and provide adequate funding for the agencies, religious organizations often used mission funds from congregant donations to aid the effort. The American Missionary Association supplemented the salary of their agents with “some thousands of dollars” to attract qualified candidates.³⁸⁰ The Quakers provided some of the largest inputs of funds. Purely for mission work, the eight Friend societies spent \$93,097 in 1876.³⁸¹ Reservation schools were particularly important to the Quakers. Annually, they supplemented government grants to schools. Each yearly meeting (the regional organizations) was given a school to support by sending supplies of books, clothing, and other items. Through this investment, the number of schools in the Central Superintendency increased from 4 to 15. The number of students educated increased from 150 to 1,000.³⁸²

The monetary investment of the religious organizations was one of the largest aids to the federal government. Especially in the area of schools and vocational training, the government gained many of the results they desired without having to expend public funds. The investments that religious organizations made in capital improvement projects had a lasting impact on the reservation. This is not to say that there was no downside to missionary funding. Congress and the executive had few incentives to make additional appropriations if the religious organizations felt obliged to fill in the gaps. As noted previously, Congress steadfastly refused to increase the salary of Indian agents despite persistent calls from the Interior Department and the Indian Office. As long as religious organizations supplemented the salary to get qualified candidates, Congress never felt it was necessary. The funding from religious organizations undoubtedly built capacity to handle immediate problems and to accomplish strategic goals but it did not leave the Indian Office as a stronger institution.

³⁸⁰ Beaver, 145.

³⁸¹ Beaver, 153.

³⁸² Beaver, 153.

When it came to supplementing the government's work force, the religious organizations had to two main contributions. First, one of the main purposes of the policy was to gain the expertise and networks of religious organizations to find appropriate individuals for the positions. Throughout the Peace Policy, the executive branch recognized the help that religious organizations provided in this area. As Secretary of Interior Zachariah Chandler noted in his annual report, "I think that it is a matter for congratulation that, in view of the sacrifice of home comforts and advantages which the agents must make, enduring the hardships and surroundings of a frontier-life for the very inadequate salaries allowed, so intelligent and capable men have been secured. For this result we are indebted to the various Christian organizations of the country, upon whose recommendation of fitness the appointments have been made."³⁸³ But as noted previously, the nominations by religious organizations were not without controversy. Some agents were incapable of running such a large and foreign operation; others were charged with corruption; and others missed their previous life with more material comforts and familiar friends.

The other benefit provided by religious nomination was the extra unpaid personnel that accompanied the agent. The wives and families of agents often moved with them. Wives would frequently take on work providing vocational education to the American Indian women and girls or helping in the mission schools and churches. The church boards felt that it was important for "virtuous" women to be on the reservations. This could be accomplished by having agents bring their wives and daughters.³⁸⁴ Lawrie Tatum related that his wife along with other women made dresses for the women and girls on the reservation.³⁸⁵

³⁸³ *Annual Report of the Secretary of Interior* (1876): iii.

³⁸⁴ *Annual Report of the Board of Indian Commissioners* (1872): 126.

³⁸⁵ Tatum, 33, 146, 161.

But as agents started making use of their family and relatives to work on the reservations, charges of nepotism arose. The Annual Report of the Commissioner of Indian Affairs in 1876 criticized the nepotism on the reservations and stated that it is not uncommon “to find four relatives quartered upon a single agency.”³⁸⁶ The report went on to give two examples of abuses to the system: “One case has been discovered in which the agent has had his wife appointed matron at a salary, and the only individual to matronize is his family cook. One agent recently forwarded for the approval of this office the nomination of one of his sons, a lad of 17, as farmer, at a salary of \$1,000, while his real market-value probably would not exceed \$150 per annum; and another son, aged 16, as assistant farmer, at a salary of \$900; the market-value of such a boy probably being \$100.”³⁸⁷ The next year, the Secretary of Interior, E.A. Hayt reported that the department had barred agents from choosing inferior officers from their friends and family because the practice “proved disastrous to agents and disadvantageous to the service.”³⁸⁸ Echoing the sentiment of Bishop Whipple, it appears that when agents tried to benefit their friends and family, the administration of federal Indian policy was harmed.

Religious organizations aided the Indian Office in finding capable men and women to take positions in the service. Not every agent appointed provided the same level of care and service and sometimes fraud and incompetence made agents worthless. One of benefits to the office as an institution was energizing a new cadre of individuals to actively find solutions to federal Indian policy and to make sacrifices to fulfill those goals. Even after the Peace Policy ended, church organizations continued their education and mission work on reservations.³⁸⁹ Over the next twenty years, the religious organizations remained active in mobilizing the public

³⁸⁶ *Annual Report of the Commissioner of Indian Affairs* (1876): 7.

³⁸⁷ *Annual Report of the Commissioner of Indian Affairs* (1876): 7.

³⁸⁸ *Annual Report of the Commissioner of Indian Affairs* (1878): iv.

³⁸⁹ Beaver, 161.

for Indian reform legislation by gathering petition signatures, setting up auxiliary branches, and visiting Indian country to gather evidence of the need for reform.³⁹⁰

It should come as little surprise that government agencies hoped to gain immediate tangible resources like money and manpower through partnerships with private organizations. A more contentious proposition is whether these partnerships can actually help strengthen the capacity of administrative agencies. When it came to the Peace Policy, the most visible effects were the agents, personnel, schools, and missions on reservation. But religious administration also directly and indirectly influenced institution-building in the Office of Indian Affairs.

The Peace Policy represented a period of experimentation where agents and superintendents were allowed and encouraged to try out new techniques and methods for administration and assimilation. As Paul Stuart notes, “Pressure for removals, rivalry with the Army, the attempt to exert total control, and the objective of civilization provided the context for a series of policy innovations which originated at the reservation level in the 1870s.”³⁹¹ Additionally, the political branches were more willing to push reform initiatives. Because Grant’s Peace Policy eliminated patronage appointments, politicians were less worried about reform initiatives threatening their cronies.

Some of these experiments only lasted as long as a particular agent was on a reservation. For example, Lawrie Tatum decided to allow his school teacher to live in tents with his native students and parents as the camps moved and conduct some lessons in the native languages. Tatum noted that his agency was the only one to have this type of arrangement.³⁹² All of the new initiatives were severely underfunded and often relied on the generosity of the religious organizations. But some stood the test of time and were actually expanded. The appointment of

³⁹⁰ Fritz, 198-9.

³⁹¹ Stuart, 20.

³⁹² Tatum, 105-6.

Carl Schurz as Secretary of Interior under President Hayes proved beneficial to some of the most successful reform initiatives. In Schurz's attempt to reform the civil service, initiatives like the Indian Service inspectors were valuable in providing federal control of regional outposts. The four major institutional reforms of the Peace Policy era were the Indian police, changing the appointment structure, oversight of supply purchasing, and the creation of Indian inspectors.

One of the first experiments initiated on several reservations was the establishment of a police force made up of tribal members. Agencies relied almost exclusively on the U.S. Army to enforce agents' orders and to maintain peace between white settlers and tribes.³⁹³ The Indian police forces that agents began to organize in the early 1870s provided rule enforcement under the exclusive command of the Indian agent. Religious Indian agents also hoped that the Indian police forces would contribute to their other goal of "civilization." In his annual report to the Commissioner of Indian Affairs, J.M. Lee Indian Agent to the Spotted Tail Agency in Nebraska, explained the benefits of the service he had in mind: "This may be an auxiliary step toward civilization, and if these Indian soldiers were put under careful and judicious training of some one greatly interested in the matter, and well fitted by inclination and education for this work, it might be the means of enforcing self-government among the Indians under the laws of the Government."³⁹⁴

The first benefit of the new forces was that they reduced strain on the military and allowed the Indian Office to gain some self-sufficiency in policing. John Clum, US Indian Agent at the San Carlos agency, noted that the agency "had no other defense than our Indian police" after the US Army moved from the area and the Indian police proved "their faithfulness

³⁹³ Stuart, 22-3.

³⁹⁴ *Annual Report of the Commissioner of Indian Affairs* (1877): 71.

and efficiency” over the previous year.³⁹⁵ The use of Indian police allowed Indian agents to avoid having to call in the military and wait for a deployment. James Wilbur, US Indian Agent Washington Territory, observed the efficiency of his police force which he claimed did “more to keep order and to arrest the lawless and bring them to justice than four times that number of soldiers. I have for years pursued this course, and have never found it necessary to call on the military for help.”³⁹⁶

The Indian police forces were not created as a result of official demands from Washington. Instead they arose as agency innovations to solve problems of lawlessness and to encourage responsibility. US Indian Agent John Clum called the Indian police his “great hobby in the management of wild Indians.”³⁹⁷ Peter Ronan, US Indian Agent at the Flathead Agency, recognized the importance of having a force “at the disposal of the agent” but encouraged the Commissioner to make an appropriation to pay the police force and provide them with supplies. Based on the success at the first agencies, other Indian agents began requesting funding for police forces. The Quaker superintendent for the Central Superintendency, William Nicholson requested a force for the Kiowa and Comanches because he felt it would be “very efficient in preserving order, not only among their own tribes, but in keeping out whisky-peddlers and other bad characters.”³⁹⁸

The second major institutional reform that came out of the Peace Policy was a change to how subordinate officials were chosen. As noted previously, accusations of nepotism on Indian agencies prompted E.A. Hayt to take the nominating power for physicians and clerks away from

³⁹⁵ *Annual Report of the Commissioner of Indian Affairs* (1876): 415.

³⁹⁶ *Annual Report of the Commissioner of Indian Affairs* (1877): 201.

³⁹⁷ *Annual Report of the Commissioner of Indian Affairs* (1876): 415.

³⁹⁸ *Annual Report of the Commissioner of Indian Affairs* (1876): 455.

Indian agents and place it in the Indian Office.³⁹⁹ As long as subordinate officials on reservations depended on the Indian agent for a position they were unlikely to report fraud or be concerned with larger institutional goals. However, as the Indian Office took over subordinate nominations, the Commissioner of Indian Affairs gained more control and influence on the reservations. As Paul Stuart has observed, “The control of entry into the positions in the Indian Office was important in determining the organization’s boundedness. If the officials with supervisory control appointed their own subordinates, they could select the subordinates most likely to comply with supervisory directives, whether because of a shared commitment to organization goals, previous socialization in the organization, or personal loyalty.”⁴⁰⁰ To develop as an institution, it was important for the Commissioner of Indian Affairs to take more control of the nomination process. Religious control of all appointments highlighted to the Indian Office the problems associated with this structure.

The third major institutional reform was the permanent oversight of all purchasing of supplies through the Board of Indian Commissioners. The Board was one of the most permanent reforms associated with the Peace Policy as it continued to oversee purchasing well into the twentieth century. As noted previously, while the Board had limited power to unilaterally act, they were one of the most successful checks on fraud to be developed. Western historian Henry Fritz was critical of some aspects of the Peace Policy but noted that “the system of purchasing supplies was greatly improved” by developing techniques “which helped rid the Indian service of many fraudulent practices which were rampant when the ‘Peace Policy’ began.”⁴⁰¹ Beyond just contracting out government responsibilities, the Board of Indian Commissioners was asked to

³⁹⁹ Stuart, 37.

⁴⁰⁰ Stuart, 27.

⁴⁰¹ Fritz, 167.

give their expertise and appearance of honesty and credibility to aid the government for over fifty years.

The final major institutional reform of the Peace Policy was the creation of a corps of Indian inspectors. Congress authorized the inspectors by a law passed on February 14, 1873, which gave inspectors the power to inspect records and suspend superintendents, agents, and agency employees and appoint others in their place, subject to presidential approval.⁴⁰² The religious organizations were influential in the establishment of inspectors. As missionary boards recommended inspection of the purchasing, they also pushed for an inspection system for the reservations.⁴⁰³ The Board of Indian Commissioners urged for the appointment of inspectors to aid them in their duties.⁴⁰⁴ The bill passed easily through Congress and it seems likely that the easy passage came because the inspectors were “watching the Church” and not agents that had been recommended by congressmen.⁴⁰⁵

Like other areas of Indian policy, President Grant initially looked to religious men to be honest government officers. One of the first five government inspectors was Colonel E. C. Kemble who had been on the Indian Commission of the Episcopal Church’s Board of Missions.⁴⁰⁶ However, Indian inspectors were not generally appointed by religious organization and they provided the Indian Office with one of the only means of accountability that was solely through the office. While it took time to perfect the system, Paul Stuart notes the general effect was beneficial to the Indian Office: “The transition from supervision to inspection as the organization’s means of mediating between Washington and the agencies increased the

⁴⁰² Prucha, *The Great Father*.

⁴⁰³ Keller, 21.

⁴⁰⁴ Keller, 114-5.

⁴⁰⁵ *Congressional Globe*, 42d Cong., 3d sess., 470.

⁴⁰⁶ Beaver, 156.

centralization and boundedness of the Indian Office. The adherence of agents to the regulations of the Indian Office was, for the first time, systematically monitored.”⁴⁰⁷

Despite the importance of the inspectors, Congress was ambivalent about the reform. The Commissioner of Indian Affairs writes in his annual report to complain about the congressional reduction in his inspector force from five inspectors to three. He contends, “This force, however, is not sufficient to meet the requirements of thorough and frequent inspection. By increasing the number to five, with a sufficient allowance for mileage, the additional expense will be many times compensated in securing, increased efficiency of the service, and economy in the use of agency funds.”⁴⁰⁸ While the inspector force never reached its full potential during the Grant administration, the force was seized on by Secretary of Interior Carl Schurz as a critical key to civil service reform in the Indian Office and he used it to centralize the office.⁴⁰⁹

Often overlooked in the study of Grant’s Peace Policy is the role that the partnership with religious organizations played in agency institutionalization. While the years of religious administration did not shepherd in wholesale and complete change, religious administration allowed for experimentation and new initiatives for reform. The most successful were built on by Carl Schurz in the administration of President Hayes. By the 1880s, political appointment had returned to the Indian service.⁴¹⁰ But after the Peace Policy, the Indian Office was now better equipped to implement Indian policy and provide oversight of field agents. Fraud and incompetence were never completely eliminated but the new institutional mechanisms helped eliminate the most egregious practices. As Paul Stuart argues, “Between 1865 and 1900, the

⁴⁰⁷ Stuart, 87.

⁴⁰⁸ *Annual Report of the Commissioner of Indian Affairs* (1875): 15.

⁴⁰⁹ Stuart, 39, 74.

⁴¹⁰ Fritz, 218.

Indian Office became an institution.”⁴¹¹ The partnership between religious organizations and the federal government ironically helped build the Indian Office institutionally by laying the foundation for future reforms.

Case Studies based on Denomination

The Peace Policy as a whole had mixed results. While it is generally seen as an improvement over the previous patronage system, it never met any of the lofty goals set by its proponents. But this general analysis overlooks the variation that existed from superintendency to superintendency and from agency to agency. While a comprehensive review of every denomination that had agency responsibilities is beyond the scope of this chapter, a more nuanced analysis that examines some of the major players helps illuminate the characteristics of private partners which helped build successful partnerships. The following section will examine the efforts of the Orthodox Friends, the Episcopalians, and the Methodists. Each denomination had different organizational capacity, denominational support, interactions with the government, and substantive results.

The Orthodox Friends

The Orthodox Friends organized rapidly and immediately “perfecting an organization that could cope with the new and great responsibility.”⁴¹² In June of 1869, the Orthodox Friends created the Associated Executive Committee of Friends on Indian Affairs which was made up of representatives from each the regional yearly meetings. The Associated Executive Committee appointed a General Agent, Dr. William Nicholson, to be the direct representative of the

⁴¹¹ Stuart, 2.

⁴¹² Kelsey, 170; *see also* Keller, 47.

committee in Indian country and provide reports to the committee.⁴¹³ The committee paid the general agent and his clerk out of their own funds. In addition, a sub-committee was created of Friends living near Washington, D.C. to represent the Associated Committee to the government.⁴¹⁴

The Committee on Indian Affairs regularly travelled to visit the reservations under control of the Orthodox Friends.⁴¹⁵ During the visits, the committee provided oversight into the operations, took lessons from successful agencies, and occasionally brought other agents in to observe strong operations. Lawrie Tatum notes that on November 27, 1870:

Enoch Hoag, Superintendent; Edward Earl and Dr. William Nicholson, members of Friends' Indian Committee; also Agent Darlington and J. J. Hoag, from the Cheyenne and Arapahoe agency, came to see how I was succeeding in that remote agency, in charge of such refractory Indians. It was a great satisfaction to me, and some of my employees, to have them with us a few days. They seemed well satisfied with the way I managed business, and encouraged me to continue as I had been doing. The usual raiding season of the Indians had now passed, and we did not expect much, if any more, during the winter.⁴¹⁶

The other means for oversight and sharing experiences was a yearly gathering of all agents, the superintendent, and members of the associated committee. Lawrie Tatum provides a description of one of these meetings:

Here the ten Friend agents and Superintendent Hoag were congregated, and met thirteen of the committee who nominated and had the oversight of them. The committee were from New England, New York, Pennsylvania, Ohio, Indiana, Iowa and Kansas—a very important committee, engaged in an interesting work. Our difficulties and trials, failures and successes were discussed. The agents were encouraged to use every effort to Christianize and civilize the Indians on the peaceable principles of the gospel, and to deal with them honestly, firmly and lovingly, and so far as practicable to procure religious employees, and look to God for a blessing on their labors. This, I believe, was the wish and intent of every agent.⁴¹⁷

These organizational elements for support and oversight played an important role in the continuity and success of the Orthodox Friend's agencies. When the chief clerk to the Indian

⁴¹³ Kelsey, 172.

⁴¹⁴ Beaver, 141.

⁴¹⁵ Beaver, 141; Keller, 47.

⁴¹⁶ Tatum, 51.

⁴¹⁷ Tatum, 53-4.

Commissioner, Samuel Galpin, visited all of the agencies under the control of the Orthodox Friends, he made special note of the importance of the organizational support provided by the denomination. “[T]he spirits of the agents and the interest of the Friends themselves have been kept up by the services of a salaried supervising agent of their own appointment, and by the regular visits of standing committees of their organization. The qualifications of the more responsible employés are also examined by this committee before their appointment, and the whole conduct of the agent is closely watched. The peculiar character of the service requires just such supervision.”⁴¹⁸ The organization created to help the denomination fulfill its responsibilities under the Peace Policy made a difference to the agents and to the Indian Office.

The Orthodox Friends also provided many additional resources for the agents and their reservations through denomination and congregant support. Orthodox Friends across the nation organized to support the church’s mission. In Philadelphia, Orthodox Friends formed the Indian Aid Association in April 1869 to assist the missions and agencies under the administration of the denomination.⁴¹⁹ Women’s Aid Committees were formed through the regional yearly meetings. These auxiliary organizations were vital in providing money and supplies for the agencies. Members of the Executive Committee went to the yearly meetings to rally support for their cause. Cyrus Beede reported back to Enoch Hoag on his experience at the annual New England Meeting, “The Indian question claimed considerable attention, and in my feeble way, I endeavored to show the necessity of greater interest among the members generally, especially to

⁴¹⁸ S.A. Galpin, *Report upon the Condition and Management of Certain Indian Agencies in the Indian Territory, Now under the Supervision of the Orthodox Friends* (Washington: GPO, 1877): 39.

⁴¹⁹ Keller, 47.

secure the united action of the New England delegation in Congress, in one sense my efforts might perhaps have been considered somewhat political.”⁴²⁰

The campaigns got results. Each year the Yearly Meetings gave several thousands of dollars to the Associated Committee and the agencies and schools directly.⁴²¹ In 1877, the Women’s Aid Committee of the Philadelphia Indian Aid Association supplied to the agencies controlled by the Orthodox Friends with clothing, shoes, blankets, cloth, toys, books and pictures valued over \$1,500 and paid for four months of an assistant teacher’s salary at the Wyandot Mission.⁴²² The support given to the agencies did not go unnoticed by the government. Samuel Galpin’s report on the Orthodox Friends agencies noted, “It is an open secret that at four of the more important agencies the meager salaries of the agents have been supplemented by payments from the Friends, while liberal donations have been, and are being, constantly made for the civilizing and christianizing part of the work.”⁴²³ The resources put into the service by the Orthodox Friends produced results and garnered praise from government officials.

The warm welcome that President Grant initially gave the Friends provided a lasting precedent for interactions between the denomination and the government throughout Grant’s presidency. Through the Washington sub-committee and their general agent for Indian Affairs, the Orthodox Friends had frequent contact with Washington. Secretary of Interior Columbus Delano wrote the Indian superintendent for the Orthodox Friends to note that “I shall always be glad to have any information from you direct, when you think the public welfare requires it. Thanking you for your efforts to sustain the Government in its present plan of dealing with the

⁴²⁰ Cyrus Beede to Enoch Hoag, June 21, 1875; Box 2 (Letters), Hoag Indian Papers, 1865-1883, Ms. Coll. 1034; Haverford Special Collections, Haverford, PA.

⁴²¹ Kelsey, 178.

⁴²² Kelsey, 178-9

⁴²³ Galpin, 39.

Indian tribes.”⁴²⁴ After leaving office, Delano wrote to Hoag about his perception of the relationship: “It has been my pleasure to say that you and the ‘Friends,’ whom you represent always gave me during my administration of the Interior Department cordial, & valuable co-operation & support.”⁴²⁵

While a warm relationship existed between the executive branch and the Orthodox Friend leadership, the denomination had constant worries about changing political tides that might threaten the Peace Policy and their role in administering federal Indian policy. As William Nicholson wrote Enoch Hoag, “It is quite possible, that in the new-born Democratic effort at retrenchment, the Superintendency may receive a death blow and as its continuance has for several years seemed doubtful, this will not be a strange result. But on the other hand, I find unexpected strengthening of the opinion on the part of some here, that its continuance is to be desired on the score both of economy and of Indian civilization.”⁴²⁶ The strong relationship that the Orthodox Friends had with the executive branch during Grant’s administration became cooler under President Hayes until the Friends withdrew from the policy.

This relationship between the Orthodox Friends and the Indian Office undoubtedly related to the demonstrable results the denomination had. Between 1869 and 1872, the number of schools, pupils, and farmland in the Central Superintendency tripled.⁴²⁷ In the same period, the production of hogs and potatoes increased tenfold.⁴²⁸ When Samuel Galpin reported on the

⁴²⁴ Columbus Delano, Secretary of Interior, to Enoch Hoag, November 13, 1871; Box 1, Hoag Indian Papers, 1865-1883, Ms. Coll. 1034; Haverford Special Collections, Haverford, PA.

⁴²⁵ Columbus Delano, Secretary of Interior, to Enoch Hoag, October 23, 1875; Box 1, Hoag Indian Papers, 1865-1883, Ms. Coll. 1034; Haverford Special Collections, Haverford, PA.

⁴²⁶ William Nicholson to Enoch Hoag, December 16, 1875; Box 1, Hoag Indian Papers, 1865-1883, Ms. Coll. 1034; Haverford Special Collections, Haverford, PA.

⁴²⁷ Keller, 47-8.

⁴²⁸ Keller, 48.

Orthodox Friend agencies, he had high words of praise for the agents and employees.⁴²⁹ Galpin was particularly impressed because prior to the Peace Policy, the Kiowa, Comanches, Arapaho, and Cheyenne were “hostile, often defiantly so”; but through the joint efforts of the military and Quakers, they had made progress and improvement.⁴³⁰

It was not just government employees and church members who noted the Orthodox Friend’s accomplishments. After Colonel W.P. Adair, chief of the Cherokees, visited the President, he wrote Enoch Hoag that he “had a very pleasant and satisfactory interview with [the President], in which I assured him, that the Indians, with but few unimportant exceptions, of your entire superintendency, over all well pleased with your administration of Ind. Affairs and that you had made all . . . endeavors to strictly carry out the President’s ‘Indian Policy’ – just as he wants it!”⁴³¹ Adair went on to address the charges of corruption that had been leveled against Hoag and his agents. He noted, “I had looked carefully into your administration. I had come to the conclusion that you were by far, the best superintendent we every had – and that we did not want you removed.”⁴³²

The Orthodox Friends made considerable gains in meeting the goals of the government. However, there were still constant challenges. Some of the tribes, the Comanches in particular,

⁴²⁹ At the Kiowa and Comanche agency, he noted, “The class of employes at the agency seemed of the best. They appeared faithful, competent, and of that high character which is, above all things, essential in all dealings with Indians.” Galpin, 7. At the Wichita agency, he noted, “Agent Williams himself is a man of large common sense and business experience, and eminently fitted to aid these Indians in solving the problem of self-support. His hands should be cordially upheld by the Department, and I have no doubt but that the Indians will make steady and marked progress under his guidance.” Galpin, 14. Of the Cheyenne and Arapahoe agent, he wrote, “He is a man of decided convictions, good executive ability, and, himself enthusiastic, he inspires his associates with the same enthusiasm. He commands the entire confidence and good-will of the Indians.” Galpin, 18.

⁴³⁰ Galpin, 36.

⁴³¹ W. P. Adair to Enoch Hoag, June 1, 1875; Box 1, Hoag Indian Papers, 1865-1883, Ms. Coll. 1034; Haverford Special Collections, Haverford, PA.

⁴³² Adair to Hoag, June 1, 1875.

periodically went on raids and threatened peace around the agency.⁴³³ White traders and settlers provoked fights and committed atrocities that could only be punished by state courts.⁴³⁴ But considering the challenges and the steep learning curve, the Orthodox Friends produced results where other denominations struggled. Some of the keys to their success were the highly structured organization of support and oversight, the auxiliary donations of funds and supplies, and attention to the quality of candidates for the agencies.

Episcopalians

The Episcopalians were active in pushing the government to create a Board of Indian Commissioners and in convincing President Grant to extend the apportionment of agencies to more denominations. While they had a strong executive organization that always had influence in policy-making realms, the Episcopalians were less successful in building congregant support for the agencies and the church's missions.

Like the Orthodox Friends, the Episcopalians created a commission to supervise the agency work, the Indian Commission under the Domestic Committee of the Board of Missions.⁴³⁵ However, the Episcopalian Indian Commission was more active in Washington D.C. than in providing oversight and support to the agencies. More helpful was the creation of the first missionary bishop to the American Indian tribes, William Hobart Hare.⁴³⁶ Previously, the bishop for the area ministered to both local tribes and white settlers. Bishop Hare was not only an effective missionary but “an exceptional spokesman...[and the position] allowed

⁴³³ Steele, 89-98; Keller, 49.

⁴³⁴ Steele, 93.

⁴³⁵ Keller, 50-1.

⁴³⁶ William Hobart Hare, *Reminiscences* (Philadelphia: Press of William F. Fell & Co., 1888); Keller, 51.

Episcopalians to effectively plan, organize, and control their work.”⁴³⁷ Bishop Hare clearly saw his role as broader than as a pastor. In his autobiography, he wrote that his work was “that of a general superintendent, whose duty it would be to reach the people through their pastors; not so much to do local work as to make local work possible and easy for others.”⁴³⁸ He accomplished this by organizing native ministers, administering ministers’ salary through their local congregations rather than through the Bishop, and conducting monthly inspections of the missions.⁴³⁹

The Episcopalians also recognized the importance of outreach and auxiliary support. Bishop Hare wrote that his mission required large funds and that “it was left largely to me to raise them. ‘The Mission had two ends,’ I was told; ‘one in the East, where the money was, and the other in the Indian Territory, where the work was. I was expected to look after both ends.’”⁴⁴⁰ While the Episcopalians had historically given little to American Indian missions or schools, the challenge of the Peace Policy increased funding for the work after 1870 as bishops told congregants that they had “a special responsibility through which God had unmistakably spoken directly to them.”⁴⁴¹ Women’s auxiliary and parish societies for Indian work were created in 1873 and 1874.⁴⁴² But after the Panic of 1873, money from the East became scarce and by 1875 the Episcopal Indian Commission was ten thousand dollars in debt and under attack from within the church.⁴⁴³

⁴³⁷ Keller, 51.

⁴³⁸ William Hobart Hare, *Reminiscences*.

⁴³⁹ William Hobart Hare, *Reminiscences*.

⁴⁴⁰ William Hobart Hare, *Reminiscences*.

⁴⁴¹ Keller, 51.

⁴⁴² Keller, 51.

⁴⁴³ Keller, 52-3.

The Episcopalians had the most success in gaining influence in policy-making circles. Many of the leaders of the Peace Policy came from their ranks including Bishop Whipple, William Welsh, Felix Brunot, Samuel Hinman, Vincent Colyer, Bishop Hare, Jared Daniels, Columbus Delano, and Edward Kemble. In the field, Bishop Hare sent along his recommendations on federal Indian policy to the Indian Commissioner. When gold was discovered in the Black Hills, he tried to protect the tribe but found it necessary to find a solution to end the conflicts. "I foresaw, however, that no power on earth could shut our white people out from that country if it really contained valuable deposits of gold or other mineral. I went, therefore, to Washington and urged upon the President that a commission of experts should be sent out to explore the country, and that, should they report the presence of gold, steps should be taken to secure a surrender of the tract in question from the Indians on equitable terms: This was eventually done."⁴⁴⁴ While historians may question the equity of the subsequent treaty, Bishop Hare and the Episcopal Committee had a strong influence on policy decisions. But even in this area, the influence of the Episcopal Committee began to wane as William Welsh's incessant appeals alienated many government officials.⁴⁴⁵

The Episcopalian efforts had mixed results. Bishop Hare was especially successful in expanding the church's missions and schools in the area under his jurisdiction. He reported that in the number of congregations served by Episcopalian missionaries increased from six in 1872 to forty-five in 1887. The denomination could not count any boarding schools in 1872 but by 1887 there were four with about forty students a piece.⁴⁴⁶ Despite the increase in schools and congregations, the Episcopalians could never muster the resources for broader support of the

⁴⁴⁴ William Hobart Hare, *Reminiscences*.

⁴⁴⁵ Keller, 52. See C. Joseph Genetin-Pilawa, "Ely Parker and the Contentious Peace Policy," *Western Historical Quarterly* 41(2010): 196-217.

⁴⁴⁶ William Hobart Hare, *Reminiscences*.

administrative mission. By 1880, the church was ready to withdraw from the program due to the increasing debt and feuds within the church over policy.⁴⁴⁷ Additionally, the Episcopalian officials were having a difficult time even finding agents and missionaries to fill their openings.⁴⁴⁸

Methodists

In 1870, the Northern Methodists had essentially no mission and the denomination and its local conferences showed little concern for American Indian tribes.⁴⁴⁹ But in that year, Vincent Colyer apportioned 20% of the agencies to the Methodists.⁴⁵⁰ There were suspicions that President Grant had favored the Methodists due to his upbringing. Grant, who was raised in a Methodist home, never joined the church and there is no evidence that his religious views influenced the Peace Policy.⁴⁵¹ But the Methodist did have an unusually large role to play given their lack of previous experience with tribal missions. The results reflected the Methodists ambivalence about the tribes. As Robert Keller notes, “Although some Methodists claimed that the Peace Policy ‘deeply awakened’ them to the Indians’ plight, other Methodists apologized for poor performance and confessed that they had entered the program against their better judgment.”⁴⁵²

In contrast to the Quakers and the Episcopalians, the Methodists made little effort to recruit men for agency positions or to try to raise money.⁴⁵³ They formed no special committee to direct efforts, provide oversight, or even liaise with the federal government. Instead, the

⁴⁴⁷ Keller, 52.

⁴⁴⁸ Keller, 53.

⁴⁴⁹ Keller, 36.

⁴⁵⁰ Keller, 36.

⁴⁵¹ Keller, 24-5; Waltmann, 328.

⁴⁵² Keller, 46.

⁴⁵³ Keller, 54.

Methodists depended on local conferences to nominate agents and supervise missions.⁴⁵⁴ While the New York staff of the Methodist Missionary Society gave formal approval to each nomination, they did not know most of the agents personally.⁴⁵⁵ As Robert Keller notes, “This procedure not only resulted in the appointed of unemployed ministers as agents but also guaranteed an apathetic Methodist performance.”⁴⁵⁶ Even worse, the Missionary Society was often deceived by local interests attempting to gain employment for an unworthy nominee.⁴⁵⁷

The lack of support, organization, and outreach given to the tribal agencies and missions by the Methodists set the stage for failure. As early as 1873, John Reid of the Methodist Missionary Society acknowledged the society’s poor performance and offered to surrender several agencies.⁴⁵⁸ At almost every Methodist agency, there were no schools or missionaries on the reservations.⁴⁵⁹ This did not go unnoticed by the agents who were asked to take charge. The agent for the Fort Peck agency in Montana wrote in his annual report, “No missionary has been sent by the missionary board of the Methodist Episcopal Church who have assumed the nomination of agents for this agency. I ardently hope the board will recognize their responsibility in this matter at an early day.”⁴⁶⁰

Some agents did try to make meaningful change but even then the lack of denominational support doomed their efforts. At the Klamath agency, the agent tried to recruit a missionary by offering to pay half of the salary that the Methodist Missionary Society would normally pay. But their local conference, the Oregon Conference, could not find a candidate or pay the rest of the

⁴⁵⁴ Beaver, 143.

⁴⁵⁵ Beaver, 143.

⁴⁵⁶ Keller, 55.

⁴⁵⁷ Beaver, 143-4.

⁴⁵⁸ Keller, 54-5.

⁴⁵⁹ Keller, 55.

⁴⁶⁰ *Annual Report of the Commissioner of Indian Affairs* (1877): 140; see also *Annual Report of the Commissioner of Indian Affairs* (1876): 447-8.

salary had a candidate been found.⁴⁶¹ On the Chehalis reservation in Oregon, the Methodist church organized a church in 1873 which the agent noted “would have been permanently beneficial had it been continued long enough to solidify in their newly reconstructed moral lives.”⁴⁶² But on most agencies, the reviews were even worse. In 1875, the Commissioner of Indian Affairs related to the Secretary of Interior that the Methodists used their authority “for the promotion of Church interests rather than for... Indians.”⁴⁶³ In Montana, the Methodist agents were accused of neglect and indifference to the poverty and starvation of the tribes by the governor of Montana and their own Rocky Mountain Conference.⁴⁶⁴ On the reservation for the Chippewas of Lake Superior, both the Methodists and Roman Catholics had control of two distinct sets of the tribe. When the supervising agent came to the reservation, he made a stark assessment of the success of each denomination:

I cannot forbear remarking the contrast between the two communities of the same tribe, separated only by the bay three or four miles wide. The latter [under the care of the Methodists] are generally seen idling about much of the time, often drunk when they can get whisky, and generally slovenly in their dress and appearance; on the other hand, those under the teaching of Mr. Marksman [the Catholic priest] appear tidily dressed ; rarely one of them indulges in intoxicating drinks; most of them are industrious, and in their houses are many articles of comfort, such as cooking-stoves, chairs, and bedsteads; some of them parlor-organs, and sewing-machines, pictures, and other evidences of taste and refinement.⁴⁶⁵

While some attempts at the agencies level proved successful, these results came from the initiatives of particular agents. The Methodists had no overarching oversight committee or procedures. The lack of organizational support and accountability led directly to the problems the Methodists had in administration.

Analysis

⁴⁶¹ *Annual Report of the Commissioner of Indian Affairs* 524 (1876); Keller at 55.

⁴⁶² *Annual Report of the Commissioner of Indian Affairs* 544 (1876).

⁴⁶³ E.P. Smith to the Secretary of Interior, January 8, 1875, Letters Sent, Commissioner of Indian Affairs, found in Keller at 55.

⁴⁶⁴ Keller at 56-7.

⁴⁶⁵ *Annual Report of the Commissioner of Indian Affairs* 123 (1877).

While some historians and legal scholars have dismissed the Peace Policy as a complete abdication of government responsibility for the tribes, a more nuanced analysis tells a different story about the policy. No religious organization was able to completely overcome the problems inherent in a reservation system chronically under-funded by Congress and the President. But some religious organizations were able to make a difference on a systematic basis. The best example of success under the Peace Policy came from the Quakers. The Quakers' national organization with regular oversight and programs for organizational learning helped the denomination create successful results on the agencies in the superintendency. The Methodists, without any denominational leadership or support, failed to meet even some of the most minimal expectations. One of the groups that lobbied the hardest for the policy, the Episcopalians, provided mediocre results. Both the Methodists and the Episcopalians had many connections in Washington D.C. and with powerful political families on the East Coast. But the administration of the Peace Policy proves that savvy lobbying and a strong political presence does not necessarily lead to results on the ground. Instead an earnest commitment to the cause, oversight mechanisms, and institutional support were critical to successful ventures.

Evaluation

The government partnerships with missionary societies to administer reservations and Indian agencies appear to fall in the bureau-building or associationalism categories. The Office of Indian Affairs was a stronger organization at the end of the Peace Policy with more control over regional and local organizations, dedicated investigators, and an inspection system. However, on the substantive mission variable, the partnership with religious organization only made a small difference. Despite successes on some reservations, religious organizations never

came close to the transformation in Indian policy administration that President Grant had hoped they would accomplish. The Peace Policy built capacity but it did not completely accomplish the substantive mission President Grant set out for it.

The Office of Indian Affairs not only gained organizational capacity. Religious organizations provided substantial capital that went to fund education and civilization efforts on the reservation that would not have existed without missionary contributions. For some agencies, the government also received comprehensive information and suggestions for policy reforms. The Quaker administrators actively monitored their agencies and created reports for their congregants and government. But most of the information collected and sent in by religious organizations was the same type of information that would have been collected by government agents.

The Peace Policy fits the hypotheses about capacity building relationships. I had predicted that presidents and bureaucrats would be the most likely to pursue these types of relationships in order to gain resources outside of formal allocations. In this case, President Grant created the Peace Policy as a means of breaking patronage appointments and corruption. President Grant did not have to rely on Congress to pass new civil service legislation or to allocate more resources to federal Indian policy. Instead, the President relied on private religious groups to implement his goals for federal Indian policy.

The Peace Policy solution to administrative problems was also innovative and entrepreneurial. Giving private organizations so large of a role in federal administration went well beyond previous partnerships. Out of desperation for a solution to problems in a weak agency, the President looked for radical solutions. Grant originally wanted military officers to

run agencies. But when Congress forbade the appointment of military men to tribal agencies, the President chose a creative solution rather than revert to patronage appointments.

Conclusion

Contrary to the argument from Marci Hamilton and Francis Paul Prucha, the use of religious organization was not a disastrous abdication of responsibility by the government. Faced by systemic corruption and underfunding, the Indian Office and President Grant experimented with administration by private organizations to reform the system. Their goals were never fully achieved but many of the agencies controlled by religious organizations had better and more stable systems of management than under patronage appointments. The agencies controlled by the most organized and motivated denominations saw marked results. During the period of religious administration, the Indian Office was also able to make institutional reforms which created more control of appointments and supervision through inspectors and the Board of Indian Commissioners. The Indian Office also learned about successful and unsuccessful groups with which to partner. Far from a disaster, the government gained resources and capacity during the period.

While the policy may have been met some success from a governmental stand-point, one should not ignore the implications for tribes in a successful “civilization” program. Intensive religious programs led to religious and government boarding schools. Both of these policies were the main contributors to the loss of native languages and attempted destruction of native religions. Unfortunately, destruction of a native way of life was precisely the goal of the government and religious organizations.

Chapter 5 – Whither the Courts?

*“The Cherokee Nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this Nation, is, by our Constitution and laws, vested in the Government of the United States.”*⁴⁶⁶

The words of John Marshall in his opinion for the Supreme Court in *Worcester v. Georgia* are rarely those remembered when historians, political scientists, and even some legal scholars, discuss the case. Instead, the first words mentioned are those allegedly uttered by President Andrew Jackson at the time, “John Marshall has made his decision; now let him enforce it!”⁴⁶⁷ Traditionally, the case has been used to illustrate the weakness of the judicial branch as scholars highlight the court’s lack of enforcement powers. Without a committed executive to take up the enforcement of the case or at least add a voice in support of the decision, courts face obstacles to the implementation of their decisions.

However, a more nuanced legal and historical analysis of *Worcester v. Georgia* reveals a deeper puzzle than the traditional story shows. First, the words of Marshall have proved meaningful in the legal and political history of interactions between tribes, the federal government, state governments, and private individuals. Chief Justice Marshall’s dicta regarding tribal sovereignty and the relationship between tribes and the American government still

⁴⁶⁶ *Worcester v. Georgia*, 31 US (6 Pet.) 515 (1832).

⁴⁶⁷ See Edward Corwin, *John Marshall and the Constitution: A Chronicle of the Supreme Court* (New Haven: Yale University Press, 1919): 193-4; Edwin Miles, “After John Marshall’s Decision: *Worcester v. Georgia* and the Nullification Crisis,” *The Journal of Southern History* 39(1973): 519-554; Ronald Berutti, “The Cherokee Cases: The Fight to Save the Supreme Court and the Cherokee Indians,” *American Indian Law Review* 17(1992): 291; William F. Swindler, “Politics as Law: The Cherokee Cases,” *American Indian Law Review* 3(1975): 7-20.

provides the precedent for both legal cases and governmental interactions regarding American Indian tribes. Second, the executive did not try to subvert the court after *Worcester*. The War Department actively negotiated with the involved missionary boards through connections forged in the administration of the Civilization Act. Finally, rather than proving the unwillingness of the executive to support the judiciary, in the aftermath of the court case Jackson strengthened the judiciary's enforcement powers over recalcitrant states by supporting the Force Bill of 1833.

Worcester v. Georgia provides interesting insights into the role the court plays in the constitutional framework of the United States as well as the place of law as a mediating institution in American politics. The settlement of the issue confirmed both the role of private groups and the courts in mediating conflicts and resolutions in the American constitutional order. The case is also intimately tied into the government's civilization policy as Samuel Worcester, the petitioner, was a missionary who received permission and money for his work from the American federal government. To better understand the connections between private groups, the legal system, and the building of the American state, I will examine the theoretical perspectives surrounding the court's place in government and society, and then lay out the circumstances surrounding *Worcester v. Georgia*. Finally, I reflect on the implications for the thesis's central questions about the implications of public-private partnerships on mission accomplishment and capacity development.

The Role of the Courts in America: Theoretical Perspectives

Analysis of judicial decisions is often relegated to the realm of judicial politics. In the past, scholars of American political development have engaged comparatively little with the theoretical debates over the judiciary – how justices make decisions, the interface between

society and the legal system, and the enforcement of the decisions. Even Stephen Skowronek's groundbreaking work, *Building a New American State*, does little to illuminate the interactions between private suits and the legal system that allowed for the dominance of the courts in the early American order. Skowronek's work compounds the view of courts as a black box where the decisions that come out are important for the functioning of the state but little thought is given to the internal workings of the courts or how the cases reach them. Despite a past unwillingness to engage with judicial theory, delving into the black box of the legal system allows scholars of American political development insight into an important realm that influenced both public-private interactions and the development of each of the branches of government.

The following section sets out the major theoretical debates over the judiciary and their interactions with society and other political institutions. What affects how justices make decisions? How do cases reach the court system? What impact do court decisions have? By integrating theoretical insights from judicial politics and American political development, the following section provides a more comprehensive view of the interactions between the legal system, the early government, and private groups. The existing literature provides a framework to examine the case study on *Worcester v. Georgia*.

The legal system is often viewed as one in which impartial arbitrators deal with disputes individually, on their merits, and with little outside influence. However, as John Marshall considered the merits of each side in *Worcester v. Georgia*, there were many competing influences that could affect his final decision and the outcome of the dispute before the Supreme Court. Marshall's background growing up in rural Virginia, serving in the continental Army, studying law at William and Mary, and his activity in the Virginia bar shaped his attitudes

toward the issues that would come before the court. The prestige and future of the appellate court system, and specifically the role of the Supreme Court in the federal structure, were in doubt. With conflict over tariffs and American Indian settlements, the strength of the federal government with regard to the states was also being challenged. Because Marshall was just one person, his influence should not be overestimated. However, he provides a useful illustration of the competing pressures on judges.

John Marshall surely had clear personal and legal opinions on each of these issues but as a judge, and not a legislator, he could not immediately and unequivocally set down the correct law as he saw it. Instead, the common law system builds up a set of rules and legally binding judgments only through disputes that can be settled in the appellate court system. Because courts in the common law system can only deal with issues that arise in actual cases, private groups and individuals will always be active participants in the judicial process. The dilemma that Chief Justice Marshall faced in *Worcester v. Georgia* was particular but it illustrates broader theoretical issues surrounding the courts and constitutional order in America. In both the decision and enforcement, private groups play a pivotal role that is understudied in the larger theoretical framework.

Making Judgments: Personal Preferences or Institutionally Conditioned?

The behavioralist revolution in the social sciences did not fail to make its mark on the study of the courts. For much of the twentieth century, the accepted opinion was that judges, with a particular emphasis on Supreme Court justices, made decisions based on their personal ideological preferences.⁴⁶⁸ So in the case of John Marshall, his stance on any issue could be attributed to his personal preferences. These preferences could be ascertained by looking, for

⁴⁶⁸ For a good example of this school of thought, see Jeffrey Segal and Harold Spaeth, *The Supreme Court and the Attitudinal Model* (New York: Cambridge University Press, 1993).

example, to his military service for revolutionary army, his time spent as a Federalist politician both in the Virginia and federal legislatures, and his role as one of the delegates for Virginia to the Constitutional convention. Jeffrey Segal and Harold Spaeth view Supreme Court justices as more than simple arbiters because they determine the very meaning of the Constitution.⁴⁶⁹ For this reason, Segal and Spaeth believe understanding preferences is important.

This simple model which boils down all judicial decisions to the ideological position of justices has been challenged by new institutionalist theorists like Howard Gillman and Cornell Clayton.⁴⁷⁰ Gillman and Clayton contend that decision-making is more than just the personal preferences of justices. Justices care about the court as an institution and its relation to other institutions in the political system. Their duty to the law goes beyond simply obeying precedent to caring about the standing of the legal system and its place in society.

This view provides a richer understanding of judicial thought but it does not provide a parsimonious, easily modeled theory. Gillman and Clayton elaborate, “While there is room in this approach for the possibility that people use their institutional positions to promote extra-institutional or personal agendas, it is also assumed that actors like Supreme Court justices may sometimes view themselves as stewards of institutional missions, and that this sense of identity generates motivations of duty and professional responsibility not easily incorporated into the world view of rational choice.”⁴⁷¹ For example, judges as part of the political system have an interest in the stability of that particular system and defining the role of the courts within the larger context. While justices might differ on the type of disputes in which the court should

⁴⁶⁹ Segal and Spaeth, 1.

⁴⁷⁰ Cornell Clayton and Howard Gillman, eds., *Supreme Court Decision Making: New Institutional Approaches* (Chicago: University of Chicago Press, 1999).

⁴⁷¹ Howard Gillman, “The Court as an Idea, Not a Building (or a Game): Interpretive Institutionalism and the Analysis of Supreme Court Decision-Making,” *Supreme Court Decision Making: New Institutional Approaches*, eds. Cornell Clayton and Howard Gillman (Chicago: University of Chicago Press, 1999): 68.

intervene, judicial concern for the legitimacy of the court may provide a reason to take or refuse review of a case as well as the rationale for a ruling.⁴⁷²

Judges may be instrumental in determining the meaning of the Constitution but new institutionalists stress that such a determination takes place within certain parameters. Beyond having institutional interests as well as personal preferences, judges cannot simply write a code that states their views on each article and section of the constitution. Lawrence Friedman explains the limitations on justices as compared to legislators in his introduction to American legal history: “What Parliament can do in a month’s intensive work, a court can do only over the years. And it can never do it quite so systematically, since the common law only handles actual disputes, actual cases. It cannot deal with hypothetical or future cases. If no one brings up a matter, it never gets into court. It is no answer to say that all important questions will turn into disputes; ‘disputes’ are not litigation, and only litigation – actually, only appellate litigation – makes new law.”⁴⁷³ The common law system creates particular opportunities and constraints for political and legal development. Systematic changes in legal implementation could occur through the judiciary and not just the legislature. But that change could only occur in a piecemeal and limited form.

Much of the common law system is outside of judicial and government control. Private groups play an important role in determining the contours of the law at any time, not least through the cases that come before the courts. The federal government, especially the President, has a role in directing the interpretation of federal law through the Attorney General (and after the Civil War, the Justice Department); but beyond the jurisdictional limits set out in Article III

⁴⁷² Gillman, 81.

⁴⁷³ Lawrence M. Friedman, *A History of American Law*, 3rd ed. (New York: Touchstone, 2005): xiv-xv.

of the Constitution, the government has very little control over private litigation, either in diversity or federal claims.

The work of Robert Lieberman illustrates the role that private groups can play in partnership with federal agencies in order to ensure proper *enforcement* of federal law through the court system. The landmark Civil Rights Act included Title VII which made it illegal for employers to discriminate based on race, color, religion, sex or national origin.⁴⁷⁴ The law relied on the court system to provide an independent forum for adjudicating disputes and imposing remedies.⁴⁷⁵ Despite the creation of the Equal Employment Opportunity Commission (EEOC), Congress did not authorize the EEOC to bring cases to the courts. Instead the EEOC had to rely on either the (unwilling) Justice Department or private suits. But as Robert Lieberman explains, neither of these institutions could ensure proper enforcement of anti-discrimination law. “The EEOC certainly could not [have achieved the result of employment discrimination enforcement]; it had the power neither to coerce nor sue. Nor could the courts; although they had the power to issue decisive and authoritative rulings in the cases that came before them, these cases had to come from somewhere.”⁴⁷⁶ The lawsuits brought by private individuals with the aid of civil rights organizations and the EEOC helped the EEOC circumvent its statutory limitations and ensure systematic attention to civil rights.

However, Lieberman’s research illustrates that private organizations alone are more limited in their impact. The success of the NAACP and other civil rights organizations relied heavily on the EEOC. The EEOC played a valuable role by contacting and coordinating civil rights groups who were interested in bringing private suits. The commission’s lawyers helped

⁴⁷⁴ Civil Rights Act of 1964, Public Law 88-352 (1964): http://finduslaw.com/civil_rights_act_of_1964_cra_title_vii_equal_employment_opportunities_42_us_code_chapter_21.

⁴⁷⁵ Lieberman, “Civil Rights and the Democratization Trap.”

⁴⁷⁶ Lieberman, “Private Power and American Bureaucracy,” 31.

train civil rights organizations on how to bring claims under Title VII of the Civil Rights Act. In addition, while the EEOC could not bring cases, they were essentially gate-keepers to the court system because Title VII required that the EEOC conduct an investigations into alleged discrimination before a case could be taken to court.

Robert Lieberman’s research highlights the role that groups play in encouraging and cultivating cases for private individuals. Charles Epp provides a more overarching study of the role of private groups and the conditions that help determine when these groups will help define the court’s agenda. Epp contends that issues brought to the court system are linked to the resources available to the private groups which champion their cause. He writes, “The political economy of litigation – particularly the availability of resources for litigation – determines the extent to which there is sustained litigation on any particular issue. On constitutional issues, in particular, the market does not supply those resources.”⁴⁷⁷ As Epp’s research indicates the likelihood of sustained litigation is not just dependent on desire but also resources. Organizations must have resources to support drawn-out and complicated litigation.

By focusing on the political economy of litigation, one can help explain why constitutional rights cases often have a difficult time making it through the court system. Because these cases require much time and money and the benefits of successful litigation are diffuse and often negligible, private groups have to be willing to shoulder large costs mainly for the public good. Epp places the beginning of this trend between the 1870s and 1910s as American businesses went through the managerial revolution and had the capacity to pursue long-term, strategic litigation.⁴⁷⁸ However, as the following case study demonstrates, private

⁴⁷⁷ Charles R. Epp, “External Pressure and the Supreme Court’s Agenda,” *Supreme Court Decision Making: New Institutional Approaches*, eds. Cornell Clayton and Howard Gillman (Chicago: University of Chicago Press, 1999): 256.

⁴⁷⁸ Epp, 262-3.

religious organizations were using litigation strategically long before the end of the nineteenth century.

After the Decision?

Even after a federal court issues a final judgment, the outcome on the ground is not assured. Without the power of the purse or the sword, courts do not have an automatic enforcement mechanism. The executive department is constitutionally required to faithfully execute the law.⁴⁷⁹ However, the color and force of enforcement can depend on the party in office and the situation on the ground. As Gerald Rosenberg convincingly demonstrates, relying on the federal courts for sweeping social change is rarely an effective strategy.⁴⁸⁰ Rosenberg does temper his view of a constrained court with four conditions that can help support the social change envisioned by the courts. The first two criteria are situations where court decisions are supplemented with either positive or punitive incentives offered by other actors to encourage compliance. The next criterion is that if the decision can be implemented by the market, the social change is more likely. For example, the court's ruling in *Roe* had a more immediate impact because it opened a market for a service that was in demand. Finally, court decisions can provide a cover for social change that is unpopular but desired by other actors.⁴⁸¹

Rosenberg's conditions help the researcher begin to think of the court, not as an isolated institution, but as part of a larger state structure whose influence depends at least in part on the president, Congress, and the states. Congress and the president have a difficult time directly overriding Court decisions because of the multiple veto points in the American separation of

⁴⁷⁹ US Constitution, Article II, §3.

⁴⁸⁰ Rosenberg, *Hollow Hope*.

⁴⁸¹ Rosenberg, 31-35.

powers system.⁴⁸² However, there is evidence that the Supreme Court is aware of its continuing role in defining political and constitutional relationships. Cornell Clayton contends that "...the Court has tended to view the law as a constitutive political process in which the relative positions and substantive views of other political actors are not just barriers to the promotion of particular preferences but are themselves the basis of appropriate legal outcomes."⁴⁸³ The new institutionalists, like Clayton, points to the realm of law where the court seems to have a larger role: defining the boundaries between the branches and levels of government.

When the court rules on policy-style questions, it is engaging in terrain where other state and national political institutions can engage and disagree. On the other hand, when courts determine the lines between state and federal jurisdiction, congressional and executive authority, or even state and tribal control; they are engaging in a realm where they have had a long history of engaging in the proper balance of these interests.

In his groundbreaking work on the development of the American state, Stephen Skowronek describes the role that courts took in the nineteenth century American state to define jurisdictional boundaries and encourage capital development. He argues that state capacity was developed during most of the nineteenth century to the extent that parties and courts needed the state to service their interests.⁴⁸⁴ In Skowronek's state of courts and parties, much of the work of a functioning state occurred at local and regional levels where courts and parties both were active (even in the territorial United States) unlike many other manifestations of the traditional state.

⁴⁸² For a similar argument but examining bureaucratic slippage, see Barry Weingast, "Caught in the Middle: The President, Congress, and the Political-Bureaucratic Structure," in *The Executive Branch*, ed. Joel Aberbach and Mark Peterson (New York: Oxford University Press, 2005): 320-331.

⁴⁸³ Cornell Clayton, "The Supreme Court and Political Jurisprudence: New and Old Institutionalisms," *Supreme Court Decision Making: New Institutional Approaches*, eds. Cornell Clayton and Howard Gillman (Chicago: University of Chicago Press, 1999): 37.

⁴⁸⁴ Stephen Skowronek, *Building a New American State*.

Law emerged as counterpoint to parties in the early American state. From an early point, courts were critical in determining the substance and role of law.⁴⁸⁵ The federal courts became an accepted arbiter in determining boundaries between inter- and intra-governmental disputes. Skowronek argues, “As the final arbiter in institutional and jurisdictional disputes, the Court shaped the boundaries of intergovernmental relations. It defined the legitimate forms of interaction between states, between state and national governments, and within the national government itself. In the evolution of the constitutional law, the fragmented system of governmental authority became malleable and responsive.”⁴⁸⁶ In governmental disputes, the Supreme Court had an authoritative role.

Beyond governmental relations, courts also played a pivotal role in the interface between state and society. Skowronek contends that the courts were one of the only state institutions watching over private capital for the public good during this time period. Using reserve clauses in government charters to justify surveillance, the courts developed a stable and predictable view on private enterprise by the middle of the nineteenth century.⁴⁸⁷ The power of the courts was felt not just at the Supreme Court in Washington D.C. but throughout the nation and its territories. Its dominance depended on a functioning legal system to adjudicate disputes. Skowronek’s book helps explain why courts are still seen as a vital source of policy but it also points to the limits on the court’s power in an increasingly complex society.

Building a New American State does not elaborate the role of private groups and individuals in the functioning of the state of courts and parties. It is clear that private capital relied heavily on courts to maintain a coherent system of rules for economic development and

⁴⁸⁵ See, for example, Martin Horwitz, *The Transformation of American Law* (Cambridge, MA: Harvard University Press, 1977).

⁴⁸⁶ Skowronek, 27.

⁴⁸⁷ Skowronek, 27.

accumulation. In addition, the functioning of this early state depended heavily on citizens engaging and using both courts and parties instead of looking for alternative institutions or failing to use or comply with courts or parties. Skowronek draws a strong link between the early court system and state development. As one of the state mechanisms most accessible to groups and individuals, more theorizing needs to be done to determine the role of the court system in encouraging public-private interactions and even enhancing capacity development.

The following chapter looks to build on Skowronek's work by examining one facet of this institution building. The case study highlights the important role of the court system in early America in state-building. But contrary to Skowronek, this state-building did not just depend on courts and parties. Instead, the early American state relied heavily on interactions between the government, courts, and private organizations. By examining the role of the missionary groups during the push for Cherokee removal, one can gain understanding about how private groups can both advocate for a particular interest through the court system and also mediate between that a marginalized group and the government.

The Missionaries, Cherokees, and the Courts

As the Chapter 3 on the government's civilization policy explained, missionaries set up schools and other institutions on tribal land with federal support. The Cherokees received much attention from both the government and missionaries because of their large numbers, willingness to accept schools and churches, and strength in treaty negotiations. In the second treaty that the tribe signed with the United States, a provision was included that required the government to provide tools and interpreters to assist the nation in learning skills of white "civilization".⁴⁸⁸ The

⁴⁸⁸ "A Treaty between the President and the Cherokee nation of Indians," [Treaty of Holston] 124-5.

Cherokee Council actively encouraged the missionaries and requested schools to be built in particular areas to create a more comprehensive school system through the 1820s.

One of the first mentions of the government's policy for civilization came in a report about the southern tribes by President Washington's Secretary of War Henry Knox. Knox recommended that missionaries be sent to reside in the Cherokee nation as agents to educate the tribe in farming and to ensure good will to the American government.⁴⁸⁹ While President Washington did not act upon the treaty or Knox's recommendation immediately, President Jefferson decided to support a mission school by Presbyterian minister Gideon Blackburn to the Cherokees after Blackburn directly lobbied the President and Secretary of War Henry Dearborn.⁴⁹⁰

By the mid-1820s, the American Board of Commissioners for Foreign Missions (ABCFM) was responsible for a majority of the schools and model farms amongst the Cherokee. ABCFM schools alone educated almost 900 Cherokee students between 1817 and 1833.⁴⁹¹

William McLoughlin testifies to the importance of the ABCFM:

Since 1817 the Prudential Committee of the American Board had been spending \$10,000 a year on the missions in the Cherokee Nation and sending dozens of volunteers to staff them. They were by far the most highly organized, ambitious, well-equipped, and ably staffed of the four denominations who came to work in the nation – and they were easily the richest. Their school and model farm at Brainerd made such a favorable impression upon those who saw it that local chiefs throughout the nation sent requests to have similar schools established in their towns.⁴⁹²

This evangelical Protestant group was far from alone in establishing schools. The Moravians, Presbyterians, Baptists, and Methodists all founded schools and churches in the Cherokee nation.

The efforts of missionaries were not motivated purely by a desire to save souls. The missionary organizations were often recruited by the federal government and almost all received

⁴⁸⁹ Knox, 53-4.

⁴⁹⁰ Prucha, 53-4; McLoughlin, 56.

⁴⁹¹ McLoughlin, 129.

⁴⁹² McLoughlin, 129.

funding from the Civilization Fund for their schools.⁴⁹³ By receiving funding from the Civilization Fund, the religious groups agreed to provide detailed annual reports on their schools and often commentary on the tribes. The missionaries, thus, became quasi-federal employees receiving funding and support from the War Department and Cherokee Indian Agent Robert Meigs. As McLoughlin explains:

[Robert J., federal agent to the Cherokees] Meigs and [Henry, Jefferson's Secretary of War] Dearborn believed (as Washington and Knox had) that all missionaries should consider themselves agents (eyes and ears) of the government. Their work was to pacify the Indians, to keep them tractable and submissive, to make them appreciate the benevolence and good intentions of the government.⁴⁹⁴

The government considered the missionaries and teachers as more than purely religious emissaries. They were also representatives of the United States.

The Cherokee nation drew upon these new resources within their territory and developed an educated elite and connections with allies in northeastern churches and government. The tribe began publishing a newspaper, *Cherokee Phoenix*, and developed a sophisticated, democratic political system that was codified in the Cherokee constitution of 1827. The connections that the Cherokees made with the ABCFM missionaries were particularly important for gaining influence in Washington, DC, and the East Coast. William McLoughlin explains the ABCFM's sway nationwide, "The influence of the board's members, particularly of its important business and political leaders, was to have great weight with members of Congress, who would ultimately decide upon the Indian policy of the nation; some of the board's members were themselves congressmen... Quickly the Cherokees began to see that these missionaries

⁴⁹³ Only the Methodists did not receive funding. Their schools and churches were itinerant and thus not eligible for building costs. McLoughlin, 172.

⁴⁹⁴ McLoughlin, 74.

represented not only a more extensive means of education in needed skills, but also a new source of friendly political power upon which they could draw.”⁴⁹⁵

The Push for Removal

Despite rapid progress on the goals of the government’s civilization policy, the Cherokees faced constant fights with the federal and Georgia state governments over land and issues of sovereignty. Land hungry settlers had little patience for tribal claims to wide swathes of land. Cotton monoculture required constant expansion to new lands as the crop quickly depleted southern soil. The discovery of gold on Cherokee lands heightened the desire of greedy white settlers to ignore treaties guaranteeing land and sovereignty to the tribe by the United States government. Tragically, the dispute only ended with the brutal forced removal of the Cherokee from their land resulting in the loss of thousands of lives.⁴⁹⁶

The fight over Cherokee land started much earlier than the Trail of Tears. As Georgia began to fill with settlers at the end of the eighteenth century, jealousy over the land held by the Cherokee began to arise. Francis Paul Prucha explains the settler mentality: “Land was the most important commodity in early-nineteenth-century America... White society, both northern and southern, had a fundamental belief that the land was there to be exploited and that the Indians were not making full use of its possibilities.”⁴⁹⁷ The feuds over land were not only between tribes and the government: in early America, many competing claims for land also arose between states and the federal government. The federal government, in particular, had to convince many of the first states to give up claims of western land. Most western claims were dealt with in the 1780s before the passage of the Northwest Ordinance which supplied federal control over lands

⁴⁹⁵ McLoughlin, 102.

⁴⁹⁶ Theda Perdue and Michael Green, *The Cherokee Nation and the Trail of Tears* (New York: Viking Penguin, 2007): 139. For the full chapter on the Trail of Tears, see Perdue and Greene, 116-140.

⁴⁹⁷ Prucha, 70.

northwest of the Appalachian Mountains. However, Georgia still had competing claims to lands west of the state with both the federal government and Spain.

In 1802, Georgia signed a compact with the federal government to give up their western claims (the Yazoo lands) in exchange for \$1.25 million and an agreement by the federal government to move the American Indian tribes from state lands and extinguish their title “as soon as could be peaceably done and on reasonable terms”.⁴⁹⁸ Despite the assertion, the federal government had only succeeded in convincing the Cherokees in Georgia to cede small amounts of land over to the government. By the 1820s, Georgia again began to press the federal government to push American Indian tribes off land within Georgia either through treaties or forceful removal.

President Monroe spent his presidency exploring diplomatic options and encouraging voluntary removal by the Cherokee. However, President Monroe also was vocal in his belief that the compact did not affect tribal title to the land. In 1824, he outlined his stance to Congress:

I have no hesitation, however, to declare it as my opinion, that the Indian title was not affected in the slightest circumstance by the compact with Georgia, and that there is no obligation on the United States to remove the Indians by force. The express stipulation of the compact, that their title should be extinguished at the expense of the United States, when it may be done *peaceably* and on *reasonable* conditions, is a full proof that it was the clear and distinct understanding of both parties to it that the Indians had a right to the territory, in the disposal of which they were to be regarded as free agents. An attempt to remove them by force would, in my opinion, be unjust.⁴⁹⁹

The Monroe administration had been the catalyst behind the Civilization Fund Act and Thomas McKenney, the main government supporter of the Act, was appointed in 1824 to head the Office of Indian Affairs. The Monroe administration hoped that civilization efforts would

⁴⁹⁸ US House, 7th Cong., 1st sess., 1802, H. Doc. 69, “Georgia Cession”, April 26, 1802, *American State Papers: Public Lands* 1: 114.

⁴⁹⁹ US House, 18th Cong., 2nd sess., 1824, H. Doc. 204, “Extinguishment of Indian Title to Lands in Georgia,” report prepared by James Monroe, March 30, 1824, *American State Papers: Indian Affairs* 2: 460.

pacify and eventually integrate the Cherokees that continued to live within state borders. In the early 1820s, most in the War Department, including Secretary of War Calhoun and Indian commissioner McKenney, believed that the civilization efforts would allow American Indians to integrate into white society and live in peace with their neighbors.

However, the federal government made two major mistakes in estimation. First, the mission schools had a more limited impact than the government had hoped. While schools rapidly expanded with funding, especially on Cherokee lands, there still were many children that did not attend the mission schools. The mission schools and training also did not educate adult American Indians and so the impact of the civilization act faced a generational gap. Second, despite promising results for the government with some tribes, most citizens of southern and western states as well as their politicians had little desire to accept or integrate even the most “civilized” American Indians. McLoughlin explains this friction against the federal government’s policy, “The first official signs that no Cherokees – no Indian people – would be allowed to share equally in the manifest destiny of ‘the chosen people’ of the United States were the forthright statements by various governors of the old Southwest that they would never accept even the most acculturated and Christianized Indians as equal citizens... By 1830, President Jackson was to make racial segregation of the Indian the new national policy, though he masked it under the ‘benevolence’ of removal.”⁵⁰⁰

This shift from the Enlightenment thought of both the Jeffersonians and the Federalists to a belief that race alone should determine an individual’s place in American society marked the beginning of a reconsideration of government policy. While most Federalists felt that a forceful removal of any of the tribes in Georgia was undesirable, many began to question whether civilization policy could be successful in such hostile conditions. No one person is more

⁵⁰⁰ McLoughlin, 186.

emblematic of this change in thought than Thomas McKenney, the architect of the Civilization Fund Act and firm believer in the inherent humanity of American Indians. But by the end of the 1820s, he had become discouraged as to the prospects of the policy while tribes faced negative forces from the neighboring whites. His annual report of 1828 adds a concluding comment aimed at the question:

I forbear also to remark, except briefly, upon measures of general policy in regards to our Indians... I refer especially to these whose territory is embraced by the limits of States. Every feeling of sympathy for their lot should be kept alive and fostered, and no measures taken that could compromise the humanity and justice of the nation; and none, I am sure, will be. But the question occurs, *What are humanity and justice, in reference to this unfortunate race?* Are these found to lie in a policy that would leave them to linger out a wretched and degraded existence, within districts of country already surrounded, and pressed upon by a population whose anxiety and efforts to get rid of them are not less restless and persevering than is that law of nature immutable, which has decreed that, under such circumstances, if continued in, *they must perish?* Or does it not rather consist in withdrawing them from this certain destruction, and placing them, though even at this late hour, in a situation, where, by the adoption of a suitable system for their security, preservation, and improvement, and at no matter what cost, they may be saved and blest? What *the means* are, which are best fitted to realize such a triumph of humanity, I leave to be determined upon by those who are more competent than I am to decide. But that something must be done, and done soon, to save these people, if saved at all, requires no very deep research into the history of the past, or knowledge of their present conditions, embracing especially their relation to the States, to see.⁵⁰¹

Georgian politicians felt that the federal government was not doing enough to move American Indian tribes out of their state. The situation became much tenser when gold was discovered on Cherokee land in 1828. In that year, the state government began passing laws to assert their jurisdiction over the Cherokee lands and declaring all tribal laws and customs void. Georgia Governor Georgia Gillmer threatened civil war if the federal government moved to stop the state's survey of Cherokee lands. John Quincy Adams's choice for the new Secretary of War at the end of 1828 seemed to capitulate to the removal stance. Porter's first annual report to Adams stressed the necessity of removal and in striking contrast to McKenney squarely placed

⁵⁰¹ Annual Report, Office of Indian Affairs, Secretary of War, November 1, 1828, p. 79-80 (National Archives Microfilm Publication 997, roll 5, frame 592-3), Annual Reports 1822-1833, Annual Report of the War Department 1822-1907, Record Group 107. National Archives, Washington D.C.

the blame for friction between the government and the tribes with the missionaries administering funds from the Civilization Fund Act:

But the ultimate success of this project [removal and colonization] has been greatly endangered, and may yet be defeated, by the operation of another prominent measure of Government, which although suggested by the most humane motives, comes in direct conflict with the plan of colonization. The annual appropriation of \$10,000 to the purposes of educating Indian children, and teaching them the mechanic arts, has had the effect to almost every Indian reservation, in addition to the agents and interpreters, a considerable number of missionaries and teachers, with their families, who, having acquired, principally by the aid of this fund, very comfortable establishments, are unwilling to be deprived of them by the removal of the Indians; and this we have found, that while the agents specially employed by the Government for this purpose are engaged in persuading, by profuse distributions of money and presents, the Indians to emigrate, another set of government agents, are operating, more secretly, to be sure, but not with less zeal and effect, to prevent such emigration.⁵⁰²

The changing governmental stance provided a hint at the monumental shift in many aspects of government policy that would occur with the election of President Andrew Jackson. While Jackson was initially steered away from unequivocally advocating forced removal, he did little to aid or support the Cherokees in the hope that they would see no other option but voluntary relocation. As Jackson put it, “This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land.”⁵⁰³ However, during the same address, Jackson made it perfectly clear that he believed that Georgia had every right to extend its laws over Cherokee land and the federal government would do nothing to intervene: “I informed the Indians inhabiting parts of Georgia and Alabama that their attempt to establish an independent government would not be countenanced by the Executive of the United States, and advised them to emigrate beyond the Mississippi or submit to the laws of those States.”⁵⁰⁴ If the Cherokees wished to remain in Georgia, they would gain no protection from the federal government.

⁵⁰² Peter Porter, “Annual Report to the President,” printed in the *Cherokee Phoenix* (New Echota, GA), January 7, 1829.

⁵⁰³ Andrew Jackson, “First Annual Message,” December 8, 1829; found at <http://www.presidency.ucsb.edu/ws/index.php?pid=29471>.

⁵⁰⁴ Jackson, “First Annual Message.”

President Jackson then introduced the Indian Removal Act which was signed into law in 1830. The act authorized the president to set aside land to exchange with tribes settled in current states for their present lands and pay the tribes for the land that they were giving up and any improvements they had made. It also appropriated \$500,000 to bring into effect the transfer of lands and relocation.⁵⁰⁵ The act did not provide for forceful removal and in fact stipulated that all exchanges would be voluntary. However, because the government simultaneously refused to intervene against state law enforcement on behalf of the tribes and denied Indian title to the land, it was clear that the executive branch saw it as inevitable that the eastern tribes would forfeit their claim to lands within the states. In February of 1831, President Jackson declared that he would no longer enforce treaties with American Indian tribes that were in conflict with the wishes of Georgia.

With the divisive election of President Jackson, the Cherokee issue also became a partisan issue. One of the main reasons that Jackson won the frontier vote was his belief that all tribes east of the Mississippi should be moved to a special consolidated Indian Territory to facilitate white expansion.⁵⁰⁶ The Whig party tried to use the case of the Cherokee to gain political traction and embarrass the president and his party. The anti-Jacksonians campaigned hard against the Indian Removal Act and tried to stir sympathy for the tribe across much of the north-eastern United States. While historians have questioned their sincerity toward the Cherokee, the Whigs did everything they could at the time to exploit the issue to gain traction with the electorate.⁵⁰⁷

⁵⁰⁵ *An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi*, 21st Cong., 1st sess. (May 28, 1830), *Statutes at Large of USA*, vol. IV (1846): 411-2.

⁵⁰⁶ William McLoughlin, "The Missionaries' Dilemma," *The Cherokees and Christianity, 1794-1870: Essays on Acculturation and Cultural Persistence* (Athens: University of Georgia Press, 1994): 39.

⁵⁰⁷ See for example, Ronald Satz, *American Indian Policy in the Jacksonian Era* (Norman: University of Oklahoma Press, 2002): 53.

Because the removal issue had become a partisan issue, missionaries and their boards were often conflicted on how to deal with the subject. All of the missionary organizations, except the Methodists, received financial support from the government's Civilization Fund. This monetary incentive complicated both their relations with the government and the tribes. While most missionaries tried to remain neutral, they faced pressure from both sides to end their silence. Cherokees viewed the missionaries as government agents and their silence as acquiescence to Jackson's removal policy. William McLoughlin explains the pressure from the other side, "Picking up where Porter left off, Jacksonian officials said that the refusal of the missionaries to encourage the new plan of emigration actively and vigorously was an indication of opposition to the government. Missionaries from the North in particular were considered opponents of national policy, tools of (Whig) party interest, and abettors of sectional division when they refused to support emigration."⁵⁰⁸ Silence by the missionaries proved to be insufficient for either the tribe or for the government. Both sides looked to religious organization to be their advocate in a time of crisis.

The government's decision to end all funds for missionary endeavors east of the Mississippi River made it clear to the missionaries on the ground that the government did not support them or the tribe. When Secretary of War John Eaton made this declaration, he contended that "the Government by its funds should not extend encouragement and assistance to those who, thinking upon this subject, employ their efforts to prevent removals."⁵⁰⁹ The government had drawn a line in the sand. Missionaries working on tribal land, regardless of their personal stances, were enemies of the government simply by continuing their work.

⁵⁰⁸ McLoughlin, 241.

⁵⁰⁹ Francis Paul Prucha, *American Indian Policy in the Formative Years* (Lincoln: University of Nebraska Press, 1970): 246.

In the next six months, missionaries from all of the denominations working on Cherokee land would unite and issue a manifesto in support of the tribe and in opposition to removal. Their manifesto, which was published in a special issue of the *Cherokee Phoenix*, included a resolution stating, “We view the removal of this people in the West of the Mississippi as an event to be most earnestly deprecated; threatening greatly to retard, if not totally arrest their progress in religious, civilization, learning and the useful arts, to involve them in great distress, and to bring upon them a complication of evils, for which the prospect before them would offer no compensation.”⁵¹⁰ The manifesto also set out to counter many of the statements the federal government and the state of Georgia had been making to support removal.

It is clear, however, that the missionaries were aware of the political minefield that they were entering. The manifesto begins with a denial of the charge, “The frequent insinuation, which have been publicly made, that missionaries have used an influence in directing the political affairs of this nation, demand from us an explicit and public disavowal of the charge; and that we therefore solemnly affirm, in regard to ourselves at least every such insinuation is entirely unfounded.”⁵¹¹ Despite this disavowal, the following statement clearly aligns the missionaries against the Jackson government.

The boards that had sent out the missionaries to the Cherokee nation were more cautious in their appraisal of the situation. All of the boards tried to at least show neutrality in order to protect their funding for civilization efforts across the nation. The Moravians had always maintained a fairly quiet and separate existence with few funds from the government and little political influence. Of all the missionary boards, they were the most able at remaining neutral.⁵¹² The Methodist membership and leadership were mainly centered out of the south and west and

⁵¹⁰ *Cherokee Phoenix* (New Echota, GA), January 1, 1831.

⁵¹¹ *Cherokee Phoenix* (New Echota, GA), January 1, 1831.

⁵¹² McLoughlin, 250, 284-9.

the views of missionary board mirrored that of their mainly Democratic congregants. The board castigated their missionaries who had spoken out against removal, writing, “That whatever may be our private views and sentiments, as men and free citizens, relative to the sufferings and privations either of the aboriginal nation of our country...or of the policy adopted and pursued by the State authorities or the General Government, yet, as a body of Christian Ministers, we do not feel at liberty, nor are we disposed, to depart from the principles uniformly [sic] maintained by the members and ministers of our Church in carefully refraining from all such interferences with political affairs.”⁵¹³

The Baptists found the most internal conflict because of their national membership. Their board voted to send memorials to Congress stating their support for granting American Indian tribes permanent grants of land in the west for their future settlement. However, the board as a whole remained silent and noncommittal on the larger issue of removal.⁵¹⁴ This overall stance was often overshadowed by the very public and vocal support by Baptist minister, Reverend Isaac McCoy, in favor of the government’s policy. McCoy believed that the best solution to the nation’s “Indian problem” was colonization in the west where missionaries would be in charge education in this new Indian Territory.⁵¹⁵ R. Pierce Beaver explains McCoy’s active involvement with the government, “McCoy’s involvement in government affairs is illustrative of the extent of the partnership between the church and government. Governor Cass was the chief patron of McCoy’s Carey Mission for the Pottawatomies near Niles, Mich. He provided supplies, used McCoy as a subagent in many affairs, and made him head of the commission which went to Kansas to select a site when the Pottawatomies were removed.

⁵¹³ John B. McFerrin, *History of Methodism in Tennessee*, vol. 3, (Nashville: Southern Methodist Publishing House, 1874), 371ff found in Beaver, 94.

⁵¹⁴ McLoughlin, 272-5.

⁵¹⁵ McLoughlin, 267-78.

McCoy served the government as its representative at many treaty councils, and he was joint head with an army officer of an expedition to explore western lands authorized by Congress in December 1827.”⁵¹⁶ McCoy also spent much time trying to convince his board and other missionary organizations that removal would be the best policy to preserve and protect the American Indian tribes.

The ABCFM had the most schools on Cherokee lands and they were also the most involved in the opposition to the removal plan. William McLoughlin characterizes their effort as “one of the first major efforts in American history in which private citizens were mobilized nationally by a voluntary reform society on behalf of a specific political cause.”⁵¹⁷ Their leadership and members were almost all centered out of the Whig-dominated northeast and were outraged at the thought of treaty violations with the tribes in acquiescence to southern states.⁵¹⁸ Their corresponding secretary, Jeremiah Evarts, attempted to sway the debate over the Indian Removal Bill with a series of articles aimed “to make it appear, by a particular examination of treaties, that the United States are bound to secure to the Cherokees the integrity and inviolability of their territory, till they voluntarily surrender it.”⁵¹⁹ To avoid publicly implicating his board, Evarts signed his articles William Penn but his authorship of the articles was quickly an open secret. The ABCFM went even further trying to rally public opinion against the removal bill. They organized protest meetings across the northeast and Midwest, petition drives, and letter writing campaigns for Congress and newspapers. In addition, the ABCFM made sure that their views as well as the tribulations faced by their missionaries and the Cherokees received extensive publicity. The ABCFM revolutionized the conduct and scope of interest group

⁵¹⁶ Beaver, 78.

⁵¹⁷ McLoughlin, 252.

⁵¹⁸ McLoughlin, 251.

⁵¹⁹ William Penn [Jeremiah Evarts], *Daily National Intelligencer* (Washington, DC), August 1, 1829.

involvement on specific political issues with lobbying, public relations campaigns, and on-the-ground activism.

In Georgia, the ABCFM missionaries were beginning to wrestle with how to approach the topic. Nine of their missionaries among the Cherokees signed the manifesto in opposition to removal efforts. In response to the outcry among the missionaries both on and off tribal land, the state of Georgia passed a law making it illegal for all white males to live on Cherokee lands without a license or permit from the governor of Georgia. The license would only be granted if the missionaries took an oath of allegiance to the state of Georgia. Individuals who failed to meet these conditions would be guilty of a misdemeanor and punished with four years hard labor.⁵²⁰

This action by the state government forced the missionaries to make hard decisions about their commitment to the Cherokees. The ABCFM proved to be the most supportive of its missionaries' choices. The board passed a resolution to support the personal choice of their missionaries to either leave Cherokee lands or to defy the state by refusing to leave or take the oath. Most decided to leave the state rather than take the oath or face jail time. Three missionaries – Samuel Worcester, Isaac Proctor, and John Thompson – all decided to remain in Georgia to support the Cherokees and their mission.⁵²¹ The missionaries hired lawyers and began to develop a legal strategy in preparation for their eventual arrest. The case would eventually reach the Supreme Court as *Worcester v. Georgia*. That case and its implications will be examined fully in the following section.

⁵²⁰ The act in question “An act to prevent the exercise of assumed and arbitrary power, by all persons under pretext of authority from the Cherokee Indians, and their laws, and to prevent white persons from residing in that part of the chartered limits of Georgia, occupied by the Cherokee Indians, and to provide a guard for the protection of gold mines, and to enforce the laws of the state within the aforesaid territory,” can be found partially in the transcript for *The State of Georgia v. Worcester and Others*, Gwinnett superior court, March 1831, reprinted in *Niles Weekly Register*, June 4, 1831.

⁵²¹ "Arrest of the Missionaries of the Board in the Cherokee Nation," *The Missionary Herald*, May 1, 1831, 165. <http://www.proquest.com/> (accessed July 20, 2010).

Almost all Cherokees had some questions about the loyalties of the missionaries stationed in their nation. Most missionaries at least initially wished to stay out of the political conflict and focus on their church and education activities. But because they received funding from the federal government, silence on the removal issue was viewed as acceptance of the removal policy. The Cherokee leadership, however, viewed the missionaries as some of their most powerful allies because of their links with politicians and their ability to campaign among voters.

The swirl of activity from the federal government, state of Georgia and missionaries was never dealt with uniformly by the tribe. There were several factions ranging from those desiring to take advantage of the government's offer to the well-educated elite that supported diplomatic and legal avenues of dissent to traditionalists, especially full bloods, who resented missionary assistance and spoke out against white arrogance. The leadership did make a concerted effort to fight for their cause through the traditional forums of white American decision-making. This effort brought the Cherokee's considerable attention, "Their leaders proved extremely skillful in manipulating white public opinion and the white political and legal structure. They made regular trips to Washington, cultivate congressional support, drew up and published forceful and eloquent memorials, circulated their views in the *Cherokee Phoenix*, and even sent some of their fluent young orators to the cities of the Northeast to speak at protest meetings where they obtained signatures for petitions and funds for their lawyers."⁵²² As Theda Perdue and Michael Green Note, the *Cherokee Phoenix* had exchange relations with over one hundred papers meaning that its editorials and reports were read across the nation and abroad.⁵²³

But despite this concerted effort, the Cherokees and their allies could not stop the passage of the Indian Removal Act. After the passage of the Act, the tribe no longer had faith in

⁵²² McLoughlin, 245-6.

⁵²³ Perdue and Green, 75.

Congress or the executive branch. The leadership decided that their case should be placed in front of the Supreme Court. Ross and the Cherokee Nation hired William Wirt, the former attorney general under James Monroe and John Quincy Adams, to urge the Court to issue an injunction to stop the state of Georgia from enforcing its laws on the Cherokee's land. The case, *Cherokee Nation v. Georgia*, laid the foundation for the focus of this thesis, *Worcester v. Georgia*. Wirt argued that "from time immemorial the Cherokee nation have composed a sovereign and independent state, and in this character have been repeatedly recognized, and still stand recognized by the United States, in the various treaties subsisting between their nation and the United States."⁵²⁴

In a move similar to his decision in *Marbury v. Madison*, Chief Justice John Marshall avoided making a judgment on the merits of the case but rather focused on process. Marshall found that the Cherokee Nation was not an independent state eligible for original jurisdiction under the Constitution. Instead, Marshall contended that American Indian tribes were "domestic dependent nations" in a relationship with the United States which resembles that between a ward and guardian. However, Marshall went out of his way to signal his sympathy with the Cherokee cause and even indicated the types of complaints that the Court might be more amenable to hearing. He forcefully writes, "The laws of Georgia set out in the bill, if carried fully into operation, go the length of a abrogating all the laws of the Cherokees, abolishing their government, and entirely subverting their national character. Although the whole of these laws may be in violation of the treaties made with this nation, it is probable this court cannot grant relief to the full extent of the complaint."⁵²⁵

⁵²⁴ *Cherokee Nation v. Georgia*, 30 US 1(1832).

⁵²⁵ *Ibid.*

The Chief Justice was not alone on the court in supporting a rehearing of the Cherokees case. The court had in fact split 2-2-2 with one justice siding with the Chief Justice in his interpretation of the Cherokee Nation as a domestic dependent nation, two justices unwilling to grant any sovereignty to the nation, and two justices relying on law of nation theory to support the claim that the Cherokee Nation was a separate nation that should be afforded sovereignty. To encourage the Cherokee cause, Chief Justice Marshall persuaded Justice Thompson and Storey to write a rare dissenting opinion outlining their thoughts. In the opinion, Justice Thompson contends, “That the Cherokee Nation of Indians have, by virtue of these treaties, an exclusive right of occupancy of the lands in question, and that the United States are bound under their guarantee to protect the Nation in the enjoyment of such occupancy, cannot, in my judgment, admit of a doubt, and that some of the laws of Georgia set out in the bill are in violation of and in conflict with those treaties and the Act of 1802 is, to my mind, equally clear.”⁵²⁶ Because of all of the indications given by the Chief Justice in his opinion and other justices privately, the search was now on for an appropriate case to bring the Cherokee’s plight back before the Supreme Court.

Worcester v. Georgia

The justices did not have long to wait for a new case testing the constitutionality of Georgia’s actions on Cherokee lands. A dispute had already arisen in the state court that challenged one of the aspects of Georgia’s new laws over Cherokee lands. One of the sections of Georgia’s disputed legislation required that all white persons living on Cherokee land obtain a license from the governor by taking an oath to the state by March 1, 1831 or face at least four years of hard labor. The oath read: “I, A. B. do solemnly swear (or affirm as the case may be),

⁵²⁶ *Ibid.*, 74-5.

that I will support and defend the constitution and laws of the state of Georgia, and uprightly demean myself as a citizen thereof so help me God.”⁵²⁷ In March 1831, six white men were arrested on Cherokee lands for violating the act including the Reverend Samuel Worcester, missionary with the ABCFM.⁵²⁸

The prisoners appeared before Judge Augustin Smith Clayton of the superior court of Gwinnet County, Georgia, later that month. The missionaries were represented by Georgia lawyers who had helped the Cherokees in the past. The defense counsel argued that the law in question was unconstitutional on five grounds. First, the law was an *ex post facto* law because it punished behavior (living in Georgia) that was legal when the missionaries moved to the Cherokee nation. Secondly, it violated the privilege and immunities of Article 4 of the Constitution because it applies differently to citizens of one part of the state as citizens who live in another part of the state. Thirdly, the defense argued that Georgia’s use of troops to guard the gold mines amounted to a state keeping troops of war in a time of peace in violation of Article 1. Fourthly, the defense contended that their arrest was an unreasonable seizure because no warrant had been issued. Finally, the missionaries were being punished based on their religious beliefs and that the oath in question amounted to a test oath.⁵²⁹ Interestingly, none of the arguments presented by these Georgia lawyers contended that the law was unconstitutional because the Constitution vested all authority over affairs with American Indians with the federal government – the main argument made by Chief Justice Marshall when he issued his opinion a year later.

⁵²⁷ Section 8 of “An act to prevent the exercise of assumed and arbitrary power, by all persons under pretext of authority from the Cherokee Indians, and their laws, and to prevent white persons from residing in that part of the chartered limits of Georgia, occupied by the Cherokee Indians, and to provide a guard for the protection of gold mines, and to enforce the laws of the state within the aforesaid territory,” Act of the State of Georgia, December 22, 1830.

⁵²⁸ *Niles Weekly Register*, April 9, 1831.

⁵²⁹ *Georgia vs. Worcester and others*, Gwinnett County Court of Georgia, March 1831; reprinted in *Niles’ Weekly Register*, June 4, 1831.

Judge Clayton rejected all of the constitutional arguments with a thorough inspection of the defense's claims. However, the judge dismissed the case against Reverend Worcester and John Thompson, also a missionary. Section 7 of the act requiring a license stated: "Provided, that the provisions of this section shall not be so constituted, as to extend to any authorised agent or agents, of the government of the United States, or of this state."⁵³⁰ The judge argued that Worcester and Thompson were exempt from the license and oath requirement because both should be considered federal agents because they administered the government's civilization policy and Worcester was a federal postmaster in the Cherokee nation. Clayton questioned the missionaries' motives in ignoring this line of defense:

I am of the opinion that the law is perfectly constitutional, and that its provisions must be carried into effect. But there is one provision in it which two of the individuals in custody seem, for reasons best known to themselves, to have overlooked, and which will discharge them from their present arrest, if I have been correctly informed as to the facts. Both of them are missionaries, and one of them a post master. In the first character they are there with the consent of the general government, and as its agents are in the nation for the purpose of civilizing and Christianizing the Indians, and as evidence of their being government agents, they have the disbursement of large sums of public money for the aforesaid objects... This much I will assert, that I respect to much my own oath, and the character of the state, to inflict penalties unauthorised by law, merely to indulge individual in the fanciful idea, that they are suffering a species of martyrdom... Let the two missionaries (one of them being a post master) be discharged, and let the other four persons be bound over to answer to the misdemeanor charged against them.⁵³¹

The decision by Judge Clayton disappointed both the missionaries, who hoped to challenge the constitutionality of the law all the way to the Supreme Court, and the government officials in Georgia, who had drafted the law with the specific intention of pushing the missionaries off Cherokee lands. Almost immediately Governor Gilmer began lobbying the Jackson administration to deny the missionaries federal employee status. After inquiring to Secretary of War John Eaton, Gilmer received a statement from the Secretary denying that the

⁵³⁰ *Georgia vs. Worcester and others*, Gwinnett County Court of Georgia, March 1831; reprinted in *Niles' Weekly Register*, June 4, 1831.

⁵³¹ *Ibid.*

government viewed the missionaries as their agents.⁵³² A month later, the Postmaster General William Taylor Barry replaced Samuel Worcester as postmaster with William J. Tarvin, a trader from the area who had taken Georgia's oath.⁵³³

On May 28, Thompson and Worcester received letters from the commander of the Georgia guard, J. W. A. Sanford, informing them that they had ten days to leave Georgia or take the oath.⁵³⁴ The governor also sent them letters outlining their eligibility for conviction.⁵³⁵ As he wrote Worcester, "You are also informed that the government of the United States does not recognize as its agents the missionaries acting under the direction of the American board of foreign missions."⁵³⁶ Worcester was rearrested on July 7 by the Georgia guard for violating the December 1830 law. John Thompson had decided to leave the Cherokee nation and abandon his resistance but another one of Worcester's colleagues, Dr. Elizur Butler, agreed to oppose the law with him.⁵³⁷

Worcester and Butler's counsel offered a more limited constitutional argument in their second appearance before Judge Clayton. Their lawyers focused primarily on the privileges and immunities clause of Article 4: "It was contended by council in their behalf, that the law was unconstitutional; that the state had no right to exercise its jurisdiction over that territory, and to make such an exaction of them, inasmuch as it was not required of other citizens."⁵³⁸ Judge Clayton spent little time on the constitutional and jurisdictional claims in his second opinion

⁵³² Miles, 523.

⁵³³ *Cherokee Phoenix (New Echota, GA)*, May 28, 1831. The article also claims that Tarvin was selling alcohol despite the restrictions in the Trade and Intercourse Act.

⁵³⁴ J. W. A. Sanford to missionaries of the ABCFM, May 28, 1831; reprinted in *Niles' Weekly Register*, June 25, 1831.

⁵³⁵ George Gilmer to Samuel Worcester, May 16, 1831; reprinted in the *Niles Weekly Register*, June 25, 1831; and George Gilmer to John Thompson, May 16, 1831; reprinted in the *Niles Weekly Register*, June 25, 1831.

⁵³⁶ Gilmer to Worcester, May 16, 1831.

⁵³⁷ Miles, 524.

⁵³⁸ *Recorder (Georgia)*, September 24, 1831; reprinted in the *Niles Weekly Register*, October 29, 1831.

stating, “That matter is settled.”⁵³⁹ After Judge Clayton dismissed the challenges against the law, he handed the sentencing of the missionaries over to a jury who sentenced them to four years imprisonment.

Preparing for their challenge to the Supreme Court, the missionaries and their board decided to hire William Wirt and John Sargeant, the lawyers who had represented the Cherokees in their earlier case before the Supreme Court. Wirt soon announced that the Supreme Court had agreed to hear the missionaries’ case during its next session in January 1832.⁵⁴⁰ The state of Georgia received a summons from Justice Henry Baldwin of the Supreme Court notifying the state to appear in court on the second Monday of that January. The new governor, Wilson Lumpkin, outlined to the legislature of Georgia why the state would ignore the summons, “My respect for the supreme court of the United States as a fundamental department of the federal government, induces me to indulge the earnest hope, that no mandate will ever proceed from that court, attempting or intending to control one of the sovereign states of this union, in the free exercise of its constitutional, criminal or civil jurisdiction... I will disregard all unconstitutional requisitions, of whatever character or origin they may be; and to the best of my abilities, will protect and defend the rights of the state, and use the means afforded to me, to maintain its laws and constitution.”⁵⁴¹ The government of Georgia remained firm in its belief in its jurisdiction over Cherokee lands and would simply ignore any proceedings to the contrary.

In February, Wirt and Sargeant presented the missionaries case before the justices stressing that the federal government alone had authority over dealings with American Indians. In less than two weeks, the Chief Justice handed down the Court’s ruling on the missionaries’

⁵³⁹ *The state of Georgia v. the missionaries*, Gwinnett superior court of Georgia, May 16, 1831; reprinted in the *Niles Weekly Register*, October 29, 1831.

⁵⁴⁰ Miles, 526.

⁵⁴¹ Wilson Lumpkin, Letter to the senate and house of representatives of the state of Georgia, November 25, 1831, reprinted in the *Niles Weekly Register*, December 24, 1831.

case. The ruling pronounced all of Georgia's laws over Cherokee lands to be unconstitutional because only the federal government had the authority to legislate over American Indian lands and people.⁵⁴² While the court still did not view the tribe as having full sovereignty (as they had ruled in *Cherokee Nation v. Georgia*), they made it clear that state governments had no authority to try to legislate or control lands reserved to American Indians by treaties with the United States. As the Chief Justice writes, "The whole intercourse between the United States and this [Cherokee] Nation, is, by our Constitution and laws, vested in the Government of the United States. The act of the State of Georgia, under which the plaintiff in error was prosecuted, is consequently void, and the judgment a nullity."⁵⁴³

The decision ended by remanding the decision back to the Georgia Superior Court requiring that the decision be reversed. One of the lawyers for Worcester, Elisha Chester, delivered the court's ruling to the new superior judge, Charles Dougherty, and moved for the missionaries' release based upon a writ of *habeas corpus*. Judge Dougherty refused the motion and even refused to put the motion on record in his court.⁵⁴⁴ The actions by the Georgia court were designed to make it more difficult to enforce the Supreme Court decision. According to the Judiciary Act of 1789, a ruling by a lower court could only be reversed by the Supreme Court after it had been remanded once to the previous court and they did not provide the appropriate remedy.⁵⁴⁵

After the Georgia Superior Court refused to even put on record the motion for the release of the prisoners, Worcester and Butler had very few options until the Supreme Court reconvened for the next year. And contrary to popular belief, this had very little to do with inaction on the

⁵⁴² *Worcester v. Georgia*, 31 US (6 Pet.) 515 (1832).

⁵⁴³ *Worcester v. Georgia*.

⁵⁴⁴ *Niles' Weekly Register*, March 31, 1832; Miles, 528.

⁵⁴⁵ *An Act to establish the Judicial Courts of the United States*, 1st Cong., 1st sess. (September 24, 1789), *Stats at Large of USA*, vol. I (1845): 73-93.

part of President Andrew Jackson. Unlike usual procedure, the justices did not prepare a mandate to require federal marshals to effectuate the decision.⁵⁴⁶ Without this mandate, President Jackson was not constitutionally required to act on the decision. No marshal had refused to perform his federal duty to secure the release of the prisoners and in fact, the Supreme Court could not even issue a writ of *habeas corpus* until its next term when it would receive formal notification of Georgia's refusal to rehear the missionaries' case.

This was not simply the interpretation of Democrats and the Jacksonian press. The *Niles' Weekly Register*, a nonpartisan paper with editorials leaning to the Whig side, contended at the time, "And so, it appears, the matter must rest until January next. It is not required of the president to act – in the present state of this business; and we have nothing to do with the speculations offered as to his views of the subject."⁵⁴⁷ Even William Wirt, counsel to the missionaries, questioned what the President was required to do and even what the Supreme Court could mandate during its next term due to the state of legislation. When Congressman Lewis Williams wrote Wirt to see what could be done to require President Jackson to act, Wirt wrote back, "There can be no doubt among those who hold the 25th section of the Judiciary Act of 1789, constitutional, that the detention of the missionaries in the Georgia penitentiary is unlawful and false imprisonment and ought to be immediately terminated by their release; and it is a most imperfect and oppressive state of legislation if there is no law to coerce their immediate discharge."⁵⁴⁸

Wirt went on to question whether the Supreme Court could even issue a writ of *habeas corpus* when they returned to session in January 1833. Section 14 of the Judiciary Act only

⁵⁴⁶ Swindler, 16.

⁵⁴⁷ *Niles' Weekly Register*, March 31, 1832. For historical background on the *Niles' Weekly Register*, see William Kovarik, "Niles Weekly Register (1811-1849)," in *Encyclopedia of American Journalism History* (New York: Routledge, 2006), found at <http://www.runet.edu/~wkovarik/papers/Niles.Register.06.html>.

⁵⁴⁸ William Wirt to Lewis Williams, April 28, 1832, William Wirt Papers, Boxes 8 & 9, Library of Congress.

grants the Supreme Court the authority to issue a writ of *habeas corpus* in cases where the court or custody is “under or by colour of the authority of the United States.”⁵⁴⁹ Because Worcester and Butler were being held under the authority of the state of Georgia, Wirt was unsure whether the Supreme Court had the ability under the Judiciary Act to issue the writ. Wirt even mentions to Williams that the missionaries were beginning to consider a pardon which would involve an admission of guilt because of their uncertainty about when they would be released.⁵⁵⁰

But in the next several months, outside events would force the missionaries to consider their case in light of their loyalty to the federal government, the Cherokees, and their mission. The nullification crisis over President Andrew Jackson’s Tariff of 1828 came to a head at the end of 1832. The tariff forced the President Jackson to reconsider his stance toward a state’s ability to determine federal law. The protective tariff put a tax on imported goods to help protect infant businesses which were primarily located in the North. Southern states contended that the tariff disproportionately affected them because they imported many British and European goods and the tax reduced British businesses ability to buy southern cotton. South Carolina responded with its Nullification Ordinance in November 1832 which contended that the state had the authority to nullify a federal law as it applied to their jurisdiction if they believed it to be unconstitutional. The ordinance included a section which forbade its courts from complying with Supreme Court processes with regard to the validity of the tariff act or the nullification ordinance.⁵⁵¹ Jackson quickly responded with his Nullification Proclamation forcefully arguing that the nullification principle was against the very fiber of the Constitution and would result in the destruction of the

⁵⁴⁹ *An Act to establish the Judicial Courts of the United States*, §14.

⁵⁵⁰ Wirt to Williams.

⁵⁵¹ “An ordinance to nullify certain acts of the Congress of the United States, purporting to be laws laying duties and imposts on the importation of foreign commodities,” November 24, 1832, found at http://avalon.law.yale.edu/19th_century/ordnull.asp.

Union. He contends that the South Carolinians have only two legitimate means of redress if they disagree with the law: either Congress or the federal courts.⁵⁵²

Those from South Carolina immediately accused the President of hypocrisy. John Calhoun was withering in his criticism:

But the President had also rested his inference on another ground. He had laid it down, that the tribunal of the Supreme Court of the United States was, in the last resort, the only arbiter of the difference in the construction of the constitutionality of the laws. On this point there seems to have been a great change in the opinion of the Executive within the last twelve months. The President had not held this opinion in reference to the resistance of the State of Georgia. A narrow river only divides the territory of Georgia from that of South Carolina; yet, on the one side, the power of the Supreme Court, as the arbiter in the last resort, is to be sustained; while, on the other side, the will of the Executive is to be supreme.⁵⁵³

The belief that a state had the right to ignore federal authority linked Georgia's Cherokee cases with South Carolina. The federal government had a reason to quickly resolve the missionaries' case without inciting conflict with Georgia or causing them to join ranks with South Carolina.

By the fall of 1832, the Jackson administration was eager to resolve dispute with Worcester and Butler to avoid a showdown when the Supreme Court came back in session in January 1833. President Jackson may have been far from sympathetic toward the missionaries but he did not want a confrontation with the Supreme Court right when he was defending it as one of the sole arbitrators over constitutional disputes. The governor of Georgia, Wilson Lumpkins, was a Unionist who hoped to keep his state from joining the nullification conflict. However, he had no desire to release the missionaries because of a court decision and process the state had refused to even recognize. Worcester and Butler were beginning to tire of their unconstitutional imprisonment but they also felt strongly about the moral and political issues surrounding the Cherokee's case which had led them to accept arrest in the first place. In May

⁵⁵² Andrew Jackson, "Proclamation concerning the Ordinance of South Carolina, on the subject of the tariff," December 10, 1833, *Eliot's Debates*, vol. IV (1836): 582-592.

⁵⁵³ John Calhoun, January 16, 1833, 22nd Congress, 2nd session, *Register of Debates: Senate* (1833): 101.

1832, Worcester wrote that they would stay firm for: “Who will hereafter venture to place any reliance on the Supreme Court of the United States for protection against laws however unconstitutional if we now yield through fear that the decision of the court will not and cannot be executed?”⁵⁵⁴

This stalemate was broken by actions taken by President Jackson and his administration. Jackson used his lieutenants to persuade Governor Lumpkins to offer a pardon to the missionaries if it was requested. Martin van Buren, the new vice president, had prominent Democratic leaders write the governor. Secretary of War Lewis Cass also wrote two letters to the governor begging for pardons in the case.⁵⁵⁵ The missionaries were also under pressure to end their case. Elisha Chester, formerly defense counsel for the missionaries, had been offered a position as a special agent for the War Department and he urged the ABCFM Board to persuade Worcester and Butler to accept a pardon from Governor Lumpkin.⁵⁵⁶ Governor Lumpkin did his part by hosting the missionaries’ wives at the executive mansion to assure them that he wished the best for their husbands and at the end of the year he signed a bill repealing the law requiring an oath under which they had been arrested.⁵⁵⁷ Finally, many Georgia Unionists visited the missionaries urging them to reconsider their stance in the interest of the nation.⁵⁵⁸

With the blessing of their board and advice from their lawyers, Worcester and Butler decided to accept the pardon. The difficulties were not quite finished. Worcester and Butler’s first letter to the governor requesting a pardon ended by arguing:

We beg leave respectfully to state to your excellency, that we have not been led to adoption of that measure by any change of views in regard to the principles on which we have acted, or by any doubt of the justice of our cause, or of our perfect right to a legal discharge, in accordance with the decision of the supreme court in our favor already given, but by the apprehension that

⁵⁵⁴ Worcester to Greene, May 7, 1832; quoted in Miles, 532.

⁵⁵⁵ Miles, 520, 536-7.

⁵⁵⁶ Miles, 530-1.

⁵⁵⁷ Miles, 535.

⁵⁵⁸ Miles, 538.

the further prosecution of the controversy, under existing circumstances, might be attended with consequences injurious to our beloved country.⁵⁵⁹

The governor was furious with this addition and refused to grant the pardon. The next day, the missionaries met the governor on his own terms, simply noting, “It has been our intention simply to forbear the prosecution of our cause, and to leave the question of the continuance of our confinement to the magnanimity of the state.”⁵⁶⁰

Five days later, Governor Lumpkin released the missionaries. Two days later, President Jackson sent his Force Bill to Congress requesting additional powers for the executive and judicial branches to deal with the states. William McLoughlin summarizes the end result, “In the final clash of sectional interests after 1828, the unsettled constitutional problem of states’ rights overrode all commitments ever made to the Indians (by treaties, civilization programs, or missionary support). Circumstantially, nullification was the overriding issue; Indian rights the minor one.”⁵⁶¹ After 1832, most missionaries and congressional supporters urged the Cherokees to sign a treaty and resigned themselves to the Jacksonian position. Over the next five years, all of the Cherokees would either move voluntarily or by force to lands in Indian Territory that the government had reserved for them.

The Role of the ABCFM

The American Board of Commissioners for Foreign Missions played an important role in the advocacy for Cherokee rights and recognition by the federal government. As a private group, it acted as an advocate for a cause its members were passionate about. But they were more than

⁵⁵⁹ Samuel Worcester and Elizur Butler, Letter to Governor Wilson Lumpkins, January 8, 1833; reprinted in *Niles’ Weekly Register*, February 16, 1833.

⁵⁶⁰ Samuel Worcester and Elizur Butler, Letter to Governor Wilson Lumpkin, January 9, 1833; reprinted in *Niles’ Weekly Register*, February 16, 1833.

⁵⁶¹ McLoughlin, 328-9.

simple advocates; they acted as intermediaries between the tribe and the various branches of the national government and the state of Georgia. In part, this role was assumed due to their financial relationship with the national government. The court case forced both the federal government and the missionary organizations to reconsider the terms of their partnership.

Throughout the debates over the removal bill, the ABCFM had been the firmest supporters for the Cherokee's cause. Their members had organized massive letter writing campaigns, written editorials, and attended meetings across the northeast and Midwest. After the Cherokees lost their case before the Supreme Court due to a lack of standing, they needed the help of someone outside of the tribe in order to challenge Georgia's laws affecting their lands. From the beginning, Samuel Worcester, an ABCFM missionary, saw his case as more than just challenging his arrest. Instead, he purposefully stayed in the Cherokee Nation in order to be arrested and to test the constitutionality of the state's laws. As he told his some colleagues who questioned his defiance of the law in January of 1831, he would "rather suffer with and for the Cherokees, than to discourage them by having it said that the Board and its missionaries could not trust the Supreme Court of the United States."⁵⁶²

This private group acted on behalf of a third party that was unable to fully exercise political or legal power. Without the actions of Samuel Worcester and Elizur Butler, the Cherokees would have been forced to negotiate with the state and national governments at a much earlier point in time. In addition, the legal views pronounced by the Chief Justice in *Worcester* would help the Cherokee Nation, and other American Indian tribes in their future interactions with state governments.

⁵⁶² Samuel Worcester to Jeremiah Evarts, January 28, 1831, Letters from the Cherokee Missions, VII, Archives of the American Board of Commissioners of Foreign Missions (Harvard University), *found in* Miles, 522.

But the missionaries were more than just advocates for the tribe; they acted as intermediaries between the tribe and the national government. Instead of simply advocating for the Cherokees in these negotiations, the ABCFM also had their own interest as well as the interests of the Cherokee Nation in mind when they negotiated. Even when the government and the missionary board were in disagreement, both used the established communication links from their civilization partnership to try to find solutions. The decision by both the board and the missionaries to accept a pardon from the state of Georgia came from negotiations with the administration, national politicians, and prominent Georgians but not the Cherokees.

The ABCFM board also had other interests to consider when they decided their role in the Cherokee Nation. Federal funding for civilization efforts played a role in determining how the board would approach the situation. As the ABCFM board began to consider their response to the Indian Removal Bill, the War Department pressured Jeremiah Evarts to have the ABCFM board approve removal with the incentive of receiving more assistance from the government.⁵⁶³ The missionaries on the ground did not decide to publicly denounce the government until Secretary of War John Eaton ended the civilization funding for mission efforts east of the Mississippi River.

Even after Worcester and Butler had ended their suit and the board had encouraged the tribe to remove, they still had a keen interest in the workings of how the government would deal with removal. They still had schools on eastern Cherokee lands and new schools in Indian Territory would be costly especially since the government had stopped paying for buildings out of the Civilization Fund by this time. When negotiating a treaty with the Cherokees in 1835, the government hired a Dutch Congregationalist minister, Reverend John F. Schermerhorn, to help design and negotiate the treaty. The Reverend did all he could to design the treaty to minimize

⁵⁶³ Beaver, 110.

mission board opposition to removal. As William McLoughlin explains, “Schermerhorn’s most Machiavellian trick was to include in the [1835 Ridge party] treaty a clause which would reimburse all mission boards for their buildings and improvements. He knew that the boards were eager to avoid a total loss and that they wanted money to establish new mission stations among the Cherokees once removal was effected... Furthermore, Schermerhorn worded this clause so as to require that any funds paid to remunerate mission boards were to be deducted from the \$5 million paid for the Cherokees’ homeland. He did so on the ground that the Cherokees had benefited from the missions and therefore they, not the federal government, should reimburse the mission boards for their benevolence.”⁵⁶⁴

The fight over removal and most importantly the *Worcester* case forced the government and missionary groups to think through how their partnership for civilization efforts would be defined. By 1833, there were serious doubts if either the churches or state wished formal relationship that had previously existed. The missionary groups had their sincerity questioned because of their monetary relationship. They also received pressure from multiple sides when they took on an advocate role and eventually stepped aside in the interest of the nation. After the end of *Worcester* and *Butler*’s case, the missionary groups decided to change their relationship with both the tribe and the government. They turned to their core mission, teaching and preaching, and ended their role as advocates, “In the long run, the effort to uphold Indian treaty rights and to prevent removal fell mainly upon the Cherokees themselves. The missionaries had too many reasons for siding with their white brethren to persist in defense of their red brethren. Blood was thicker than water; ethnocentrism was stronger than righteousness. After 1832 the missionaries withdrew from the struggle (with a few notable exceptions). They did not, in their opinion, ‘desert’ the Cherokees, because some missionaries in all denominations continued to

⁵⁶⁴ McLoughlin, 308.

live and work among them during the next six years. But after January 1833 they confined their work to preaching and teaching school.”⁵⁶⁵ Based on their experience with the Cherokee, missionary organizations diminished their presence among and commitment to American Indian tribes. It was not for another forty years during President Grant’s Peace Policy for missionary activity to reach a similar level. Religious organizations became much more hesitant about partnering with the government for education efforts for American Indian tribes.

On the other hand, the government had long advocated for the Civilization Fund on the grounds that church groups would be quasi-agents passing on information and unequivocally backing the government’s position. As it became clear that missionary groups would not be outright advocates for the government but would take actions to challenge the government’s position, the government began to distance itself from the missionaries and eventually denied them federal employee status. The situation began an examination over the relationship between the government and its contractors, both legally and politically. This debate over the role of contractors still has not ended.

Worcester v. Georgia: An Evaluation of American Indians and the Law

The Cherokee cases (both *Cherokee Nation v. Georgia* and *Worcester v. Georgia*) provide insights into the role of private parties as both advocates and intermediaries. But the case also raises special issues about the role of law as a tool for American Indian communities and as mechanism for national development. Even in only considering the wording of the decision, the cases set up two of the most important and enduring concepts for tribal-federal relations: sovereignty and the guardian-ward relationship. But beyond this, the case and the way in which it was handled by the legal and political systems as well as the private group that helped

⁵⁶⁵ McLoughlin, 299.

bring the case illustrate larger themes of the indigenous experience in America. First, both the judicial decision and the missionary advocates reflected the paternal attitudes toward American Indians that typify much of government-tribal interactions. Second, this case study provides insight into how the early American state defined insiders and outsiders in the constitutional framework and what happened to those outside of the Constitution's promise.

Worcester v. Georgia is often misunderstood because, at the end of the day, the national government would not force Georgia to recognize the sovereignty of the tribe even though Marshall's decision spends much of the decision explaining why tribal sovereignty precludes state action on American Indian lands. However, the national government actually had no obligation under *Worcester* to uphold Cherokee sovereignty. The case simply decided whether or not the imprisonment of Samuel Worcester and Elizur Butler was constitutional. The only obligation for the government was to ensure the missionaries' release (as problematic as that may have been).

All of Marshall's pronouncements regarding tribal sovereignty were merely dicta, opinions that go beyond the facts of the case. While dicta may not be legally binding, the ideas that Marshall set forward became the benchmark for understanding the federal-tribal relationship in the future. Clifford Lytle sets out the force that the Cherokee cases has had over the last two centuries, "Over the years the 'domestic dependent' Indian nations under the shield of tribal sovereignty became exempt from state taxation, political regulation, and administrative intrusion, to name but a few areas of concern. The Supreme Court thus initially erected a protective barrier insulating Indian nations from hostile state governments."⁵⁶⁶

⁵⁶⁶ Clifford Lytle, "The Supreme Court, Tribal Sovereignty, and Continuing Problems of State Encroachment into Indian Country," *American Indian Law Review* 8(1980): 72.

For a young nation still learning how federalism and separation of powers would work in practice, the case also helped define the authority relationships between national, state, tribal and private entities. The existence of indigenous tribes on land encompassed by the borders of existing states had been a thorny issue for the national government almost from the beginning of the nation. Treaties selling land and promising removal was the general strategy but as the Cherokee case illustrates, treaty making alone could not ensure that a people would readily leave their ancestral lands for faraway places. However, for a nation still trying to establish primacy over state governments, it was often difficult to take the side of the tribes. Ronald Berutti explains, “Because the young federal government’s relationship with the various states was characterized by friction, it is no wonder that the Indians were so poorly treated. Any time the federal government acted in a manner which mildly harmed the states and which could be viewed as pro-Indian, the threat arose of secession, civil war, or both. The Indians were, therefore, victimized by the tension created by federalism.”⁵⁶⁷

In the Cherokee case, the federal government faced a direct challenge to its authority over intercourse with American Indian tribes from Georgia. This challenge may have become particularly acute without Worcester’s challenge to the Supreme Court. Without the missionaries’ actions, the national government would have allowed Georgia to enforce its laws on Cherokee land. However, the court case meant that the final word from the national government came from the courts and upheld sovereignty and national primacy in the realm of intercourse with American Indian tribes. The case outlined the multi-faceted nature of tribal sovereignty, as explained by Lytle, “On one hand, it [tribal sovereignty] was a formidable barrier to state encroachment into its affairs; on the other hand, it was a fragile legality capable of

⁵⁶⁷ Berutti, 295.

extinguishment if and when the federal government felt so inclined.”⁵⁶⁸ Finally, the federal government’s active role in working with the religious organizations to resolve the case ensured federal dominance in the area by acting as the final authority and coordinator between Georgia, private groups, and the President.

The case study also illuminates a larger trend toward paternalism even in the most liberal advocates for the American Indians. Part of the reason that the ABCFM leadership encouraged Samuel Worcester to take up his case was a belief that the Cherokees were incapable of defending their rights in court. For the missionary board, the Cherokees’ white benefactors would have to take up the challenge if they had any chance at protection. William McLoughlin describes the situation: “Writing to Worcester in January 1831 about the prospect of his being the person to bring the suit, Evarts encouraged him toward civil disobedience... He then indicated that, sympathetic though he was with the Cherokees, he believed they were, as a race, incapable of standing up to the oppression by legal means... Despite their loyalty to the Cherokees as a suffering people, the New Englanders could not help expressing their ethnocentric and racial prejudice.”⁵⁶⁹

This paternalistic attitude recurred in John Marshall’s opinions in both of the Cherokee cases. In *Cherokee Nation v. Georgia*, Marshall outlined his belief that American Indian nations were domestic dependent nations in a relationship with the United States similar to a ward to a guardian. Marshall saw the tribes as in a “state of pupilage” and stressed that they “look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their Great Father.”⁵⁷⁰ While the general argument of *Worcester* upheld tribal sovereignty, Marshall sets out the relationship between the national

⁵⁶⁸ Lytle, 71.

⁵⁶⁹ McLoughlin, 258-9.

⁵⁷⁰ *Cherokee Nation v. Georgia*, 30 US 1(1832).

government and tribes that has been established through treaties. He stresses that the tribes are under the “favor and protection” of the United States.⁵⁷¹

The attitude that Marshall and others on the court took toward the Cherokees is especially important because it worked to institutionalize a particular view of race. This institutionalization of a particular form of racism can become problematic as Paul Frymer explains, “Racism is not politically problematic simply because some or even many individuals hold racist attitudes; it becomes problematic when institutional dynamics legitimate and promote racist behavior.”⁵⁷² While the attitude of Marshall and other court cases of the period did not express a hostile racist attitude, their paternalism legitimated a form of racial superiority that still affects governmental and legal decisions toward American Indians. Future acts of racism both politically and individually can be explained partly by the legitimation of this power relationship.⁵⁷³

The Cherokee cases also illustrate the role the court played in determining insiders and outsiders in the constitutional framework. Examining the plaintiffs in the two Cherokee cases helps explain the differing treatment by the courts. On the one hand, the plaintiff in *Worcester* is a white, Protestant New Englander with connection to the nation’s economic and political elite. On the other hand, the Cherokee Nation is an indigenous tribe who also represents a number of other tribes across the nation’s periphery, most still practicing their native religion and way of life. The Cherokee Nation attempted to use the federal court system as a foreign nation in *Cherokee Nation v. Georgia*. If they had been successful, they would have had full sovereignty over their land and political autonomy. However, the court instead ruled that they were domestic dependent nations and therefore under the jurisdiction of the federal government. So the tribe

⁵⁷¹ *Worcester v. Georgia*, 31 US (6 Pet.) 515 (1832).

⁵⁷² Paul Frymer, “Racism Revised: Courts, Labor Law, and the Institutional Construction of Racial Animus,” *American Political Science Review* 99(2005): 374.

⁵⁷³ For a more general theoretical analysis of the power of institutional racism, see Frymer, 373-387.

could not use the court system as a foreign nation but they also enjoyed few of the protections afforded by the Bill of Rights. The individual focus of the American Bill of Rights is a poor fit for protecting group cultural practices and tribal collective interests.⁵⁷⁴ However, the courts were a one of the few avenues for justice for American Indians in the nineteenth and early twentieth centuries because as non-citizens they could not exercise political rights, such as voting, that would help determine who the policy-makers would be.⁵⁷⁵

In *Worcester* and *Cherokee Nation*, John Marshall outlined the relationship between the United States government and American Indian tribes. Congress and the executive branch had the authority to determine all contours of policy toward the tribes. Congress is constitutionally authorized to regulate the trade and intercourse with American Indians. The President is authorized to make treaties and execute the laws of the land. *Cherokee Nation* set the federal government in a guardian/ward relationship with the tribes so the guardian had the ability to take actions that they viewed in the best interest of the tribe, their ward. However, American Indians had very few resources to influence the decisions that their guardian made. As non-citizens, they had no right to vote in elections for either the President or members of Congress. Politicians invariably catered to their voting constituents rather than tribes. Often the court system became one of the few institutions that American Indians had access to, even if they were routinely discriminated against when trying to use its framework.

The court system played a special role in the relationship between American Indians and the United States. Unlike other non-slaves living in states and territories, American Indians did not have political power backed by the vote. The court thus became one of the few avenues open for redress to tribes. The court during this period played an instrumental role in developing

⁵⁷⁴ *Cohen's Handbook of Federal Indian Law*, §14.03, found at LexisNexis Research.

⁵⁷⁵ Several significant cases include *Standing Bear v. Crook* (1879), *Lone Wolf v. Hitchcock* 187 U.S. 553 (1903); *Winters v. US* 207 U.S. 564 (1908).

concepts of sovereignty and guardianship that still define federal-tribe relations. The cases examined also shed light on larger problems of institutional racism exemplified by paternalism and the insider/outsider framework.

Private Groups and the Courts: An Assessment of the Literature

Worcester v. Georgia and the events surrounding the case illustrate the relationship between private groups, the state, and the court system. At the beginning of the chapter, I explored the current literature by looking at how justices make decisions, how cases reach the courts, and what happens after the decision with special emphasis on the role of private groups in each of these three areas. In this final section, I will examine what *Worcester* adds to each of these discussions.

One of the defining debates in judicial politics is over the motivations of judges. Behavioralists claim that judge's decisions are almost pure reflections of their personal ideological preferences. In the Cherokee cases, Marshall leaves little doubt as to his personal preference regarding the fate of the Cherokees. He wrote his friend, Judge Carr, in a message to be shared with Worcester's lawyer, William Wirt, that he "wished, most sincerely, that both the executive and legislative departments had thought differently on the subject. Humanity must bewail the course which is pursued, whatever may be the decision of policy."⁵⁷⁶ The justice made sure it was known in the dicta of *Cherokee Nation* that he would look favorably on a more suitable case and he encouraged Justices Storey and McLean to publish a dissenting opinion that supported full Cherokee sovereignty to encourage the tribe and its supporters. In his dicta for

⁵⁷⁶ John P. Kennedy, *Memoirs of the Life of William Wirt (revised edition)*, vol. II (Philadelphia: Blanchard and Lea, 1856): 258.

both *Worcester* and *Cherokee*, Marshall went well beyond the narrow decision to outline an overarching judicial doctrine toward American Indians in the constitutional framework.

However, the case speaks strongly to the arguments made by new institutionalists. While Marshall's preferences were clear, they were mediated by his belief about the proper procedure for presentment of cases before his institution. As Kent Newmyer contends, "Judges have biases that shape policy decisions, but they also have commitments to the institutional tradition of the Court and to the methodology of the law."⁵⁷⁷ In this case, Marshall's sympathies toward the Cherokees could not overcome his belief that the tribe did not have standing to bring a claim before the Supreme Court. He waited for the proper case to outline his views on sovereignty and the states.

Chief Justice Marshall clearly was uncomfortable with ruling against the Cherokees in their suit against Georgia. His personal preference may have been to simply ignore the issue until a more suitable case arose. However, the court cannot simply write out their views on general issues. They are institutionally constrained to the cases that arise before them as Marshall points out in *Worcester*, "It is, then, we think, too clear for controversy that the act of Congress by which this Court is constituted has given it the power, and of course imposed on it the duty, of exercising jurisdiction in this case. This duty, however unpleasant, cannot be avoided. Those who fill the judicial department have no discretion in selecting the subjects to be brought before them. We must examine the defence set up in this plea."⁵⁷⁸ In addition, Marshall's dicta and Thompson's dissent in *Cherokee Nation* made it clear that they hoped for a case that revolved around personal property. The missionaries' criminal case was not exactly

⁵⁷⁷ Kent Newmyer, "On Assessing the Court in History: Some Comments on the Roper and Burke Articles," *Stanford Law Review* 21(1968-9): 540.

⁵⁷⁸ *Worcester v. Georgia*.

what the Chief Justice had in mind but as he notes judges can only resolve conflicts that are before them.

The litigation brought before the court was partly determined by private groups. The case helps researchers flesh out both the theories of Robert Lieberman and Charles Epp regarding the role of private groups. This case from afar appears to be the opposite of Lieberman's description of capacity building through a legal partnership between a federal agency and a private group. In *Worcester*, the private group was in direct opposition with established executive policy. However, there was significant dialogue and, in the end, cooperation due to the established links between the War Department and missionary boards forged through civilization policy. In addition, the case helped build state capacity by validating the national government's authority in American Indian affairs.

Charles Epp emphasizes the political economy of litigation in his work. This case both confirms and adds to his theories. It is highly unlikely that Samuel Worcester would have fought his case all the way to the Supreme Court without the moral and monetary backing of the ABCFM. Worcester's family continued to receive support from the mission in his absence and the cost of soliciting advice and publicizing the case fell to the board.

The ABCFM's strategy during the Cherokee removal crisis was affected because it obtained a portion of the funds necessary to continue its work from the federal government. The Board's work among various tribes in the United States was partially funded through the national government's Civilization Fund. This funding link made a difference both in the manner of litigation and the eventual resolution. The legal strategies of private organizations that receive federal funding deserves more attention. As Jack Walker has illustrated, many nonprofit and

advocacy groups receive funding from the federal government.⁵⁷⁹ With limited sources of funding for many public interest groups, it is worth investigating if legal strategies change based on fear of funding cuts. In this case, Worcester and his fellow missionaries did not become vocal against removal until after the War Department cut their funding.

The final aspect of judicial politics is how the ruling actually plays out on the ground. Gerald Rosenberg's theory on judicial enforcement and the conditions when social change can occur are incredibly relevant to the case at hand. Even though the court ruled in favor of the missionaries and made it clear that Georgia had no jurisdiction on Cherokee lands, the state of Georgia refused to even recognize the court's proceedings. Without political will from the state of Georgia and the federal government, there was little the court could do to enforce its decision. This was especially true in 1832 since the Judiciary Act of 1789 only gave the Supreme Court the ability to issue writs of *habeas corpus* where the prisoners were held under the authority of the United States. Rosenberg's assumption that on-the-ground outcomes often differ from judicial pronouncements is especially clear in this case.

But despite the court's inability to change Georgia's actions, *Cherokee Nation* and *Worcester* became landmark cases in American Indian law. As Clifford Lytle explains, "Marshall's views in *Cherokee Nation v. Georgia* laid a foundation upon which much of the idea of federal responsibility over Indian affairs is predicated" and in *Worcester*, "the sovereignty of Indian nations reached full fruition."⁵⁸⁰ So how did these decisions become landmark decisions when they were viewed as failures to effectuate their purpose at the time? In part, they were some of the only outlines of federal Indian law. But possibly more importantly, they meet Rosenberg's final criteria for a decision to have continued importance: the cases provided cover

⁵⁷⁹ Walker, *Mobilizing Interest Groups in America*.

⁵⁸⁰ Lytle, 68, 71.

for a view that was politically unpopular but desired by other political actors. Upholding tribal sovereignty and national supremacy over the subject may have been unpopular, but the decision at its essence provided a strengthened defense of federal supremacy over intercourse with American Indian tribes. National actors, especially those politicians and bureaucrats with significant roles in determining policy, had an interest in perpetuating the view of American Indian policy elucidated by the Supreme Court in the Cherokee cases.

Cornell Clayton and Stephen Skowronek both stress the importance of the courts in determining the contours of the political system. The Cherokee cases were important in defining the jurisdictional boundaries and authority relationships between the states, national government, and tribes. Building on Skowronek's view of the legal system of the time, in these cases the courts aided nation-building by defining the proper interactions between different institutions and society in a previously unclear arena: American Indian affairs. The Court also clearly staked out its role as the final arbiter in these decisions.

However, in protecting its role as final arbiter, the Court was not immune from the political discussions of the day. The Court was not popular especially since it was seen as hostile to Georgia's interests. The Georgia congressional delegation continually pushed a bill that would take away the Supreme Court's ability to review decisions from state courts. Justice Story, at the time, wrote his wife about the bill which "would deprive the Supreme Court of the power to revise the decisions of the State Courts and State Legislatures, in all cases in which they were repugnant to the Constitution of the United States."⁵⁸¹ While institutional norms may caution against paying attention to political currents, the Court had to at least be cognizant that institutional maintenance would require delicacy when *Cherokee Nation* reached it in 1831.

⁵⁸¹ Joseph Story to Mrs. Joseph Story, January 28, 1831, found in *Life and Letters of Joseph Story*, vol. II, ed. William Wetmore Story (Boston: Charles C. Little and James Brown, 1851): 43.

Some legal scholars have pointed to Chief Justice Marshall's creative reasoning in *Cherokee Nation* as indication that he bowed to political pressure. Ronald Berutti is especially critical, "[Marshall] effectively traded away the rights of American Indians in exchange for retention of the Supreme Court's power."⁵⁸² However, this ignores the fact that Marshall eventually upheld the Cherokee sovereignty in *Worcester*. A more balanced assessment comes from Kent Newmyer who writes, "Marshall accomplished these results without cynically disregarding the law on the question of jurisdiction, or abandoning his respect for the institutional procedures of the Court. To put it another way, Marshall's genius, in this case as in others, was not that he abandoned the framework of the law, but that the legal framework allowed discretion and choice sufficient for statesmanship. The message is that the Supreme Court can affect politics without ceasing to be a court of law; the burden of scholarship then is to understand both the political and legal dimensions of the Court."⁵⁸³ The institutional constraints provided for engagement with the political realm while maintaining judicial caution.

As indicated by Skowronek, national capacity in this period had much of its genesis in the courts. Through *Worcester*, the national government became the unquestioned source of authority in American Indian affairs. The court further delineated the roles of states, tribes, and the national government in governing particular classes of people. Finally, the Force Bill, which drew heavily on the suggestions of William Wirt as he sought to alleviate the problems of enforcement after *Worcester*, gave the federal courts significantly more power over the states than they had ever had in the past.

However, Skowronek contends that capacity was built for the American state by insulating it from the public. This is directly contradicted by this case. Capacity was built

⁵⁸² Berutti, 302.

⁵⁸³ Newmyer, 546.

through partnerships with the public and through private groups challenging and prodding the national government. While Skowronek may have omitted the role of public-private partnerships in creating state capacity, they are another form of governing that gave an “evanescent or elusive quality to the early American state.”⁵⁸⁴

According to Skowronek, this period is the era of courts and parties but in relations with the Cherokees, national political institutions such as the Presidency and the War Department as well as the military were crucial in determining policy and creating change. The executive government through the War Department, not the Democratic Party, brokered agreements with various political players at multiple levels of government and pushed party officials to follow national policy.

Conclusion

Worcester v. Georgia and its surrounding events illustrate the complexities of American Indian law in the political and judicial system. The case was vital in securing sovereignty for a class of people often ignored by the political system but it also cemented particular racial views of indigenous peoples. The case study also illustrates the complexities of public-private relationships. The missionary boards in this case were often in direct opposition with federal policy and ignored threats from the President and War Department. However, the final result illustrates the cooperation that can be born out of previous connections to ensure national capacity and strength. While judicial politics are often separated from the American political development and theories about interest groups, this case study stresses the importance of further research into the interconnections between the judiciary, private groups, and the federal government.

⁵⁸⁴ Skowronek, 29.

Conclusion

Throughout the nineteenth century, the federal government continually looked to private organizations to help accomplish major Indian policy initiatives. Private fur traders provided the government with information from the remote areas of American territory and helped push out foreign traders. The federal government directly distributed all of the Civilization Funds to religious organizations to subsidize schools on tribal lands. And in one of the nation's largest experiments in public-private partnerships, religious organizations became responsible for the complete administration of all tribal agencies and superintendencies during the presidency of Ulysses Grant. The continual reliance on private capacity in federal Indian policy allows for a wide-ranging look at public-private partnerships in state-building.

Each branch of the federal government had a role in initiating and supporting these partnerships. Congress designed a licensing system for traders that minimized the need for direct bureaucratic control of trade. The Office of Indian Trade and the War Department set up a system of dividing up its appropriations to religious groups that met particular criteria in its effort to set up schools. President Ulysses S. Grant looked to mission groups as a radical alternative to patronage appointments to achieve reform and peace on the frontier. Throughout the nineteenth century, the federal courts provided a forum for private organizations to shape and challenge federal policy while reinforcing federal authority. The in-depth case studies explored in this thesis provide a starting point for evaluating my theoretical framework and hypotheses. The following sections provide a concluding analysis, an outline of limitations, and suggestions for future study.

Evaluation of the Theoretical Framework

The case studies provide support for the hypotheses developed at the beginning of this thesis. One of the central contentions of this thesis is that the results of public-private partnerships will vary depending on which branch originated the partnership. Congress desires public-private partnerships that do not add to administrative capacity. On the other hand, presidents and bureaucratic administrators desire to develop capacity that is greater than the congressional delegation. Bureaucrats are most likely to pursue entrepreneurial initiatives when they have the slack necessary to innovate.

The case studies provide support for these general contentions. As an alternative to public control of the fur trade, Congress designed a licensing system which empowered private traders through grants of authority. Like a mercenary relationship, the licensing system helped the American government push out foreign traders and agents and establish American supremacy in the territories. But the system failed to develop capacity for the Office of Indian Trade to control trade and intercourse laws. In this area, the office depended on the information and cooperation of private fur traders. On the other hand, in the administration of the education fund, the Office of Indian Affairs was able to leverage its limited budget for schools by providing incentives for religious organizations to build schools and provide the teachers. In its selectivity, the office was able to direct private organizations and demand information and support from private organizations. The partnership between religious organizations and the federal government to provide schools on tribal land was not always smooth. The removal of the Cherokees from the south-east illuminated conflicting policy visions between the partners. While the aftermath of *Worcester v. Georgia* confirmed the convergence of federal and private goals, both religious organizations and the federal government were more reticent about engaging in partnerships. By the end of the 1860s, the executive branch was again ready for

radical reliance on private organizations to administer federal Indian policy. While the Peace Policy failed to accomplish the intended wholesale reformation of the Indian Office, the period was marked by the creation of some of the most important institutional reforms. From this admittedly limited set of cases, I find support for the general contention that the results of partnerships are related to the branch that initiates them.

One of the other main contentions is that capacity building is more likely when agencies are in a position of weakness. In these situations, bureaucrats and presidents are more likely to take entrepreneurial action to meet their missions. Two of the case studies, the Civilization Fund partnership and the Peace Policy, provide support for the idea that innovative, capacity-building relationships are likely when agencies have limited monetary and reputational resources to simply force their desired change. In the 1820s, the Office of Indian Affairs had to find a way to incentivize the provision of tribal education without the funds or the manpower to make a difference on its own. The program designed allowed the government to provide block grants to religious organization. The religious groups were required to provide the initial buildings, teachers, and the necessary additional funds. In the case of the Peace Policy, the Indian Office's reputation had been destroyed and it was struggling to fulfill even the most basic federal goals. From this low point, President Grant was given leeway to innovate with federal Indian policy.

The thesis also asked under what conditions are public-private partnerships most successful in accomplishing substantive missions and building capacity. Three factors appear to be important in determining success. First, in order to ensure that private partners follow government directives, the federal government must hold some important bargaining chips to control private actions. In the first case study on trade, the government had a difficult time controlling powerful traders because the trader held almost all of the information, organizational

presence, funds, and even some of the authority in the territorial west. On the other hand, in the administration of the Civilization Fund, the Office of Indian Affairs distributed an additional source of funding for projects already planned by religious organizations. The office thus had the ability to place important conditions on the use of funds to direct private behavior.

Second, successful public-private partnerships depend on government working with private organizations that have strong organizational capacity. President Grant's Peace Policy provides the perfect case to see the implications of organizational capacity on successful partnerships. The government had the most success when religious mission groups created organizational structures to encourage institutional learning and monitor agents. For successful partnerships, the government had to ensure that it had enough power over private groups to ensure compliance. But the relationship could not be completely lop-sided because successful partnerships also required private organizations that were strong enough to take on the role given to them by the government.

Third, public-private partnerships are most successful when the incentives of private groups and the government are in line. In both of the situations where religious organization partnered with the Office of Indian Affairs, they had very similar goals to the federal administrators. The Office of Indian Affairs and religious organizations believed that increasing schools and missions on tribal lands was required based on their Christian commitment to the tribes and would help with assimilation. The program never had enough funding to make a nationwide impact but the individual schools were exactly what the government had hoped for.

When the partnerships were least successful, the goals of the private organizations and the government were not closely aligned. The government's system of trade illustrates this point. The trade system successfully met the mission that both the traders and the government

felt were necessary: eliminating foreign traders from American territory. But where the goals of the two groups were divergent – on the strict and even enforcement of the trade and intercourse system – the partnership failed to achieve its mission. Even the Peace Policy illustrates the importance of determining private motivation. The partnerships with the Quakers and Episcopalians were the most successful ventures because those denominations were outspoken advocates for a reformation of Indian Office administration and the government's required commitment to the tribes. Denominations that were least successful historically had not had missions and were not actively involved in advocating for the tribes.

The thesis did not directly address the long-standing debate over the motivation of bureaucrats. But these in-depth case studies give insight into this larger discussion. Administrators did call for appropriations to meet congressional demands. Thomas McKenney continually reminded legislators that the commissioner of the Office of Indian Affairs deserved a commensurate salary. Almost every year, the Commissioner of Indian Affairs asked Congress to increase the budget for the Civilization Fund in order to expand the reach of schools and vocational training. But Niskanen also contends that departments will try to increase the services they provide in order to increase their budget and the reliance of the legislature on the department.⁵⁸⁵ Contrary to Niskanen, bureaucrats in my case studies partnered with private organizations to accomplish the missions that Congress had delegated to them. With alternative sources of capacity, Congress often saw little reason to increase budgets. In these case studies, administrators seemed much more concerned with accomplishing their missions even if it meant giving up control and credit over the provision of services.

Limitations on Thesis

⁵⁸⁵ Niskanen, 27.

This thesis provides insight into the questions posed at the beginning of this study. But a conscious choice was made to use in-depth case studies in a particular policy area rather than an analysis of a large number of cases. It would have been difficult to draw a large sample and the measures were not readily available. The in-depth case studies allowed me to fully develop my hypotheses and understand the nuanced differences in partnerships. However, the thesis is skewed by the particular policy area I studied: federal policy toward American Indian tribes.

The study of federal Indian policy proved to be a useful case for my analysis because it involved a department that was chronically underfunded and the site of clashes between multiple political and racial orders. Different branches of the federal government looked to private organizations throughout the nineteenth century to help administer federal policy. This policy area, however, represents an extreme in the federal bureaucracy. Without further study, it is impossible to extend my results past this particular field.

The case studies also highlighted the need for more theorizing in the realm of public-private partnerships. In my hypotheses, I predicted that agency entrepreneurship would depend on the relative strength of an agency and the slack that it was given. The case studies confirmed this hypothesis. It may be necessary to systematize this assumption as a formal variable in my framework.

From the case studies, an alternative explanation for the results also seemed to emerge. The government achieved better results when it asked private organizations to help supply goods and services. When the government relied on private organizations to help regulate a policy realm where they were a participant, the results were more mixed. Traders regulating the field of trade only worked when the goals of the government and private traders converged. It may be

necessary to further explore the difference in results between service providers and regulation of direct participants.

Areas for Future Research

Because this thesis provides a snapshot of a particular policy area and its administration over time, further research is necessary to develop and extend my theoretical framework. A larger sample of cases that draw from different policy areas is necessary to meet these goals. The thesis also provides an examination of a particular policy over time but it does not systematically look at entire federal policy at any particular moment. It would be interesting to see if there are particular periods where the government relies more on private organizations across the board. While the public-private partnerships may be a tool used by the American government throughout the nation's existence, exogenous conditions may make public-private partnerships more attractive at certain times.

Concluding Thoughts

The preceding thesis is not the final chapter in study of public-private partnerships in American state-building. But it provides a theoretical framework and illustrative case studies to guide future work. The thesis builds a more nuanced picture of American state building by breaking out of the traditional notions of state-building. America did not accomplish national goals purely by traditional state capacity or societal contributions. Instead state and society worked together to define and accomplish national goals. The federal government did not simply follow societal interests but instead was active in defining state goals and their means of enforcement. By examining the variety of tools that states can use to accomplish its missions,

this thesis expands the general study of state-building. The study of the role of public-private partnerships in American state building is a large undertaking but this thesis adds to an understanding the dynamics between public and private power historically.

Appendix 1: Bibliographic Abbreviations

AR	Annual Reports
CIA	Committee on Indian Affairs
ED	Executive Document
HR	House of Representatives
LOC	Library of Congress, Manuscript Division, Washington D.C.
LSP	Letters Sent to the President
M	Microfilm Publication
NA I	National Archives, Washington D.C.
OIA	Office of Indian Affairs
OSW	Office of the Secretary of War
RG	Record Group
SW	Secretary of War
WD	War Department

Appendix 2: Primary Documents

An Act to establish the Judicial Courts of the United States, 1st Cong., 1st sess. (September 24, 1789), *Stats at Large of USA*, vol. I (1845): 73-93.

“An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace of the frontiers,” *Statutes at Large*, 1st Congress, 2nd session, July 22, 1790.

“An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace of the frontiers,” *Statutes at Large*, 2nd Congress, 2nd session, March 1, 1793.

“An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace of the frontiers,” *Statutes at Large*, 4th Congress, 1st session, May 19, 1796.

“An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace of the frontiers,” *Statutes at Large*, 5th Congress, 3rd session, March 3, 1799.

“An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace of the frontiers,” *Statutes at Large*, 7th Congress, 1st session, March 30, 1802.

“An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace of the frontiers,” *Statutes at Large*, 23rd Congress, 1st session, June 30, 1834.

“An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi,” *Statutes at Large* 21st Cong., 1st sess., May 28, 1830.

Adair, W. P., to Enoch Hoag, June 1, 1875. Box 1, Hoag Indian Papers, 1865-1883, Ms. Coll. 1034. Haverford Special Collections, Haverford, PA.

American Board of Commissioners for Foreign Missions, Memorial to the Committee on Indian Affairs, March 3, 1824; Committee on Indian Affairs, Petitions and Memorials, Resolutions of State Legislatures, and Related Documents which were referred to Committees (HR18A-F7.1); 18th Congress; Records U.S. House of Representatives, Record Group 233; National Archives, Washington D.C.

Annals of Congress, 4th Cong., 1st sess.

Annals of Congress, 17th Cong., 1st sess.

Annual Report, Office of Indian Affairs, Secretary of War, November 1, 1828. p. 79-80 (National Archives Microfilm Publication 997, roll 5, frame 592-3). Annual Reports 1822-1833. Annual Report of the War Department 1822-1907, Record Group 107. National Archives, Washington D.C.

Annual Report of the Board of Indian Commissioners (1872).

Annual Report of the Commissioner of Indian Affairs (1872).

Annual Report of the Commissioner of Indian Affairs to the Secretary of Interior (1874).

Annual Report of the Commissioner of Indian Affairs (1875).

Annual Report of the Commissioner of Indian Affairs (1876).

Annual Report of the Commissioner of Indian Affairs (1877).

Annual Report of the Commissioner of Indian Affairs (1878).

Annual Report of the Secretary of Interior (1876).

Annual Report of the Secretary of Interior (1877).

Annual Reports of the War Department. (National Archives Microfilm Publication M997, roll 8 and 9). Annual Reports 1845-1847, 1848-1851; Record Group 107. National Archives, Washington D.C.

“Annuity of the Five Nations,” 1792, *American State Papers: Indian Affairs* 1: 229.

"Arrest of the Missionaries of the Board in the Cherokee Nation," *The Missionary Herald*, May 1, 1831, 165. <http://www.proquest.com/> (accessed July 20, 2010).

Astor, John Jacob to Thomas Benton, January 29, 1829. Committee on Indian Affairs. Records of the United States Senate, Record Group 46. National Archives, Washington D.C.

Atkinson, Colonel, to John Calhoun, Secretary of War, November 26, 1819, letter attached to Calhoun's Report on the Senate resolution respecting trade and intercourse with the Indian tribes, February 16, 1820; CIA (SEN 16A-D6); 16th Congress; Records US Senate, RG 46; NA I.

Beede, Cyrus, to Enoch Hoag, January 14, 1875. Box 2 (Letters), Hoag Indian Papers, 1865-1883, Ms. Coll. 1034. Haverford Special Collections, Haverford, PA.

Beede, Cyrus, to Enoch Hoag, June 21, 1875. Box 2 (Letters), Hoag Indian Papers, 1865-1883, Ms. Coll. 1034. Haverford Special Collections, Haverford, PA.

Blue River Association of Indiana. Petition to the Committee on Indian Affairs, December 15, 1818. Select Committee on Indian Affairs. Various subjects (HR15A-G6.1). 15th Congress. Records U.S. House of Representatives, Record Group 233; National Archives, Washington D.C.

- Calhoun, John. January 16, 1833. 22nd Congress, 2nd session. *Register of Debates: Senate* (1833).
- Calhoun, John. "Expenditures for the Civilization of the Indians." February 29, 1820. *American State Papers: Indian Affairs 2*.
- Calhoun, John. "Progress Made in Civilizing the Indians." 17 January 1820. *American State Papers: Indian Affairs 2*.
- Calhoun, John, to the Speaker of the House of Representatives, December 5, 1818 (National Archives Microfilm Publication 220, roll 1). Reports to Congress, February 3, 1803-January 20, 1829. Reports to Congress from the Secretary of War, 1803-1870. Records of the Office of the Secretary of War, Record Group 107; National Archives, Washington D.C.
- Calhoun, John, to John Cocke, Chairman of the House Committee on Indian Affairs, December 13, 1823. Committee on Indian Affairs. Various Subjects (H18A-C7.1). 18th Congress. Records U.S. House of Representatives, Record Group 233; National Archives, Washington D.C.
- Calhoun, John, to John McKee, House Committee on Indian Affairs, March 8, 1824. Letters Sent, Indian Affairs. Records of the Office of the Secretary of War Relating to Indian Affairs 1794-1824, Record Group 75. National Archives, Washington D.C.
- Calhoun, John, to James Monroe, November 29, 1823. Volume 2, January 7, 1820-February 26, 1833. Letters Sent to the President, 1800-1863. Records Office of the Secretary of War, Record Group 107. National Archives, Washington D.C.
- Calhoun, John, to James Monroe, December 3, 1824. Volume 2, January 7, 1820-February 26, 1833. Letters Sent to the President, 1800-1863. Records Office of the Secretary of War, Record Group 107; National Archives, Washington D.C.
- Cherokee Nation v. Georgia*, 30 US 1(1832).
- Cherokee Phoenix* (New Echota, GA), January 1, 1831.
- Cherokee Phoenix* (New Echota, GA), May 28, 1831.
- Civil Rights Act of 1964 (Pub.L. 88-352, 78 Stat. 241, enacted July 2, 1964).
- Congressional Globe*. 30th Cong., 2nd Sess. (1849).
- Congressional Globe*, 42d Cong., 3d Sess. (1873).
- Congressional Record*. 44th Cong., 1st Sess. (1876).

Crooks, Ramsay, to James D. Doty. Papers of the American Fur Company, vol. 2 (letters from 1831-1836). Manuscript Collection, New York Historical Society Library, New York City.

Delano, Columbus. *Annual Report of the Secretary of the Interior* (1873).

Delano, Columbus, Secretary of Interior, to Enoch Hoag, November 13, 1871. Box 1, Hoag Indian Papers, 1865-1883, Ms. Coll. 1034. Haverford Special Collections, Haverford, PA.

Delano, Columbus, Secretary of Interior, to Enoch Hoag, October 23, 1875. Box 1, Hoag Indian Papers, 1865-1883, Ms. Coll. 1034. Haverford Special Collections, Haverford, PA.

Documents of United States Indian Policy, comp. Francis Paul Prucha (Lincoln: University of Nebraska Press, 1975).

Everett, Horace. "Report on Indian Affairs. Presented to the House of Representatives of the United States, on the 20th of May, 1834." *Princeton Review* 10(4): 535

Ewing, Thomas. "Report of the Secretary of the Interior," (December 24, 1849). *Executive Document No. 1*. 31st Congress, 1st Session (1849).

"The 'Explanation' in Reply to Mr.Cox." *Nation* 11, no. 281 (November 17, 1870): 324, 325. *The Nation Archive Premium Edition*, EBSCOhost (accessed March 27, 2010).

Friends (Quakers) of Indiana, Ohio & Illinois, Memorial to the Committee on Indian Affairs, December 23, 1818; Select Committee on Indian Affairs, Petitions and Memorials, Resolutions of State Legislatures, and Related Documents which were referred to Committees (HR15A-G6.2); 15th Congress; Records U.S. House of Representatives, Record Group 233; National Archives, Washington D.C.

Galpin, S.A. *Report upon the Condition and Management of Certain Indian Agencies in the Indian Territory, Now under the Supervision of the Orthodox Friends* (Washington: GPO, 1877).

Georgia vs. Worcester and others, Gwinnett County Court of Georgia, March 1831; reprinted in *Niles' Weekly Register*, June 4, 1831.

Gilmer, George, to John Thompson, May 16, 1831. Reprinted in the *Niles Weekly Register*, June 25, 1831.

Gilmer, George, to Samuel Worcester, May 16, 1831. Reprinted in the *Niles Weekly Register*, June 25, 1831.

Grant, Ulysses S. "First Inaugural Address," March 4, 1869, found at http://avalon.law.yale.edu/19th_century/grant1.asp.

Halleck, H. W. "Report of Major General Halleck," in "Report of the Secretary of War Ad Interim." *Executive Document No. 1*. 40th Cong., 2nd Sess. (1868).

Hare, William Hobart. *Reminiscences* (Philadelphia: Press of William F. Fell & Co., 1888).

Hoag, Enoch, to Edward Earle, November 9, 1875. Box 2 (Letters), Hoag Indian Papers, 1865-1883, Ms. Coll. 1034. Haverford Special Collections, Haverford, PA.

H.R. 2677. 44th Cong. (1876).

House of Representatives Document No. 66. 30th Cong., 2nd Sess. (1849).

House of Representatives Document No. 241. 45th Cong., 2nd Sess. 11 (1878).

House Journal. 30th Cong., 2nd sess., 15 February 1849.

"Indians." *Friends' Intelligencer*, 8 April 1876, p. 105, APS Online.

Irwin, Matthew, factor at Green Bay, to Thomas McKenney, September 29, 1817. Committee on Indian Affairs (SEN17A-D7, f. 9). 17th Congress; Records US Senate, Record Group 46. National Archives, Washington D.C.

Jackson, Andrew. "First Annual Message." December 8, 1829. Found at <http://www.presidency.ucsb.edu/ws/index.php?pid=29471>.

Jackson, Andrew. "Proclamation concerning the Ordinance of South Carolina, on the subject of the tariff." December 10, 1833. *Eliot's Debates*, vol. IV (1836): 582-592.

Jefferson, Thomas. *Notes on the State of Virginia* (Richmond, VA: J. W. Randolph, 1853).

Knox, Henry. "Gen. Knox, Secretary of War, to the President of the United States, in continuation." 7 July 1789, *American State Papers: Indian Affairs*.

Lone Wolf v. Hitchcock 187 U.S. 553 (1903).

Lumpkin, Wilson, to the senate and house of representatives of the state of Georgia, November 25, 1831. Reprinted in the *Niles Weekly Register*, December 24, 1831.

Marcy, William to General P.M. Wetmore, March 9, 1849; General Correspondence, 7 May 1848-19 April 1849 (Container 15), Papers of William L. Marcy (O317Q), Library of Congress, Manuscript Division, Washington D.C.

McLean, William. "Civilization of the Indians." 23 March 1824, *American State Papers: Indian Affairs* 2.

- McKenney, Thomas to William Astor, American Fur Company, July 22, 1825. p. 98-99 (National Archives Microfilm Publication No. 21, roll 2). Letters Sent, Volume 2, May 4, 1825-May 31, 1826. Records Office of Indian Affairs, Record Group 75. National Archives, Washington D.C.
- McKenney, Thomas to James Barbour, November 15, 1825. Official Letter, (National Archives Microfilm Publication No. 21, roll 2). Letters Sent, Volume 2, May 4, 1825-May 31, 1826. Records Office of Indian Affairs, Record Group 75. National Archives, Washington D.C.
- McKenney, Thomas to James Barbour, November 15, 1825. Unofficial Letter, (National Archives Microfilm Publication No. 21, roll 2). Letters Sent, Volume 2, May 4, 1825-May 31, 1826. Records Office of Indian Affairs, Record Group 75. National Archives, Washington D.C.
- McKenney, Thomas, to John Calhoun, November 24, 1824. Annual Report, Office of Indian Affairs, Secretary of War, 1824. p. 106-7 (National Archives Microfilm Publication 997, roll 5, frame 156). Annual Reports 1822-1833. Annual Report of the War Department 1822-1907, Record Group 107. National Archives, Washington D.C.
- McKenney, Thomas to Henry Johnson, Chairman of the Senate Committee on Indian Affairs, February 27, 1822. Committee on Indian Affairs (SEN17A-D7, f. 8-9). 17th Congress. Records US Senate, Record Group 46. National Archives, Washington D.C.
- McKenney, Thomas to Henry Southard, Senate Committee on Indian Affairs, December 13, 1820. Committee on Indian Affairs (SEN16A-D6). 16th Congress. Records US Senate, Record Group 46. National Archives, Washington D.C.
- Monroe, James. "Second Annual Message." November 16, 1818. In John T. Woolley and Gerhard Peters, *The American Presidency Project* [online]. Santa Barbara, CA: University of California (hosted), Gerhard Peters (database). Available from World Wide Web: <http://www.presidency.ucsb.edu/ws/?pid=29460>.
- Morse, Jedidiah. *A Report to the Secretary of War of the United States on Indian Affairs* (New Haven: S. Converse, 1822).
- Nicholson, William, to Enoch Hoag, December 16, 1875. Box 1, Hoag Indian Papers, 1865-1883, Ms. Coll. 1034. Haverford Special Collections, Haverford, PA.
- Niles Weekly Register*, April 9, 1831.
- Niles' Weekly Register*, March 31, 1832.
- "An ordinance to nullify certain acts of the Congress of the United States, purporting to be laws laying duties and imposts on the importation of foreign commodities," November 24, 1832. Found at http://avalon.law.yale.edu/19th_century/ordnull.asp.

- Papers of John Jacob Astor (MMC). Library of Congress, Manuscript Division, Washington D.C.
- Papers of John Jacob Astor, vol. 1 (1813-1843). Manuscript collection, New York Historical Society Library.
- Papers of John C. Calhoun*, ed. Clyde Wilson (Columbia, SC: University of South Carolina Press, 1959-2003).
- Papers of John C. Calhoun, 1819-1850 (MMC-0146). Library of Congress, Manuscript Division, Washington D.C.
- Papers of Lewis Cass, 1818-1859 (MMC). Library of Congress, Manuscript Division, Washington D.C.
- Papers of Thomas L. McKenney (MMC). Library of Congress, Manuscript Division, Washington D.C.
- Papers of William L. Marcy (O317Q), Library of Congress, Manuscript Division, Washington D.C.
- Papers of William Medill (MMC). Library of Congress, Manuscript Division, Washington D.C.
- Papers of Carl Schurz. Library of Congress, Manuscript Division, Washington D.C.
- Penn, William [Jeremiah Evarts]. *Daily National Intelligencer* (Washington, DC), August 1, 1829.
- Petitions. Committee on Indian Affairs, Indian Trade (HR17A-F6.1). 17th Congress. Records US House of Representatives, Record Group 233; National Archives, Washington D.C.
- Porter, Peter. "Annual Report to the President." Printed in the *Cherokee Phoenix* (*New Echota, GA*), January 7, 1829.
- Porter, Peter to John Quincy Adams, November 24, 1828. Volume 2, January 7, 1820-February 26, 1833. Letters Sent to the President, 1800-1863. Records Office of the Secretary of War, Record Group 107. National Archives, Washington D.C.
- Recorder (Georgia)*, September 24, 1831; reprinted in the *Niles Weekly Register*, October 29, 1831.
- "Report of the Commissioner of Indian Affairs," pp. 445-1058. In U.S. House. 41st Congress, 2d Session. *Report of the Secretary of the Interior, 1869* (H.Ex.Doc.1, Pt. 3). Washington: Government Printing Office, 1869. (*Serial Set* 1414).

- “Report of the Committee on Indian Affairs on the present system of Indian Trade,” April 5, 1820. Committee on Indian Affairs (SEN16A-D6). 16th Congress. Records US Senate, Record Group 46. National Archives, Washington D.C.
- Rhoads, James, to Enoch Hoag, April 1, 1876. Box 2 (Letters), Hoag Indian Papers, 1865-1883, Ms. Coll. 1034. Haverford Special Collections, Haverford, PA.
- Sanford, J. W. A. to missionaries of the ABCFM, May 28, 1831. Reprinted in *Niles' Weekly Register*, June 25, 1831.
- Schofield, J. M. “Report of the Secretary of War,” November 20, 1868. *Executive Document No. 1*. 40th Cong., 3rd Sess. (1869).
- Schurz, Carl. Letter from. February 15, 1878. Reel 88, p. 177. Carl Schurz Papers, Library of Congress, Manuscript Division, Washington D.C.
- Schurz, Carl. “Report of the Secretary of the Interior,” (November 1, 1878). *Executive Document No. 9*. 45th Cong., 3rd Sess. p. iv.-v. (1878-79).
- Schurz, Carl, to President-elect Garfield, Jan 2, 1881. *Speeches, Correspondence and Political Papers*, IV (New York: G.P. Putnam's Sons, 1913).
- Senate Miscellaneous Document No. 53*. 45th Cong., 3rd Sess. (1878).
- Senate Journal*. 22nd Cong., 1st sess.
- Sherman, William Tecumseh. *Memoirs*, vol. II (ed. 4) (New York: Charles L. Webster & Co., 1892)
- Soule, Joshua. “Religious and Missionary Intelligence.” *Methodist Magazine*. January 1822.
- Southard, Henry, House Committee on Indian Affairs. “Trade, Intercourse, and Schools.” 22 January 1818. *American State Papers: Indian Affairs 2*.
- Standing Bear v. Crook* (1879).
- The State of Georgia v. Worcester and Others*, Gwinnett superior court, March 1831. Reprinted in *Niles Weekly Register*, June 4, 1831.
- Story, Joseph, to Mrs. Joseph Story, January 28, 1831. In *Life and Letters of Joseph Story*, vol. II, ed. William Wetmore Story (Boston: Charles C. Little and James Brown, 1851).
- Synod of Philadelphia of the Presbyterian Churches. On Civilization fund. December 17, 1823. Committee on Indian Affairs, Petitions and Memorials, Resolutions of State Legislatures, and Related Documents which were referred to Committees (HR18A-F7.1). 18th

Congress. Records U.S. House of Representatives, Record Group 233; National Archives, Washington D.C.

Tatum, Lawrie. *Our Red Brothers and the Peace Policy of President Ulysses S. Grant* (Philadelphia: 1899).

Taylor, N.G. "Report of the Commissioner of Indian Affairs," November 23, 1868, in "Report of the Secretary of the Interior." *Executive Document*. 40th Cong., 3rd Sess. 475 (1869).

Transportation Act of 1940.

"A Treaty between the President and the Cherokee nation of Indians," 2 July 1791 [Treaty of Holston], *American State Papers: Indian Affairs* 1:124-5.

"A Treaty between the President and the Creek nation of Indians," 7 August 1790, *American State Papers: Indian Affairs* 1: 82.

U.S. Congress. *Register of Debates*. 22nd Cong., 1st sess.

United States Constitution.

US House, 7th Cong., 1st sess., 1802, H. Doc. 69, "Georgia Cession", April 26, 1802, *American State Papers: Public Lands* 1.

US House, 18th Cong., 2nd sess., 1824, H. Doc. 204, "Extinction of Indian Title to Lands in Georgia," report prepared by James Monroe, March 30, 1824, *American State Papers: Indian Affairs* 2.

Walker, Robert. "Report of the Secretary of the Treasury," (December 11, 1848). *Executive Document No. 7*. 30th Cong., 2nd sess. 36 (1848-49).

War Department, Secretary's Office. Letters Sent, Indian Affairs, E and F. Record Group 75. National Archives, Washington D.C.

Winters v. US 207 U.S. 564 (1908).

Wirt, William, to Lewis Williams, April 28, 1832. William Wirt Papers, Boxes 8 & 9, Library of Congress.

Worcester v. Georgia, 31 US (6 Pet.) 515 (1832).

Worcester, Samuel, and Elizur Butler to Governor Wilson Lumpkins, January 8, 1833. Reprinted in *Niles' Weekly Register*, February 16, 1833.

Worcester, Samuel, and Elizur Butler to Governor Wilson Lumpkin, January 9, 1833. Reprinted in *Niles' Weekly Register*, February 16, 1833.

Appendix 3: Bibliography

The following bibliography contains all of the sources cited in the text of the thesis. Some additional texts which were used for reference are also included in the bibliography. The archival sources are compiled separately in Appendix 1.

- Aberbach, Joel, and Bert Rockman. *In the Web of Politics* (Washington DC: Brookings, 2000).
- Almond, Gabriel. "The Return to the State." *American Political Science Review* 82 (1988): 853-874.
- Balogh, Brian. *A Government out of Sight: The Mystery of National Authority in Nineteenth-Century America* (Cambridge: Cambridge University Press, 2009).
- Bartlett, Irving. *Calhoun: A Biography* (New York: W. W. Norton, 1993).
- Beaver, R. Pierce. *Church, State, and the American Indian* (St. Louis: Concordia Publishing House, 1966).
- Belko, William S. "John C. Calhoun and the Creation of the Bureau of Indian Affairs: An Essay on Political Rivalry, Ideology, and Policymaking in the Early Republic." *South Carolina Historical Magazine* 105 (2004): 170-197.
- Berutti, Ronald. "The Cherokee Cases: The Fight to Save the Supreme Court and the Cherokee Indians." *American Indian Law Review* 17(1992): 291.
- Büthe, Tim. "Taking Temporality Seriously: Modeling History and the Use of Narratives as Evidence." *American Political Science Review* 96 (2002): 481-493.
- Butler, L.J. and Anthony Gorst. "Public Records." In *Modern British History: A Guide to Study and Research*, eds. L.J. Butler and Anthony Gorst (London: I.B. Tauris, 1997).
- Cagan, Phillip. "The First Fifty Years of the National Banking System – An Historical Appraisal." In *Banking and Monetary Studies*, ed. Deane Carson (Homewood, IL: Richard D. Irwin, 1963): 15-42.
- Calabresi, Steven. "Concluding Thoughts—Symposium: Presidential Power in Historical Perspective: Reflections on Calabresi and Yoo's The Unitary Executive." *University of Pennsylvania Journal of Constitutional Law* 12 (2010): 651-658
- Calabresi, Steven, and Christopher Yoo. *The Unitary Executive: Presidential Power from Washington to Bush* (New Haven: Yale University Press, 2008).
- Calabresi, Steven, and Christopher Yoo. "The Unitary Executive During the Second Half Century." *Harvard Journal of Law & Public Policy* 26 (2003): 667-802.

- Calabresi, Steven, Christopher Yoo, and Anthony Colangelo. "The Unitary Executive in the Modern Era, 1945-2004." *Iowa Law Review* 90 (2005): 601.
- Calabresi, Steven, Christopher Yoo, and Laurence Nee. "Unitary Executive During the Third Half-Century, 1889-1945." *Notre Dame Law Review* 80 (2004): 1-109.
- Cannon, M. Hamlin. "The United States Christian Commission." *The Mississippi Valley Historical Review* 38(1): 61-80.
- Carpenter, Daniel. "The Evolution of the National Bureaucracy in the United States." In *Institutions of American Democracy: The Executive Branch*, ed. Joel Aberbach and Mark Peterson (New York: Oxford University Press, 2005): 41-71.
- Carpenter, Daniel. *The Forging of Bureaucratic Autonomy* (Oxford: Princeton University Press, 2001).
- Cater, Douglass. *Power in Washington* (New York: Random House, 1964).
- Clayton, Cornell, and Howard Gillman, eds., *Supreme Court Decision Making: New Institutional Approaches* (Chicago: University of Chicago Press, 1999).
- Clemens, Elisabeth. "Lineages of the Rube Goldberg State: Building and Blurring Public Programs, 1900-1940." In *Rethinking Political Institutions: The Art of the State*, eds. Ian Shapiro, Stephen Skowronek, and Daniel Galvin (New York: NYU Press, 2006).
- Cohen's Handbook of Federal Indian Law* (LexisNexis, 2009).
- Corwin, Edward. *John Marshall and the Constitution: A Chronicle of the Supreme Court* (New Haven: Yale University Press, 1919).
- de Tocqueville, Alexis. *Democracy in America*, vol. II (New York: Alfred A. Knopf, 1994)
- Demsetz, Harold. "Toward a Theory of Property Rights." *American Economic Review* 57(1967): 347-359.
- Dussias, Allison. "Indigenous Languages Under Siege: The Native American Experience." *Intercultural Human Rights Law Review* 3 (2008).
- Dussias, Allison. "Let No Native American Child Be Left Behind: Re-envisioning Native American Education for the Twenty-First Century." *Arizona Law Review* 43 (2001): 819-904.
- Dworkin, Andy. "Bolting from Waste," *Dallas Morning News*, March 27, 1997, Lexis-Nexis (March 7, 2010).

- Environmental Protection Agency. "An Evaluation of the South Coast Air Quality Management District's Regional Clean Air Incentives Market – Lessons in Environmental Markets and Innovation." November 2002. Found at <http://www.epa.gov/region9/air/reclaim/reclaim-report.pdf>.
- Eriksson, Erik. "The Federal Civil Service under Jackson." *Mississippi Valley Historical Review* 13 (1927): 517-540.
- Evans, Peter. "The Eclipse of the State? Reflections on Stateness in an Era of Globalization." *World Politics* 50(1): 62-87.
- Evans, Peter, Dietrich Rueschemeyer and Theda Skocpol, eds. *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985).
- Fisher, Louis. "Indian Religious Freedom: To Litigate or Legislate?" *American Indian Law Review* 26 (2001-2002): 1-39.
- Fixico, Donald. "Ethics and Responsibilities in Writing American Indian History." *American Indian Quarterly* 20 (1996): 29-39.
- French-Hodson, Ruth Anne. "New Economics of Organization and Nineteenth-Century Bureaucracies: A Study of the Bureau of Indian Affairs." MPhil thesis. Politics Department, University of Oxford, 2007.
- Friedman, Lawrence M. *A History of American Law*, 3rd ed. (New York: Touchstone, 2005).
- Fritz, Henry. *The Movement for Indian Assimilation: 1860-1890* (Philadelphia: University of Pennsylvania Press, 1963).
- Frymer, Paul. "Racism Revised: Courts, Labor Law, and the Institutional Construction of Racial Animus." *American Political Science Review* 99(2005): 373-387.
- Genetin-Pilawa, C. Joseph. "Ely Parker and the Contentious Peace Policy." *Western Historical Quarterly* 41(2010): 196-217.
- Hall, Richard, and Frank Wayman. "Buying Time: Moneyed Interests and the Mobilization of Bias in Congressional Committees." *American Political Science Review* 84(3): 797-820.
- Hamilton, Marci. "Free? Exercise." *William and Mary Law Review* 42(2000): 823-882.
- Hamilton, Marci. "Panel Two Commentary, Symposium on The Legal Frontier of Religious Freedom: Religion and State in the Twenty-First Century." *New York University Annual Survey of American Law* 57 (2000): 49-56.
- Hartshorne, Henry. "Memoir of James E. Rhoads, M.D. LL.D." *Proceedings of the American Philosophical Society* 34 (Dec. 1895): 354.

- Hartz, Louis. *The Liberal Tradition in America* (New York: Harcourt, 1955).
- Hemphill, W. Edwin. "Introduction." Ed. W. Edwin Hemphill. *The Papers of John C. Calhoun*, vol. 7 (Columbia, University of South Carolina Press, 1975).
- Hood, Christopher. "Intellectual Obsolescence and Intellectual Makeovers: Reflections on the Tools of Government after Two Decades." *Governance* 20(2007): 127-144.
- Hood, Christopher. *The Tools of Government* (London: Macmillan, 1983).
- Horwitz, Martin. *The Transformation of American Law* (Cambridge, MA: Harvard University Press, 1977).
- Huntington, Samuel. "The Marasmus of the ICC." *Yale Law Journal* 61 (1952): 467-509.
- Johnson, Kimberley. *Governing the American State: Congress and the New Federalism, 1877-1929* (Princeton: Princeton University Press, 2007)
- Jones, Landon. *William Clark and the Shaping of the West* (New York: Hill and Wang, 2004).
- Katznelson, Ira, and Martin Shefter, eds. *Shaped by War and Trade: International Influences on American Political Development* (Princeton, NJ: Princeton University Press, 2002).
- Kaufman, Herbert. *The Forest Ranger: A Study in Administrative Behavior* (Washington D.C.: Resources for the Future, 1960).
- Keller, Robert. *American Protestantism and United States Indian Policy, 1869-1882* (Lincoln: University of Nebraska Press, 1983).
- Kelsey, Rayner W. *Friends and the Indians, 1655-1917* (Philadelphia, 1917).
- Kennedy, John P. *Memoirs of the Life of William Wirt (revised edition)*, vol. II (Philadelphia: Blanchard and Lea, 1856).
- King, Desmond and Marc Stears. "The Missing State in Postwar American Political Thought." Lawrence Jacobs and Desmond King, eds. *The Unsustainable American State* (Oxford: Oxford University Press, 2009): 116-132.
- King, Desmond, and Robert Lieberman. "Finding the American State: Transcending the 'Statelessness' Account." *Polity* 40(2008): 368-378
- King, Desmond and Robert Lieberman. "Ironies of State Building: A Comparative Perspective on the American State." *World Politics* 61 (2009): 547-588.

- King, Desmond, Robert Lieberman, Gretchen Ritter, and Lawrence Whitehead, eds. *Democratization in America: A Comparative-Historical Analysis* (Baltimore: John Hopkins University Press, 2009).
- King, Desmond, and Rogers Smith. "Racial Orders in American Political Development." *American Political Science Review* 99(2005):75-92.
- King, Gary, Robert Keohane, and Sidney Verba. *Designing Social Inquiry* (Princeton: Princeton University Press, 1994).
- Klunder, Willard. *Lewis Cass and the Politics of Moderation* (Kent, OH: Kent State University Press, 1996).
- Kovarik, William. "Niles Weekly Register (1811-1849)." In *Encyclopedia of American Journalism History* (New York: Routledge, 2006). Found at <http://www.runet.edu/~wkovarik/papers/Niles.Register.06.html>.
- Lavender, David. *The Fist in the Wilderness* (Garden City, NY: Doubleday & Co., Inc., 1964).
- Levine, Michael, and Jennifer Forrence. "Regulatory Capture, Public Interest, and the Public Agenda: Toward a Synthesis." *Journal of Law, Economics, and Organization* 6(1990): 167-198.
- Lieberman, Robert. "Civil Rights and the Democratization Trap: The Public-Private Nexus in the Building of American Democracy." Desmond King, Robert Lieberman, Gretchen Ritter, and Lawrence Whitehead, eds. *Democratization in America: A Comparative-Historical Analysis* (Baltimore: John Hopkins University Press, 2009): 211-229.
- Lieberman, Robert. "Ideas, Institutions, and Political Order: Explaining Political Change." *American Political Science Review* 96(4): 697-712.
- Lieberman, Robert. "Private Power and American Bureaucracy: The EEOC and Civil Rights Enforcement." Paper presented at APSA annual meeting 2006.
- Lipset, Seymour. *Continental Divide* (New York: Routledge, 1990).
- Lowi, Theodore. *The End of Liberalism*, 2nd ed. (New York: W. W. Norton, 1979)
- Lytle, Clifford. "The Supreme Court, Tribal Sovereignty, and Continuing Problems of State Encroachment into Indian Country," *American Indian Law Review* 8(1980): 65-77.
- Maass, Arthur. *Muddy Waters: The Army Engineers and the Nation's Rivers* (Harvard: Harvard University Press, 1951)
- March, James and Johan Olsen. *Rediscovering Institutions: The Organizational Basis of Politics* (Oxford: Maxwell Macmillan, 1989).

- McCubbins, Matthew and Thomas Schwartz. "Congressional Oversight Overlooked." *American Journal of Political Science* 28 (1984): 165-179.
- McLoughlin, William G. *Cherokees and Missionaries, 1789-1839* (New Haven: Yale University Press, 1984).
- McLoughlin, William. "The Missionaries' Dilemma." In *The Cherokees and Christianity, 1794-1870: Essays on Acculturation and Cultural Persistence* (Athens: University of Georgia Press, 1994).
- Merritt, Deborah Jones, and Daniel Merritt. "The Future of Religious Pluralism: Justice O'Connor and the Establishment Clause." *Arizona State Law Journal* (2007): 895-948.
- Milbank, Dana. "Bush Unveils 'Faith-Based' Initiative." *Washington Post*, 30 January 2001, sec. A, p. 1.
- Miles, Edwin. "After John Marshall's Decision: *Worcester v. Georgia* and the Nullification Crisis." *The Journal of Southern History* 39(1973): 519-554
- Moe, Terry. "New Economics of Organization." *American Journal of Political Science* 28 (1984): 739-777.
- Moe, Terry. "The Politicized Presidency." In *New Direction in American Politics*, eds. John Chubb and Paul Peterson (Washington, D.C.: The Brookings Institute, 1985): 235-71.
- Moe, Terry. "The Politics of Bureaucratic Structure." Eds. John Chubb and Paul Peterson. *Can the Government Govern?* (Washington DC: Brookings Institute, 1989).
- Moe, Terry. "The Politics of Structural Choice: Toward a Theory of Public Bureaucracy." Ed. Oliver Williamson. *Organization Theory: From Chester Barnard to the Present and Beyond* (Oxford: Oxford University Press, 1990).
- Moe, Terry. "The Positive Theory of Public Bureaucracy." Ed. Dennis Mueller. *Perspectives on Public Choice* (Cambridge: Cambridge University Press, 1997).
- Nettl, J. P. "The State as a Conceptual Variable," *World Politics* 20 (1968): 559-592.
- Newmyer, Kent. "On Assessing the Court in History: Some Comments on the Roper and Burke Articles." *Stanford Law Review* 21(1968-9): 540-547.
- Niskanen, William. *Bureaucracy and Representative Government* (Chicago: Aldine, 1971; New Brunswick: AldineTransaction, first paperback edition 2007).
- Nordlinger, Eric. *On the Autonomy of the Democratic State* (Cambridge, MA: Harvard University Press, 1982).

- Norris, Floyd. "U.S. Bank Bailout to Rely in Part on Private Money." *New York Times*. February 8, 2009. Accessed online at www.nytimes.com.
- North, Douglass. *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990).
- Novak, William. *The People's Welfare* (Chapel Hill: University of North Carolina Press, 1996).
- Oglesby, Richard E. "The Fur Trade as Business." In *The Frontier Re-examined*, ed. John Francis McDermott (Urbana: University of Illinois Press, 1967).
- Orfield, Gary, and Chungmei Lee. *Racial Transformation and the Changing Nature of Segregation* (Cambridge, MA: The Civil Rights Project at Harvard University, 2006) (Downloaded at http://www.civilrightsproject.ucla.edu/research/deseg/Racial_Transformation.pdf).
- Perdue, Theda, and Michael Green. *The Cherokee Nation and the Trail of Tears* (New York: Viking Penguin, 2007).
- Pierson, Paul. "The Limits of Design: Explaining Institutional Origins and Change." *Governance* 13 (2000): 475-499.
- Prucha, Francis Paul. *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900* (Norman, OK: University of Oklahoma Press, 1976).
- Prucha, Francis Paul. *American Indian Policy in the Formative Years* (Lincoln: University of Nebraska Press, 1970).
- Prucha, Francis Paul. *The Great Father* (Lincoln: University of Nebraska Press, 1986).
- Ragsdale, John. "The Chiricahua Apaches and the Assimilation Movement, 1865-1886: A Historical Examination." *American Indian Law Review* (2005-2006): 291-363.
- Rahill, Peter. *The Catholic Indian Missions and Grant's Peace Policy, 1870-1884* (Washington, 1953).
- Rockwell, Stephen. *Indian Affairs and the Administrative State in the Nineteenth Century* (Cambridge: Cambridge University Press, 2010).
- Rosenberg, Gerald. *The Hollow Hope: Can Courts Bring about Social Change?* (Chicago: University of Chicago Press, 1991).
- Salamon, Lester. "Economic Regulation." In *The Tools of Government*, ed. Lester Salamon (Oxford: Oxford University Press, 2002).

- Satz, Ronald. *American Indian Policy in the Jacksonian Era* (Norman: University of Oklahoma Press, 2002).
- Schattschneider, E. E. *Semisovereign People* (New York: Holt, Rinehart and Winston, 1960).
- Scott, James. *Seeing Like a State: How Certain Schemes to Improve the Human Condition have Failed* (New Haven, CT: Yale University Press, 1998).
- Segal, Jeffrey, and Harold Spaeth. *The Supreme Court and the Attitudinal Model* (New York: Cambridge University Press, 1993).
- Sheingate, Adam. "Political Entrepreneurship, Institutional Change, and American Political Development." *Studies in American Political Development* 17(2003): 185-203.
- Skowronek, Stephen. *Building a New American State* (Cambridge: Cambridge University Press, 1982).
- Skowronek, Stephen. *The Politics Presidents Make: Leadership from John Adams to Bill Clinton* (Cambridge, Massachusetts: Harvard University Press, 1997).
- Slattery, Charles Lewis. *Felix Reville Brunot: 1820-1898* (London: Longmans, Green, and Co., 1901).
- Smith, Rogers. "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America." *American Political Science Review* 87(1993): 549-566
- Smith, Rogers. "Which Comes First, the Ideas or the Institutions?" *Rethinking Political Institutions: The Art of the State*, ed. Ian Shapiro, Stephen Skowronek, and Daniel Galvin (New York: NYU Press, 2006): 91-113.
- Steele, Aubrey L. "The Beginning of Quaker Administration of Indian Affairs in Oklahoma." *Chronicles of Oklahoma* 17 (Dec. 1939): 364-392.
- Steinberg, Ted. *Down to Earth: Nature's Role in American History* (New York: Oxford University Press, 2002).
- Streek, Wolfgang, and Kathleen Thelen. "Introduction." in *Beyond Continuity*, ed. Wolfgang Streek and Kathleen Thelen (Oxford: OUP, 2005).
- Stuart, Paul. *The Indian Office: Growth and Development of an American Institution, 1865-1900* (Ann Arbor, MI: University Microfilms International, 1979).
- Swindler, William F. "Politics as Law: The Cherokee Cases." *American Indian Law Review* 3(1975): 7-20.
- Taylor, Theodore W. *The Bureau of Indian Affairs* (Essex: Bowker Publishing Company, 1984).

- Thelen, Kathleen. *How Institutions Evolve* (Cambridge: Cambridge University Press, 2004).
- “Transfer of the Indian Bureau.” *Friends’ Intelligencer*, 25 March 1876, p. 72, APS Online.
- Tsosie, Rebecca. “The Challenge of ‘Differentiated Citizenship’: Can State Constitutions Protect Tribal Rights?” *Montana Law Review* 64 (2003): 199-244.
- Utley, Robert M. *Bluecoats and Redskins: The United States Army and the Indian 1866-1891* (London: Cassell & Company, 1973).
- Utley, Robert M. *The Indian Frontier of the American West 1846-1890* (Albuquerque: University of New Mexico Press, 1984).
- Walker, Jack L. *Mobilizing Interest Groups in America* (Ann Arbor: University of Michigan Press, 1991).
- Waltmann, Henry G. “Circumstantial Reformer: President Grant & the Indian Problem,” *Journal of the Southwest* (1971): 323-342.
- Walton, Gary and Hugh Rockoff. *History of the American Economy*, 10th edition (Thomson South-western, 2005).
- Weber, Max. *Economy and Society*, eds. Guenther Ross and Claus Wittich (New York: Bedminster Press, 1968).
- Weeks, Philip. *Farewell, My Nation: The American Indian and the United States in the Nineteenth Century*. 2nd ed. (Wheeling, IL: Harlan Davidson, 2001).
- Weingast, Barry. “Caught in the Middle: The President, Congress, and the Political-Bureaucratic Structure.” In *The Executive Branch*, ed. Joel Aberbach and Mark Peterson (New York: Oxford University Press, 2005): 320-331.
- White, Leonard D. *The Jacksonians: A Study in Administrative History* (New York: The Macmillan Company, 1954).
- White, Leonard D. *The Jeffersonians: A Study in Administrative History, 1801-1829* (New York: The Free Press, 1951).
- White, Leonard D. *The Republican Era: A Study in Administrative History, 1869-1901* (New York: The Free Press, 1958).
- Wilkins, David. *American Indian Politics and the American Political System* (Lanham, MD: Rowman and Littlefield Publishers, 2001).

Wilkins, David. "A Constitutional Conundrum: The Resilience of Tribal Sovereignty during American Nationalism and Expansion." *Oklahoma City University Law Review* 25 (2000): 87-118.

Wooster, Robert. *The Military and United States Indian Policy 1865-1903* (New Haven: Yale University Press, 1988).

Young, Ashley. "Continuing an American Legacy of Racial and Cultural Injustice: A Critical Look at *Bonnichsen v. United States*." *DePaul-LCA Journal of Art and Entertainment Law* (2006): 1-35.