

The Panama Canal

International Straits of the World

Series Editor

Gerard J. Mangone

VOLUME 15

The Panama Canal

By

Robert W. Aguirre

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FOREWORD

This is the fifteenth book in the series *International Straits of the World*, organized and edited at the College of Earth, Ocean, and Environment at the University of Delaware. Thirty-one years have passed since the publication of the first pioneering study of *The Northeast Arctic Passage*, followed by analyses of virtually every major natural strait in the world. The present book by Dr. Robert Aguirre describes an “artificial” strait, one of the several inter-oceanic straits like Kiel and Suez that have their peculiar characteristics, notably not subject to the 1982 UN Law of the Sea Convention, yet subject to international law and legal logic that will respond to geographic and historical circumstances.

I have been fortunate in selecting Dr. Aguirre as the author of this robust and comprehensive study of the Panama Canal. He received his Ph.D. in Geography from the Louisiana State University and has served with national distinction as a professional geographer for the National Oceanic and Atmospheric Administration (NOAA) in Washington, D.C. and Seattle. He has worked within the field of geospatial analysis and geovisualization, which gives special merit to his analysis of the Isthmus of Panama and the Canal from a physical and environmental perspective. He has conducted field research in the Republic of Panama and has authored many scholarly publications on maritime and coastal geography. Presently Dr. Aguirre is an independent scholar, a lecturer at the University of Washington where he conducts funded research on geographic technology and social sciences.

What the reader will find most interesting and unique about this book on the Panama Canal, different from all others, are not only facts and figures about the trade, traffic, tonnage, capital, and revenues of the Canal since its opening in 1914, but also a complete analysis of how environment, flows, and territoriality affect a strait. Moreover, the author has threaded throughout his work, the politics of Columbia-Panama showing economic and ethnic differences in the population affecting attitudes and Panamanian government. He has detailed a history of United States policy towards Panama through what he calls the periods of the First Republic, First Democracy, Second Republic, Second Democracy, and Third Republic beginning in 1980. The author has painstakingly reported on every treaty and other international

agreement for interoceanic communication through Central and South America beginning in 1836 up to the Hay-Herran Treaty of 1903, which are listed in the Appendix.

Beginning in 2000, all ownership and operations of the Canal were transferred to Panama in accordance with the April 1978 treaty between Panama and the United States. The United States continues to have unilateral rights to interpose militarily against any threat of aggression against the free and neutral use of the Canal. A Senate reservation to the treaty emphasized the right of the United States to take any necessary action if the Canal were closed or its operation interrupted.

After a proposal by the Panama Canal Authority and approval by the Panama executive, legislature, and a public referendum, the Third Set of Locks project was set in motion in late 2006. A capital investment of \$5.2 billion will be required with the intention to capture more tonnage and tolls, increase the revenues to the Panama government, and make the Canal safer, more efficient, and productive. Whether these hopes will be realized only time, technology, and trade will tell. Under the best circumstances, the East Coast ports of the United States might gain additional trade with Asia.

This series on *International Straits of the World* began with a modest grant from the Rockefeller Foundation, which was exhausted many years ago. Nevertheless I want to thank the Foundation for its initial support that has led to fifteen books on a subject of worldwide political and economic interest. I also want to compliment Dr. Aguirre, the author, for his discipline in the prompt submission of manuscript, careful review and response to editing, and complete cooperation in the production of this outstanding work. To my loyal secretary, Jacqueline Bijansky, I owe a debt of thanks for her transcriptions of the manuscript, ever efficient and faithful to the task.

Gerard J. Mangone
University of Delaware
Newark, Delaware
10 April 2010

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As in any acknowledgements, there are many people and organizations that deserve mention. I will confine myself to mentioning those who been most persistent and instrumental in bringing this particular book to publication, beginning with my friend Dr. Leonard J. Hochberg. He was Edward Fox's protégé at Cornell University in Ithaca, thus it was no accident of fortune that I embarked upon Fox's theoretical ideas and their application in other parts of the world. Dr. Hochberg's masterful ability to bridge the past and present in ways that others fail to see are the stuff of lore; and in playing part Siren and part Scylla, he managed to sway me to avoid delay and end my decade's wander from an earlier unpublished work that I significantly revised and expanded. I also greatly benefitted from the ideas of Dr. Carville Earle as he was in the process of completing his final book, a copy of which he sent back to me with an inscription I hope I am fulfilling.

I am particularly grateful to Dr. Gerard J. Mangone for his encouragement and support in adding an "artificial strait" to the edited series. The opportunity was perfectly framed by Dr. Mangone and I am delighted that this work has found its true home in comparative perspective with other straits. In the course of my research, I availed myself of the public archives at the former Panama Canal Commission's Technical Resources Center in Panama City, the Library of Congress and National Archives in Washington, D.C. and College Park, MD, as well as map and digital resources at Louisiana State University in Baton Rouge and the University of Washington in Seattle.

Finally, I must reluctantly acknowledge Lisa Atkinson, Nicole, Mary, and Robert Aguirre Jr., Brittany, Logan, Sal, Blazer von Titan, Audrey, Diego, Robby, Robbie, and the Griffin; who patiently albeit involuntarily are still awaiting these particular wanders to come to a mercifully non-metaphorical conclusion.

Robert W. Aguirre III
Seattle, Washington
30 March 2010

CHAPTER ONE

INTRODUCTION

“Damn! We’re in a tight spot.”

George Clooney, in the role of Odysseus, in the film
O Brother, Where Art Thou? (2000)

A. STRAITS IN COMPARATIVE PERSPECTIVE

A strait, from a geographic and legal perspective, is any narrow and natural maritime passage between land areas connecting two parts of the high seas.¹ When foreign vessels on the high seas pass through a strait they must cross the water domain of adjacent land territories. Thus straits pose an interesting circumstance, both physiographic and geopolitical. Straits put the autonomy of navigation on the high seas and the reach of non-adjacent maritime power in contention with assertions of political power from adjacent land territories. These circumstances have posed an irresistible subject of debate since the time of Grotius and Selden during the early 17th century, when control over the world’s straits was a source of contention among great maritime powers and adjacent states.²

There are interesting parables about the circumstances of straits. In Homer’s *Odyssey*, Odysseus is confronted with making a choice between Scylla and Charybdis, two inescapable monsters that live on either side of the strait his ship must pass through. Scylla lives in the adjacent rocks and has six long heads that can strike quickly. Charybdis lives underwater and at various times during the day can create a powerful whirlpool. Odysseus is advised by the gods to take the most

¹ R. R. Baxter and Jan F. Triska. *The Law of International Waterways: With Particular Regard to Interoceanic Canals* (Cambridge: Harvard University Press, 1964). See definition by Baxter and Triska (1964, 3). See also Donat Pharand and Leonard H. Legault, *The Northwest Passage: Arctic Straits* (Dordrecht: Martinus Nijhoff Publishers, 1984), 90.

² The two ideological positions are those of Grotius in *Mare liberum*, ‘the freedom of the sea,’ published in 1609, and Selden in *Mare clausum*, ‘closed or territorial sea,’ published in 1635.

logical course of action and stick close to the adjacent rocks to avoid Charybdis. The lesson of the myth is that when faced with choosing between two unfavorable options, e.g., two monsters, the best course of action is to imagine the worst consequences of being wrong. Better to sacrifice six men than risk losing the entire ship.

Myths and fables like Scylla and Charybdis about the menace of monsters versus the rights of passage of heroes are simple parables about the logical situation of a strait. We are told what is just and what is unjust in the stories, but we are not given an explanation of the true nature of the circumstances. Unfortunately, it is not difficult to find explanations about the Panama Canal that cast its history in similar sorts of silly morality plays between the greedy Panamanian and the intrepid American, or the poor Panamanian and the Yankee imperialist. In reality, reference to universal laws or principles of moral justice does not explain the source of territorial maneuvers and confrontations over straits. Imperatives of societies and states are attenuated by promises to abide by conventions of international law, but circumstances change and so do legal conventions.

The first volume in the *International Straits of the World* book series, of which this book is a part, appeared in print at a time when the world was negotiating rights of passage through straits at the 1973–1982 Third United Nations Conference on the Law of the Sea (UNCLOS).³ It was important, at the time, to examine the general legal principles discussed at the Third UNCLOS on a case by case basis. The *International Straits of the World* book series undertook an in depth comparison with a broad sample of straits from different parts of the world, each with unique geographic characteristics and histories of use in international navigation. Comparative investigation revealed fascinating similarities with respect to how different societies spanning the globe from Australia to Turkey and from Chile to Korea have dealt with the geographic circumstances of a strait. Figure 1 illustrates the 15 straits covered to date in the *International Straits of the World Series*, beginning in 1978 and including the present volume, with the Panama Canal listed as number 15 (numbered straits are referenced in chronological order of publication).⁴

³ See William E. Butler, *Northeast Arctic Passage* (Alphen aan den Rijn: Sijthoff and Noordhoff, 1978).

⁴ Straits listed include: 15. *The Panama Canal*, Robert W. Aguirre (c. 2010); 14. *The Russian Arctic Straits*, R. Douglas Brubaker (2005); 13. *The Legal Regime of the Turkish*

There have been doubts that comparisons could be made between straits and interoceanic canals, international waterways created through human endeavor to connect two parts of the high seas but typically residing within the territorial jurisdiction of one state. One of the purposes of the present study is to remove this doubt and compare the history of the Panama Canal to other straits as a special class of strait, i.e., the “artificial” strait. Almost a decade before the Third UNCLOS, Baxter and Triska published their idea that the Panama Canal, the Suez Canal, and the Kiel Canal were “artificial straits.”⁵ Obviously, both interoceanic canals and natural straits connect two parts of the seas. However, Baxter and Triska’s perspective was that this geographic circumstance, though interesting, did not alter the fact that straits and interoceanic canals belonged in two completely different categories. Interoceanic canals like the Panama, Suez, and Kiel Canals are not subject to the same rules under international law nor are they subject to the provisions of the Law of the Sea, which were intended for natural straits.⁶

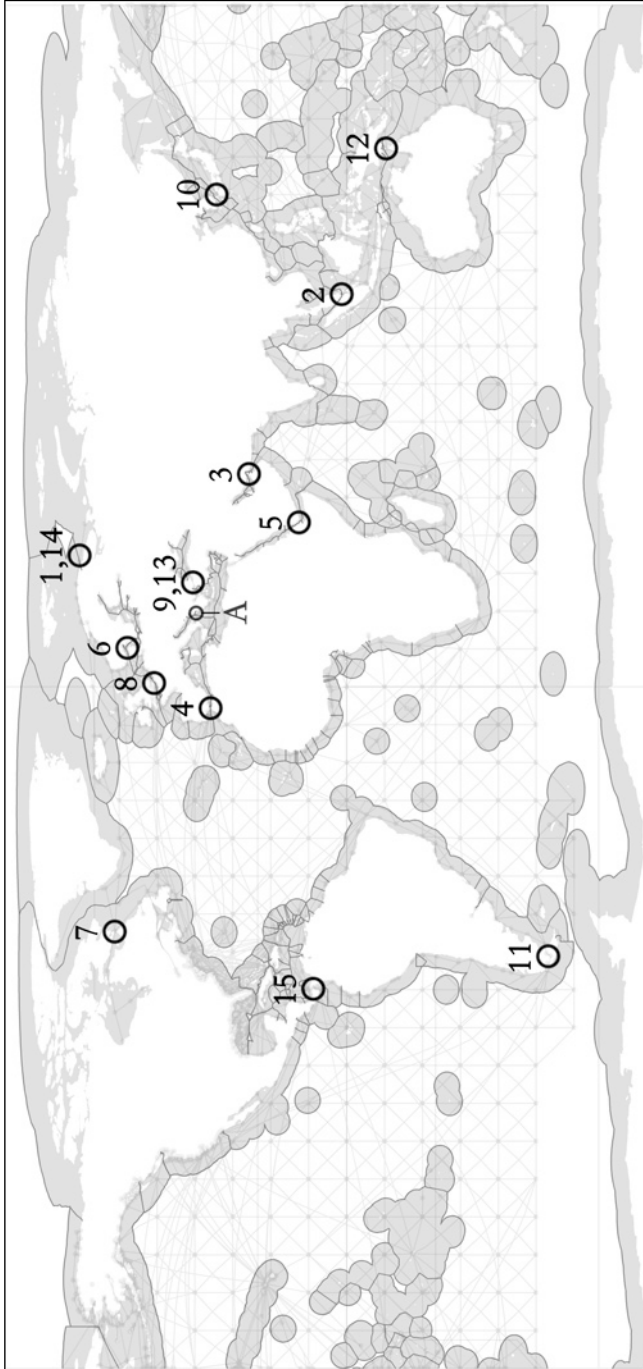
It has been three decades since the Third UNCLOS and the 1982 Convention of the Law of the Sea. This book is not meant as a reference work of the conventions that states have promised to abide by in their use of the Panama Canal. This book first and foremost regards the Panama Canal as an artificial strait comparable in all respects to natural straits. The book also considers that states and societies with different motivations can change conventions of international law, and that legal principles are adaptable to fit the needs of geographic and historical circumstances.⁷

Straits, Nihan Ünlü (2002); 12. *The Torres Strait*, Stuart B. Kaye (1997); 11. *The Strait of Magellan*, Michael A. Morris (1989); 10. *The Korean Straits*, Chi Young Pak (1988); 9. *The Turkish Straits*, C. L. Rozakis and Petros N. Stagos (1987); 8. *The Strait of Dover*, Luc Cuyvers (1986); 7. *The Northwest Passage: Arctic Straits*, Donat Pharand and Leonard H. Legault (1984); 6. *The Baltic Straits*, Gunnar Alexandersson (1982); 5. *The Red Sea and the Gulf of Aden*, Ruth Lapidot (1982); 4. *The Strait of Gibraltar and the Mediterranean*, Scott C. Truver (1980); 3. *The Persian Gulf and the Strait of Hormuz*, Rouhollah K. Ramazani (1979), 2. *Malacca, Singapore and Indonesia*, Michael Leifer (1978); 1. *Northeast Arctic Passage*, William E. Butler (1978).

⁵ Baxter (1964, 1) notes, “Not content with these channels, man has constructed a number of artificial straits, or canals, where an isthmus may be pierced to afford easy access between two portions of the high seas.” Baxter also (1964, 11) says, “As inland canals may be considered to be artificial forms of rivers, so may interoceanic canals be regarded in a geographic sense as artificial straits.”

⁶ Baxter and Triska (1964, 185).

⁷ This follows from a turn of phrase in Baxter and Triska (1964).



1. Straits of the *International Straits of the World*

1. *Natural and Artificial Straits*

Just as timely as the 1973–1982 Third UNCLOS was to previous books in the International Straits of the World series is the fact that, as of the date of the writing of this book, the Panama Canal Authority (*Autoridad del Canal de Panamá*) is undergoing a \$5.25 billion capacity improvement project scheduled to be completed by 2014 called the “Third Set of Locks Project.” Two-thirds of the total estimated cost will go towards construction of larger locks with water saving basins (\$3.35 billion), with the rest going towards improvement of the canal’s Atlantic and Pacific Ocean access channels, interior navigation channels, and its supply of freshwater from Gatun Lake.⁸ The Panama Canal Authority’s Third Set of Locks Project suggests something so obvious that its importance can be overlooked. Interoceanic canals have to be administered, operated, maintained, and improved – periodically with massive capacity improvement projects – in order to continue to be safe, effective, and economically viable. The same can be said of natural straits. Natural straits also have to be administered, operated, maintained, and improved through things like enforcing fiscal, customs, immigration, and environmental regulations; installing navigational aids; establishing sea lanes and traffic separation schemes; providing pilot and tug services; removing wrecks or responding to oil spills; and dredging or icebreaking.⁹

Baxter and Triska’s insight regarding interoceanic canals as artificial straits can be turned completely around if, rather than regarding the Panama Canal as an artificial strait we regard natural straits as “artificially-enhanced.” The extent to which natural straits become artificially-enhanced is something that Baxter and Triska never fully contend with. Straits are supposedly natural and do not require human modification, whereas interoceanic canals are entirely works of mankind.¹⁰

⁸ The English version is published by the Panama Canal Authority, *Proposal for the expansion of the Panama Canal: Third Set of Locks Project*, 24 April 2006 (Panama City: Panama Canal Authority, 2006). The longer Spanish version is published by Autoridad del Canal de Panamá, *Plan Maestro del Canal de Panamá*, 7 June 2006 (Panama City: Panama Canal Authority, 2006).

⁹ See Ruth Lapidoth-Eschelbacher, *The Red Sea and the Gulf of Aden* (Dordrecht: Martinus Nijhoff Publishers, 1984), 140.

¹⁰ For examples see Baxter and Triska (1964, 27, 37). It is curious that even though Baxter and Triska (1964) do not suggest natural straits can be artificially-enhanced, they find it possible to consider artificially-enhanced rivers and degrees of “artificiality” between inland waterways, for instance see Baxter and Triska (1964, 11).

Since Baxter and Triska's publication, increases in the size and number of oceangoing vessels have required natural harbors and channels to undergo extensive modification, making it necessary to see many natural straits as more artificially-enhanced than natural.

If we take Baxter and Triska's two separate categories of straits (natural and artificial) and add a hybrid category in the middle, the result is a gradient of straits described as natural, artificially-enhanced, or artificial. Without becoming distracted into the legal meaning of the word "natural," with at least these three categories of straits in mind it becomes possible to compare the environment of the Panama Canal with that of any other narrow and natural waterway that connects the high seas and is useful for international navigation.¹¹

2. *International Court of Justice Decision in the 1949 Corfu Channel Case*

If a narrow natural water passage connects two bodies of the high seas, or a body of territorial sea with the high seas, it qualifies as a strait useful for international navigation under international law and vessels have the right to pass through adjacent states' territorial waters without previous authorization. In its well-known decision in the 1949 *Corfu Channel* case between Britain and Albania, the International Court of Justice (ICJ) considered, separately, whether the Corfu Channel met the necessary physiographic criteria as a strait; and then whether actual international use of the Corfu Channel demonstrated sufficient interest to merit passage rights for foreign vessels (see strait labeled "A" in Figure 1).

The key to the ICJ decision in the *Corfu Channel* case was the separation of "geographic" criteria concerning the physiographic role a strait plays in connecting two parts of the high seas, from "functional" criteria concerning sustained use of a strait for international navigation.¹² After the *Corfu Channel* case it became customary legal practice to separate a strait's geographical and functional characteristics. The geographic and functional definition of a strait in the *Corfu Channel* case was the foundation for a 1956 report by the United Nations

¹¹ Interestingly, Lapidath-Eschelbacher (1982, 247 note 3) says, "It might be asked whether semi-natural waterways should be assimilated to natural straits or to artificial canals."

¹² See Pharand and Legault (1984).

International Law Commission, which was retained in all of its major points by the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, which in turn was carried forward by the 1982 Convention of the Law of the Sea.¹³

A strait's geography and function for international transits are not, however, the only two defining circumstances to consider. Baxter and Triska suggest that a "strait" is really only a strait when it is completely closed off by the territorial seas of the adjacent coastal states thus requiring a legal regime for rights of passage. There were obviously global "territoriality" concerns at play in the *Corfu Channel* case in which Albania presumably closed off the strait to British vessels with mines. The dispute between Britain and Albania occurred at the onset of the Cold War, which places the ICJ's consideration of the case in a geopolitical context.¹⁴ The point of mentioning the Cold War context of the case is that it seems more accurate to say that the *Corfu Channel* case could have been separated into the sum of not two parts, but three, including: "geographic" characteristics of a strait meaning the unique physiographic circumstances that compels the spatial juxtaposition of a nation's vessels in transit over the high seas with the territorial waters or jurisdiction of adjacent nations; "functional" characteristics of a strait referring to flows of goods by vessels in transit along suitable routes of navigation; and most importantly, "territoriality" of a strait, a very broad term referring to anything from mundane navigation rules imposed by the adjacent sovereign states over the channel to the geopolitical maneuvers of non-adjacent maritime powers to close off a channel to its non-adjacent rivals.

¹³ Christos L. Rozakis and Petros N. Stagos, *The Turkish Straits* (Dordrecht: Martinus Nijhoff Publishers, 1987).

¹⁴ Lapidoth-Eschelbacher (1982) relays the context of the Corfu Channel case stating that Greece had made territorial claims to part of Albanian territory bordering the channel, and that Greece had declared itself technically in a state of war with Albania. Lapidoth-Eschelbacher (1982, 142–3) arrives at the conclusion that, "The question has not been solved by treaty or case law, and therefore the answer must be sought in the practice of states." Hochberg (personal communication 2009) notes the timing of the Corfu Channel case unfolding on the eve of the Cold War, and given the political actors in Albania at the time and their relationship with the Soviet Union, versus British support for Greece, suggests there were many larger global geopolitical dimensions to the territorial issues at stake. For a book that specifically examines territoriality over straits between adjacent and non-adjacent states, see Yaacov Vertzberger, *Coastal states, regional powers, superpowers, and the Malacca-Singapore straits* (Berkeley: University of California Press, 1984).

There has been a strong tendency, as generally noted by many legal scholars and formalized by the 1982 Convention of the Law of the Sea, to deal with only the bare minimum of circumstances in terms of relationships between flows and the geographic circumstances posed by a strait – and ignore the circumstances of territoriality. The 1982 Convention of the Law of the Sea established five normative scenarios juxtaposing hypothetical transits through a rudimentary physiographic configuration, in which one or more adjacent states had extended their territorial jurisdiction out into the sea, sometimes with offshore islands just to complicate matters further.¹⁵ The *Corfu Channel* case was notably different in that the ICJ went further and considered the properties and attributes of vessel transits themselves, attempting to establish some minimum criteria for what constitutes sustained international use in practice in order to be considered a strait under international law. However, the ICJ case did not deal with any of the properties of the adjacent or non-adjacent states involved in terms of conflicting territorialities.

Baxter and Triska, among other authors, have gone a little bit further in considering the impact of territoriality by pointing out that some interoceanic canals during their history were subject to an international operating or supervisory agency, while others were owned and operated wholly by the adjacent sovereign state. They compared the administration of the Suez, Panama, and Kiel Canals as well as the St. Lawrence Seaway in five case studies of different types of operating or supervisory agencies including: 1) administration by a private company (Suez Canal), 2) operation of an interoceanic canal by a foreign sovereign (Panama Canal), 3) operation of interoceanic canals by the territorial sovereign (Kiel and Suez Canals), 4) operation of an international waterway through international coordination (St. Lawrence Seaway), and finally 5) international administration through international commissions. But artificial straits can change from one type of operating regime to another. The operating regimes of the Suez and Panama Canals changed and are in the same ‘operation by the territorial sovereign’ category as the Kiel Canal. What explains how an operating regime or other aspects of territoriality over a strait can change?

¹⁵ See Pharand and Legault (1984) for a visual explanation.

B. THE THREE CIRCUMSTANCES OF A STRAIT: ENVIRONMENTS, FLOWS, AND TERRITORIALITY

The word “strait” can mean a position of personal difficulty, perplexity, distress, or need, a.k.a., a tight spot, often referring to financial difficulties and almost always used in the plural such as “dire straits.” If one were to reflect on use of the word “straits” in ordinary language, it would be synonymous with the word “circumstances.”¹⁶

A comparative understanding of straits used for international navigation might begin in the following way by borrowing from use of the word straits to mean circumstances. A strait combines a set of circumstances including – but not merely limited to – a narrow water passage between adjacent land areas that connects two parts of the high seas or a body of sea with the high seas. What are the curious resemblances and parallels in the histories of the Strait of Gibraltar, the Northwest Passage, and the Korean Straits because of these physiographic circumstances? Each of the preceding fourteen volumes in the International Straits of the World book series described in great detail a set of conditions, situations, or a state of affairs existing in and around narrow water passages used for international navigation. What is needed is a comparative framework. The framework used as the three parts of this book defines a strait as a convergence of three major circumstances between 1) elements of the environment, 2) what flows through that environment, and 3) a regime of territoriality over both the environment and what flows through it.

1. *Elements of the Environment*

Everything in and around a strait happens in a set of physical and human-built environments that inhabit or impact a narrow water passage connecting the high seas. Environments contain both living and non-living elements and they share relationships or interact with one another. The environment around a strait seems complex because there are many different elements, interactions, and relationships that could be considered. It is useful to separate the environment purely for the purpose of analysis into physical and human-built elements.

¹⁶ J. Freeman, “Strait up,” Boston Globe, March 20, 2009, (http://www.boston.com/bostonglobe/ideas/articles/2009/03/29/strait_up/).

Figure 2 is a 3D perspective view of the most important elements of the physical and human-built environment of the Panama Canal. The features of the channel and locks of the Panama Canal itself are numbered from 1 to 9 including: 1) the Atlantic Ocean entrance-exit channel, 2) the port of Cristobal, 3) Gatun Locks, 4) the channel through Gatun Lake, 5) the area of the Culebra or Gaillard Cut at the continental divide, 6) Pedro Miguel Locks, 7) Miraflores Locks, 8) the port of La Boca, and 9) the Pacific Ocean entrance-exit channel. The navigable distance between the Atlantic entrance-exit channel (1) and the Pacific entrance-exit channel (9) is approximately 51 miles. Ancillary elements are i) Gatun Dam, creating Gatun Lake and the canal's primary source of freshwater, ii) Madden Dam, creating Madden Lake and another source of freshwater, iii) the contemporary route of the Panama Railroad, and iv) Miraflores Lake. The location of the port city of Colón is labeled as A, and Panama City as B (urban areas are not shown). Also illustrated are roads, buildings, and other parts of the human-built environment of the former Canal Zone.¹⁷

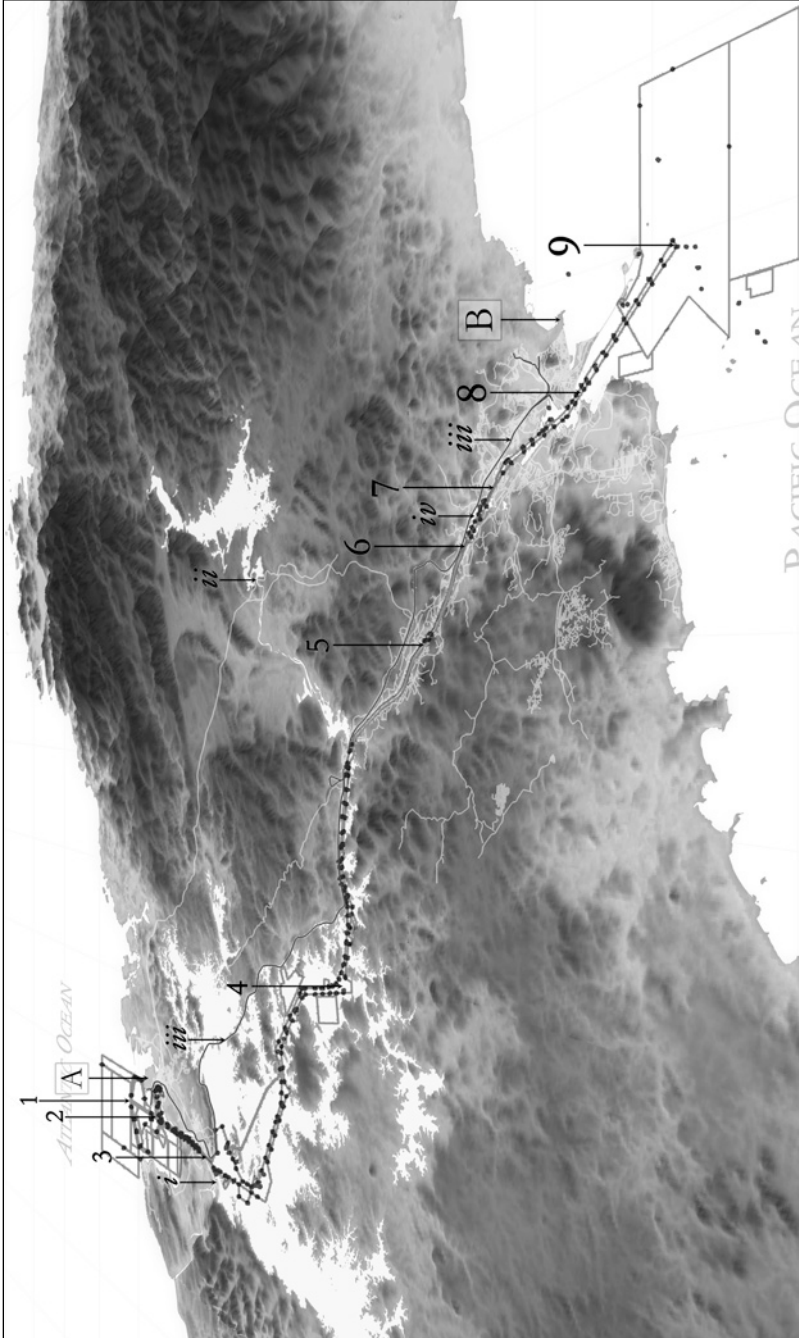
1.1 *Elements of the Physical Environment*

The elements of a strait's physical environment include anything that exists from the upper reaches of the Earth's atmosphere to below the Earth's surface inhabiting or impacting a narrow water passage between the seas. Mapping how physical environments converge in and around a strait and create unique circumstances affecting international navigation can mean recognizing a variety of spatial and temporal scales.

For instance, long term patterns of ocean circulation can affect local rainfall in the Gatun Lake watershed and thus the Panama Canal's water supply. In 1904, American engineers planned major modifications for the surrounding watershed so that it would be capable of sustaining a continuous source of freshwater for canal operations. Historically, since 1914, rainfall during the rainy season has always provided adequate freshwater for operations during the ensuing dry season. However, in extremely dry seasons such as the El Niño event from 1982 to 1983 and from 1997 to 1998, freshwater levels in Gatun Lake were so low that the Panama Canal Commission had to restrict the maximum allowable draft of vessels for several months.¹⁸ Thus

¹⁷ Data sources compiled from various publicly available GIS data.

¹⁸ Autoridad del Canal de Panamá (2006).



2. The physical and human-built environment of the contemporary Panama Canal

there is a relationship between patterns in global ocean circulation patterns, the need for greater water efficiency in canal operations, and large-scale environmental modifications to impound a greater supply of freshwater runoff.

1.2 *Elements of the Human-Built Environment*

Elements of human-built environments can be distinguished and mapped in great detail from the scale of backyards to entire territorial boundaries. Though we can try to separate elements of the physical and human-built environment they function as a single environment. For instance, the Panama Canal is a highly engineered environment but on closer examination it functions by design as two artificially enhanced rivers. The strategy ultimately employed by United States engineers in 1906 was not to modify the physical environment in order to meet expectations of a sea-level canal but rather take what the existing physical environment provided them. French engineers had contemplated similar circumstances when pressed by a lack of time and resources, but American engineers from the start essentially recognized that what would work best was to simply use the natural courses of two rivers that drained in opposite directions towards the Atlantic and Pacific oceans, replace them with a system of freshwater canals and locks, and then connect them together by excavating through the continental divide separating them.

2. *Flows Through the Environment*

Flows through an environment are generally regarded in system dynamics as the movement or the circulation of stocks between sources and sinks. Most of the stock of goods, people, finances, and messages that flow in transit through a strait's environment do so in order to generate commercial wealth elsewhere. However, there are local commercial activities associated with flows in transit through a strait's environment that also generate wealth. For instance, the Panama Canal Authority identified direct, indirect, induced, and parallel commercial activities in Panama related to the operational success of the Panama Canal. As a whole, these related activities were estimated to account for one third of the Republic of Panama's gross domestic product and employ one quarter of its workforce.

2.1 *Flows of Goods, People, Finances, and Messages in Transit*

We can think of flows of stocks of goods, people, finances, and messages as a continuous process of movement on a mode of conveyance like an oceangoing vessel, packaged and stored so as to be easy to load and offload from one mode of transportation to another. Flows of goods, people, finances, and messages can also be thought of as the result of a discrete process of global communications and logistics to generate commercial wealth. The significance of flows of goods, people, finances, and messages is profound when considered in historical perspective. Entire societies evolve and sustain themselves on economic activities associated with long-distance maritime flows.

2.2 *Direct, Indirect, Induced, and Parallel Activities Associated with Flows*

Wealth to the Panamanian economy comes from several economic activities associated with the operations of the Panama Canal. Direct activities associated with canal operations include employee wages, payments to the National Treasury, and local purchases. Indirect activities and services include provisioning vessels in transit, shipping offices, fuel bunkering services, vessel repair and maintenance services, launch services, dredging, pilots, and other services provided to a ship's crew and passengers. Induced commercial activities include those that occur in the Colón Free Trade Zone, as well as most of the activities in the ports, tourism operators, logistics, use of the railroad and other intermodal services, export processing, maintenance of containers, and ground transportation. Finally, parallel activities due to the relative geographic location of the Isthmus of Panama and Panama's monetary system, which is based on the U.S. dollar, include shipping services, flags of convenience, banking, finance, insurance, legal services, airports, merchant marine, telecommunications, maritime courts, and other related services.

3. *Territoriality Over the Environment*

Sovereign states can impose their territoriality over a strait's environment and everything that flows or passes through it, including related commercial activities. In animals, "territoriality" is simply a pattern of behavior related to the occupation and defense of a territory. In refined human understanding, the "territoriality" principle provides the basis of legal authority for a state to exercise its jurisdiction over something

like a crime, based on the fact that the crime occurred within its territorial borders. The territoriality principle may also bar a state from exercising jurisdiction beyond its territorial borders though not without some exceptions. Territoriality is a very broad term which in this book is not limited to mean just the jurisdiction of a sovereign state. The broad definition of territoriality used in this book is the following: an attempt by an individual or group to affect or influence elements in the physical and human-built environment – including people and phenomena or their interactions and relationships – by delimiting and asserting control over a geographic area recognized as territory.¹⁹

Territoriality over a strait's environment and everything that passes through it is not limited to high matters of foreign relations. It also includes day-to-day things like enforcing rules, procedures, and regulations over Panama Canal piloting; safety procedures when maneuvering vessels into place before entering the locks of the Panama Canal; or employment guidelines with respect to how American citizens were to be paid as Canal Zone employees in comparison with rates of pay of American government employees doing comparable work back in the United States.

3.1 *Territoriality by Adjacent Sovereign States*

Everything that happens in or moves through a strait is subject to the sovereign privileges, rights, and authority of the state or states within whose territorial boundaries the narrow water passage lays, unless that situation is altered through mutual agreement. The adjacent state's territorial boundaries are displayed by imposing structural features as part of the built environment such as gates, fences, or buoys, usually through a negotiated process of demarcation with other adjacent states. An interesting fact, of course, is that in the historical past threatening displays of a state's territoriality over adjacent seas were limited by the three-nautical-mile distance that any given onshore battery of cannon could fire. The convention of this threatening display of territoriality evolved into the accepted three-nautical-mile boundary to represent a state's territorial seas, extended from the outermost accepted coastal baseline points or island extensions.

¹⁹ Robert D. Sack, *Human territoriality: Its theory and history* (Cambridge: Cambridge University Press, 1986).

Territoriality over a strait's environment and everything that flows through it can occur by means of official executive orders, or by means of emergent group activities whereby people assert some sort of symbolic control over territory, even if they do not carry any official title or endorsement from a government. This latter aspect of territoriality allows for consideration of more than just government representatives at the diplomatic negotiating table. Territoriality describes groups of people acting for the welfare or defense of perceived social interests in contest with internal rivals and opposition, for example, during the student-led demonstrations during the 1960s involving planting the Panamanian flag in the Canal Zone.

3.2 *(Extra)territoriality by Non-Adjacent Sovereign States*

Narrow water passages between adjacent land areas connecting the high seas have historically been the objects of geopolitical maneuvering and extraterritoriality by powerful non-adjacent states whose citizens rely on use of straits in foreign territory to sustain flows of goods, people, finances, and messages vital to the state's general welfare and common defense. Among Baxter and Triska's five types of territoriality over inter-oceanic canals, the only instance of operation by a foreign sovereign was the Panama Canal, a result of the 1903 Hay-Bunau-Varilla Treaty.

But when exactly might one say the circumstances of territoriality changed from operation by a foreign sovereign to operation by the territorial sovereign in the case of the Panama Canal? December 31, 1999 at midnight was the official date when administration and operations were to be turned over the Panama Canal Authority under the Republic of Panama. However, the Panama Canal Commission (1979–1999) was a joint United States and Panama administering body, a result of a major reorganization of the Panama Canal Company and Canal Zone Government (1951–1979) through the terms of the 1977 Panama Canal treaties. In addition, there were notable reorganizations and more than one partial abrogation of the extraterritorial rights acquired by the United States under the 1903 treaty, beginning with the 1904 Taft Agreement.

C. CONCLUSION

With the exception of a framework in Baxter and Triska there is no framework for detailed historical comparison between the Panama Canal as an artificial strait and other straits. The book is motivated

to investigate the Panama Canal as an artificial strait in comparison with other natural or artificially-enhanced straits with respect to its environment, flows, and territoriality.

Part I will describe the environment of the Isthmus of Panama by selecting three major changes to its physical and human-built environment, from physiographic processes occurring 16 million years ago that uplifted a natural strait to create the Isthmus of Panama land bridge, to the activities of the Isthmian Canal Commission after 1904 to create an artificial strait, and finally, to the activities of the Panama Canal Authority between 2005 and 2014 to add a larger third set of locks and deepen the interior navigation channels.

Part II will describe interoceanic flows that passed in transit through Panama's human and built environment following three major periods of technological enhancement, including the Royal Road and Las Cruces Trail (1540–1740), the Panama Railroad (1852–1869), and the Panama Canal (1914–date). Part II will show that the Panama Canal environment has contributed to the phenomenon of globalization by conveying flows of goods, people, finances, and messages since the 16th century. Part II is a concise statistical review about how three different built environments functioned in very different ways with respect to their viability over time and peak periods of operation, the points of origin and destination they served, and whether they specialized in serving flows of goods, passengers, finance, or messages.

Finally, Part III will describe territoriality over both the physical and human-built environments of the Isthmus of Panama and the interoceanic flows through that environment. The Panama Canal is the only artificial strait that for most of its 100 years of operating history was owned and operated by a foreign sovereign nation. Thus the issue of territoriality bears explanation. Part III explains territoriality over the Panama Canal as an interaction between the territoriality of two Panamanian societies and the territoriality of two alternating American policy regimes. Part III is not a complete history of foreign relations between the United States and the Republic of Panama but one that transcends, and explains, persistent motivations between and among different American and Panamanian demonstrations of territoriality over the Panama Canal and former Canal Zone.

PART ONE

THE ENVIRONMENT OF A STRAIT

CHAPTER TWO

THE ENVIRONMENT OF THE ISTHMUS OF PANAMA

A. INTRODUCTION

In 1901, the Isthmian Canal Commission published as part of its recommendations to Congress a map of all practicable routes investigated in the past for an interoceanic canal. The map was entitled “The American Isthmus from Tehuantepec to Buenaventura Showing Routes Investigated for a Ship Canal.” The map was very simple and depicted 19 routes including all those investigated by the Commission as well as those investigated in the past in more than a dozen other surveys and maps.¹ The 19 routes include 1) Tehuantepec Route; 2) Fonseca, 3) Realejo, 4) Tamarindo, 5) Brito, 6) S. Juan del Sur, and 7) Salinas Bay; 8) Panama Route, 9) San Blas Route, 10) Caledonia Bay Routes, 11) Tupisa-Tiati-Acanti Route, 12) Arguia-Paya-Tuyra Route, 13) Atrato Cacarica Tuyra Route, 14) Atrato Peranchita Tuyra Route, 15) Atrato Truando Route, 16) Atrato Napipi Route, 17) Atrato Bojaya Route, 18) Atrato Baudo Route, and 19) Atrato San Juan Route.

The Isthmian Canal Commission selected routes 2 through 7 (Nicaragua) and route 8 (Panama) for final evaluation and recommendation to Congress and the President. Route 8 across Panama was considered to have a number of physical advantages, including a much shorter and straighter route, more complete survey knowledge of surface and subsurface features, and lower expected costs of maintenance and operation. However, the Commission felt that the costs to acquire the New French Panama Canal Company at the time of publication in 1901 were so unreasonable that routes 2 through 7 across Nicaragua provided the most practicable and feasible potential route for a canal under American control.

The fact that routes 2 through 7 and route 8 were selected for final consideration was not surprising. Paleogeographic reconstructions of the Central American isthmus twenty million years ago depict two

¹ U.S. Congress, Senate, *Report of the Isthmian Canal Commission, 1899–1901*, 57th Cong., 1st Sess., Doc. No. 54 (Washington, D.C.: GPO, 1901).

major seaways between the Atlantic and Pacific Oceans. One seaway was oriented east-west across Nicaragua and another oriented north-south across Panama. Based on physical evidence and model inferences it is likely that the geologic legacy of the ancient Nicaraguan seaways led to the contemporary features of Lake Nicaragua and the Rio San Juan, routes 2 through 7 in the Isthmian Canal Commission's 1901 map. It is also reasonable speculation that the geologic legacy of the ancient Panamanian seaway led to the Chagres River and Rio Grande Rivers, route 8 in the Isthmian Canal Commission's 1901 map. The physical environments of the Chagres River and Rio Grande Rivers in Panama were modified to create the original Panama Canal that opened in 1914 as an artificially-enhanced version of the natural strait that existed until only a few million years ago.²

B. HOW A STRAIT BECAME AN ISTHMUS 16 MILLION YEARS AGO

Many narrow and natural sea passages joining the high seas played the opposite role in the ancient past, since by definition an isthmus is the exact opposite of a strait. There are straits existing today that used to be isthmuses, joining continents and enabling massive biogeographic exchanges overland. There are also isthmuses existing today that used to be straits, joining oceans and enabling massive physical and biogeographic exchanges by sea, and Panama was one of them.³ Though offered with some caution based on the inferential methods used for paleogeographic reconstruction, geologists have speculated that twenty million years ago during the Miocene epoch the Jutland Peninsula (Denmark, Germany, and site of the Kiel Canal) did not obstruct passage between the Baltic and the Atlantic, both the Strait of Gibraltar and the Strait of Malacca were not straits at all but were land bridges and barriers to interoceanic exchange, the Mediterranean Sea was twice as long and continued east as an enormous inland sea across the Arabian Peninsula all the way to the Persian Gulf and the

² Ron Blakey, *Regional paleogeographic views of earth history*, 2009, (<http://jan.ucc.nau.edu/~rcb7/globaltext2.html>). Blakey (2009) depicts Nicaragua and central Panama as the two deepest and widest seaways. See also Frank C. Whitmore Jr. and Robert H. Stewart, "Miocene mammals and Central American seaways," *Science* 148 no. 3667 (1965): 180–185.

³ See, for instance, Lapidoth-Eschelbacher (1982) for speculation about the Red Sea.

Indian Ocean, and the Red Sea was so narrow that it was practically closed off.⁴

In addition, there were deep and very wide natural straits and seaways through Central America from just south of the Isthmus of Tehuantepec in Mexico to the Darien Province of Panama on the Panamanian-Colombian border. There have been some scientific doubts based on fossil evidence that a major seaway across the Isthmus of Tehuantepec in Mexico ever existed during the later Tertiary period (65 million to 2.588 million years ago). Yet there is no doubt from either fossil evidence or paleogeographic reconstructions that for millions of years there were enormous seaways between the Atlantic and Pacific Oceans through Central America, dotted with volcanic islands and subject to intense tectonic activity.⁵

It was about sixteen million years ago during the late Miocene and early Pliocene epochs that gradual and fragmented geological processes of upwelling began to constrict and shallow out the seaways and natural straits across Nicaragua and eventually Panama, which was subducted by the Pacific Ocean Cocos plate. The Isthmus of Panama itself was formed from Central American crustal blocks of the Atlantic Ocean Caribbean plate that became fused together at what is referred to as the Gatun fracture zone, an area that by all indications lies precisely along the former Chagres River valley and route of the Panama Canal.⁶

According to one scenario, as the crustal blocks of the Isthmus of Panama became subducted by the Cocos plate, the Panama straits gradually began to shallow to a depth of 150 meters between twelve and seven million years ago, and then to less than 50 meters between six and four million years ago.⁷ Incidentally, the Panama Canal Authority's plans call for dimensions of the "Third Set of Locks" to be 18.3 meters (60 feet) in depth. Fossil evidence from widely and

⁴ See methods used by Blakey (2009).

⁵ See also Jay M. Savage and Marvilee H. Wake, "Reevaluation of the status of taxa of Central American caecilians (Amphibia: Gymnophiona), with comments on their origin and evolution," *Copeia* 1 (2001): 52–64. Savage and Wake (2001) suggested seaways dotted with volcanic islands.

⁶ The Gatun fracture zone in the map provided by Savage and Wake (2001) seems to lie along the line of the Panama Canal itself.

⁷ See Harry L. Fierstine, "Makaira sp., Cf. M. Nigricans Lacépède, 1802 (Teleostei: Perciformes: Istiophoridae) from the Late Miocene, Panama, and Its Probable Use of the Panama Seaway," *Journal of Vertebrate Paleontology* 19 no. 3 (1999): 430–437.

rapidly dispersed marine larva like tonnoidean gastropods (marine snails) indicates that the Central American seaways began to constrict by the early middle Miocene epoch sixteen to fourteen million years ago.⁸ Intermittent larval transport between the Atlantic and Pacific Oceans continued during the late and early Pliocene epoch and the early Pleistocene epoch two and one-half to five million years ago. Larval transport may have continued as late as two-and-one-half million years ago in the early Pleistocene epoch during interglacial periods of high sea-level when shallow and constricted seaways inundated the land, but discontinued during glacial periods of low sea-level when the land bridge reemerged.⁹

The Pacific Ocean Cocos plate uplifting process that created the Isthmus of Panama about three million years ago recreated an ancient continental land bridge and removed barriers to overland movement, and with it the long isolation that had existed between North and South American biota. The result was a massive biogeographic exchange between the two continents called the "Great American Interchange."¹⁰ The movement of terrestrial mammals over the Panama land bridge between North and South America is one of the most well studied phenomena in biogeography. The uplift of a land barrier also had significant effects on the distribution and abundance of marine life, in effect, cutting off oceanic circulations and exchanges of marine flora and fauna between the Atlantic and Pacific Oceans. In fact, the massive reorganization in patterns of Pacific and Atlantic oceanic circulation caused by the uplifting of the Isthmus of Panama represented one of the causes of global climate change and glaciation during the Pleistocene epoch.¹¹

The early Pleistocene epoch two-and-one-half million years ago is the most recent period that scientists suggest there were shallow and

⁸ Alan G. Beu, "Gradual Miocene to Pleistocene uplift of the Central American Isthmus: Evidence from tropical American tonnoidean gastropods," *Journal of Paleontology* 75 no. 3 (2001): 706–720. Brian N. White, "The isthmian link, antitropicality and American biogeography: Distributional history of the atherinopsinae (pisces: atherinidae)" *Systematic Zoology* 35 no. 2 (1986): 176–194.

⁹ Fierstine (1999) discusses the use of the Panama seaways by large vertebrates and cites evidence that the Isthmus of Panama is believed to have completely emerged by 3.5 million years ago.

¹⁰ Larry G. Marshall, S. David Webb, J. John Sepkoski, and David M. Raup, "Mammalian evolution and the Great American Interchange," *Science* 215 no. 4538 (1982): 1351–1357.

¹¹ See Beu (2001).

narrow seaways across the Isthmus of Panama. The Pleistocene is significant because it was during the late Pleistocene epoch about 150,000 years ago when modern human beings began emigrating out of the African continent to Europe and Asia, crossing the Bering Sea ice bridge to North America and eventually across the Isthmus of Panama to South America. Evidence from sources like fossil pollen, phytoliths, diatoms, sediment chemistry, pigment-analysis, and clay mineralogy suggests that the landward spread of human beings out of the African continent had reached the Isthmus of Panama by about 11,000 years ago, although well-preserved archaeological finds of stone tools and weapons typically tend to date human occupation of Panama to earlier periods. Evidence of fires in the sedimentary record, which scientists say could not have been of natural origin, characterize the first human occupation of Panama as local and patchy clearing of forest trees. Pollen and other evidence of cultivated maize agriculture appear in Panamanian sedimentary evidence as early as 7,000 years ago. There is also some evidence that the Isthmus of Panama was used for interoceanic exchanges between pre-Colombian Panamanian civilizations.¹²

The most recent massive biogeographic exchange of people, flora, and fauna, termed the "Colombian Exchange," was not a gradual overland migration via natural ice or land bridges but a dramatic interaction between the Americas and Europe and Africa via oceangoing vessels. Europeans and Africans introduced an essentially Mediterranean agro-ecological system of flora and fauna adapted from the dry coasts and uplands of the Mediterranean coast on the Iberian Peninsula. Europeans also introduced their advanced military equipment, cultural and religious conventions, and most significantly, contagious diseases to which people in North and South America had never been exposed. In the most recent strata of sedimentary evidence from Panama, scientists note a marked period of forest growth over the last several centuries and infer that massive human population losses led to a precipitous decline in agriculture and forest-clearing activity.¹³ Inferential evidence of massive population loss on the Isthmus of

¹² Christopher C. Ward, *Imperial Panama: Commerce and conflict in isthmian America, 1550–1800* (Albuquerque: University of New Mexico Press, 1993).

¹³ Mark B. Bush, Dolores R. Piperno, Paul A. Colinvaux, Paulo E. De Oliveira, Lawrence A. Krissek, Michael C. Miller, and William E. Rowe, "A 14 300-Yr paleoecological profile of a lowland tropical lake in Panama," *Ecological Monographs* 62 no. 2 (1992): 251–275.

Panama adds insight to what is already known from historical records about the impact of human disease on relatively isolated North and South American civilizations as a result of the maritime biogeographic exchange between the American continents and Europe and Africa at the turn of the 16th century.¹⁴

What European explorers at the turn of the 16th century had been intent on discovering was an alternate maritime means of long-distance interoceanic exchange between the Mediterranean and Atlantic Oceans, and the Indian and Pacific Oceans, that is, an alternative to a transcontinental overland route through the Middle East or a sea voyage around the continent of Africa. The first Europeans did not find a natural strait through the Western Hemisphere to Asia because it had disappeared more than three million years ago; but what they did find was whatever was left of it as a passage through the Isthmus of Panama via the Chagres River watershed. The first group of Europeans to explore the coast of the Isthmus of Panama presumably arrived sometime in 1501 led by Rodrigo de Bastidas, who left the port of Cadiz in Spain in October 1500 with two ships as the last of five expeditions allowed as private voyages, licensed by Spain, in the wake of Christopher Columbus' first voyage. Bastidas may have explored the Atlantic coast of Panama as far west as the eventual sites of Nombre de Dios and Porto Belo near the contemporary Atlantic Ocean entrance point of the Panama Canal.¹⁵

The first documented European transit across the Isthmus of Panama was in September 1513 by a combined force of about two hundred Europeans and a thousand South American natives who made their way to the Pacific Ocean led by the Vasco Nuñez de Balboa, appointed by King Charles I as one of the early Governors of Darien, and one of the former members of Bastidas' original exploration of the Atlantic coast of Panama in 1501. Unbeknownst to either Vasco Nuñez de Balboa in 1513 or the Isthmian Canal Commission four centuries later in 1901 was the fact that the geologic legacy of ancient Nicaraguan and Panamanian seaways had already provided human enterprise with the physical environment for an artificial strait.

¹⁴ Richard N. Adams, "The conquest tradition of Mesoamerica," *Americas* 46 no. 2 (1989): 119–136. Adams's "conquest tradition" is very much in the spirit of a territorial-administrative society of the interior and the *longue durée*.

¹⁵ Ira E. Bennett, *History of the Panama Canal. Builder's Edition* (Washington, D.C.: Historical Publishing Company, 1915).

C. HOW AN ISTHMUS BECAME AN ARTIFICIAL STRAIT ONE HUNDRED YEARS AGO

During their first field visit to Panama on 5 April 1904, the Isthmian Canal Commission (the “Commission”) itemized six problems about the physical and human-built environment that they would have to solve in order to build the Panama Canal. The six problems included 1) harbor improvements and seawater entrance channels, 2) flooding in the Chagres River watershed, 3) excavating an interior freshwater navigation channel at a summit level as yet to be determined through the continental divide, 4) constructing locks, 5) civil infrastructure ensuring public health and public safety within the boundaries of the Canal Zone; and finally 6) civil infrastructure ensuring public health and public safety in the maritime port cities adjacent to the Canal Zone. With the exception of partial excavation of interior freshwater navigation channels and harbor improvements, none of the six environmental problems had been solved by French private enterprise between 1880 and 1904, according to the Isthmian Canal Commission.

1. *The Human-Built Environment in the Canal Zone and the Adjacent Maritime Port Cities*

The plan for the human-built environment within and adjacent to the boundaries of the Canal Zone buffer was the Isthmian Canal Commission’s first priority. Congress and President Theodore Roosevelt created a Canal Zone government to govern its workforce. Legislative powers were given to the Isthmian Canal Commission, judicial powers to a Canal Zone court system, and executive powers to a Canal Zone Governor. Among the first priorities as instructed by Roosevelt were reducing risks to public health and public safety. Roosevelt remarked that the United States had already successfully dealt with diseases such as yellow fever during occupation of Cuba and Puerto Rico after the 1898 Spanish-American War. Roosevelt said he expected health conditions to improve in Panama as least as much as they had in Cuba and Puerto Rico.

In 1905, after a year of progress that Roosevelt criticized as unsatisfactory, the Commission said it was “useless” to hope for productive results from the canal workforce in terms of modifying the physical environment until the human-built environment was significantly improved. The Commission, therefore, decided to stop large scale

excavation in what it called a “radical change of policy.” The Commission said:

The Isthmus must be made healthy by thorough sanitation, proper quarters and food must be provided for employees, and adequate terminal facilities must be constructed for the prompt and economic handling of supplies and material. It was decided, therefore, to stop at once excavation on a large scale until the preparatory work was done. The Commission realized that this was a radical change of policy, but believed that it would be approved when a full statement should be made of existing conditions and of the difficulties to be overcome before canal construction could be undertaken in accordance with a comprehensive and systematic plan.¹⁶

Modifying the human-built environment meant bringing in supplies, engineers, and manual laborers to construct new roads, railways, bridges, houses and offices, sewer systems, water systems, power systems, and other support facilities. Changes were intended not only for the canal workforce and the residents of municipalities in the Canal Zone, but for the Panamanian population of the adjacent maritime port cities of Colón and Panama City.¹⁷ Accommodating and governing the “human” elements of the human-built environment in terms of the health and safety of people living in or near the Canal Zone was the responsibility of the Governor. The Governor’s staff included five executive departments that administered health, revenues, justice, police, and education. At the time of its creation in 1904, the health department had five separate services including a sanitary service, hospital service, maritime-quarantine service, health officer for the city of Panama, and health officer for the city of Colón.

The health department was aggressive about responding to reports of disease, isolating patients and preemptively eradicating known disease vectors. One of the first public health issues confronted by the Isthmian Canal Commission and the Governor was the ‘perception’ of exotic tropical diseases against which there was no remedy. For example, according to the health department’s statistics, between 1 May and 31 August 1905 most deaths were due to malaria (85 deaths) whereas there were about half as many fatal cases of yellow fever (47 deaths). Yet diseases caused by parasitic animals and bacteria other than those carried by mosquitoes caused more fatalities than malaria

¹⁶ Isthmian Canal Commission, *Annual Report* (Washington, D.C.: GPO, 1905), 6.

¹⁷ Isthmian Canal Commission, *Annual Report* (Washington, D.C.: GPO, 1904).

and yellow fever combined, including diarrhea and enteritis (57 deaths), consumption, i.e., tuberculosis (54 deaths), pneumonia (49 deaths), and dysentery (46 deaths). The range of fatalities from non-mosquito carried diseases suggests that a combination of overcrowding in urban areas, lack of adequate water and sewage systems, and maybe also malnutrition represented the major underlying threat to public health. The perception of contracting yellow fever, according to the Isthmian Canal Commission, was out of proportion to its actual impact on canal laborers given all the other sorts of human health problems. Nonetheless, taking steps to eradicate breeding areas for the different species of mosquito that carried the yellow fever virus or the malaria parasite, and advertising the elimination of all cases of yellow fever, would help the Commission to attract and maintain its resident immigrant workforce.

The Isthmian Canal Commission's activities to accommodate the "human" elements of the human-built environment, laudable in many respects for their positive outcomes on quality of life, had a strictly instrumental purpose. The Commission itself stated that ensuring public order and the safety and health of the workforce, including measures like subsidizing delivery and sale of more highly nutritious sources of fresh foods in refrigerated rail cars and providing employees of all levels with much better accommodations, was a policy designed to increase productivity and decrease high labor turnover. The first Chief Engineer John F. Wallace (1904–1905), a former railroad engineer and railroad company manager, recommended supplying food to the canal workforce with the same methods and practices used to supply boarding camps, restaurants, and hotels for the transcontinental railroads.¹⁸

The second Chief Engineer John F. Stevens (1905–1907) was critical of labor when he arrived. Stevens evaluated manual labor in the Canal Zone against common labor in the United States and complained that the Panama Canal workforce was expensive by comparison. Stevens said that even after proper allowance for differences in wages, he doubted if the efficiency of labor in Panama rated any higher than 33 per cent of similar labor in the United States. Stevens believed that labor efficiency had to be improved and it could be done by recruiting larger numbers of people, using prompter methods of payment,

¹⁸ See the Isthmian Canal Commission *Annual Report* (1905, 344).

subsidizing more nutritious well-cooked foods, and more carefully selecting foreman and superintendents.

The “human” element of the human-built environment problem was not limited to accommodating and governing the workforce already living in or near the Canal Zone. It also included attracting and recruiting employees from the United States, the Caribbean, and Europe. It is understandable, from the point of view of the beginning of the 21st century, to be startled by the prejudicial narrative that occasionally punctuates the Isthmian Canal Commission annual reports at the turn of the century. For instance, the Commission’s 1904 report asserts that manual excavation was not a suitable job for the ‘Caucasian race’ due to the tropical environment, requiring some means to attract other sources of immigrant labor. Eventually, the labor force for the construction of the Panama Canal grew to a professional workforce of about five thousand people from the United States, and a manual labor force of nearly forty thousand recruited from the Caribbean including Barbados, Martinique, Guadeloupe, and Trinidad. There were also large numbers of people who came to Panama from the Mediterranean, particularly from Spain but also from Italy and Greece.

Recruiting qualified professionals and their families from the United States to come to Panama was equally as problematic as recruiting manual laborers from the Caribbean and other places. At the beginning in 1904, the Isthmian Canal Commission was worried that market forces alone, e.g., wages, were not sufficient to attract a manual labor force in large enough numbers. Various non-market methods were used to attract labor from the United States though there were repeated calls to put the Canal Zone under a special legal regime so that restrictive labor laws that applied in the United States could be circumvented. Non-market practices used to recruit labor from the Caribbean included things like providing quota payments to foreign government officials. Labor recruitment and high turnover was such a serious problem that the second Chief Engineer John F. Stevens even tried to negotiate immigration of Chinese labor into Panama, as had been done to construct the transcontinental railroads across the United States. Like Wallace before him, Stevens had a wide range of transcontinental railroad experience and had worked as a famous locating engineer for the 1893 Great Northern Railway before being hired by President Roosevelt for the Panama Canal.

Cost estimates made public by Ferdinand De Lesseps, speaking as a representative of *La Compagnie Universelle du Canal Interoceanique*,

often refer to what the company expected to spend on excavation and engineering operations to modify the physical environment. None of the costs of modifying a human-built environment figure as highly. It would be a revealing historical comparison to investigate the time and resources spent modifying the human-built environment in Panama for the professional and manual labor workforce of the Panama Railroad Company after 1851, the original French Panama Canal Company (*La Compagnie Universelle du Canal Interoceanique*) after 1880, the reorganized New French Panama Canal Company after 1894, and finally, the United States federal government after 1904. Such a comparison would be even more helpful if it also included expenditures of time and resources by railroad companies to sustain and supply the mobile civil societies of professional and manual laborers that constructed the American transcontinental railroads during the second half of the 19th century.

Putting expenditures into comparable categories across organizations, converting currencies, and adjusting for inflation are well outside the scope and purpose of this book. Nonetheless, similar patterns of expenditure might be expected when comparing two private companies, but profoundly different patterns of expenditure might be expected when comparing a private company with the United States federal government. The results of such an analysis might shed light on the policy of the Isthmian Canal Commission to spend money modifying the human-built environment as its first task, in order to then recruit, accommodate, and govern the labor force necessary to modify the physical environment.

Modifying the human-built environment was a priority and much of the work was accomplished in the first few years under the tenure of figures whose histories have already been investigated in depth, including the first Governor Maj. Gen. George W. Davis, the chief sanitary officer William C. Gorgas, the second Chief Engineer John F. Stevens, and the third Chief Engineer and Governor Maj. George Washington Goethals. For modifying the physical environment, the Isthmian Canal Commission faced a Janus-faced undertaking. In the center was an initially dry excavation project through the continental divide in the area of the Culebra Cut that needed a plan for an efficient railroad system to carry away massive amounts of excavated material. On either side of the continental divide were parallel projects to excavate freshwater navigation channels. One channel connected to the Atlantic along the course of the Chagres River and another connected

to the Pacific along the course of the Rio Grande. There were also parallel projects for locks and parallel projects for harbors and entrance channels, one at the Atlantic end adjacent to Colón and the other at the Pacific end adjacent to Panama City. The Janus-faced geographic division of labor for the Panama Canal was eventually formalized by the third Chief Engineer Maj. George Washington Goethals, who created three construction divisions to finish construction of the Panama Canal including the Atlantic division, the Pacific division, and the Central division.

The Isthmian Canal Commission in 1904 had to consider whether they should start by duplicating effort on the Atlantic and Pacific sides simultaneously or work in a certain sequence, starting on one side first and then gradually moving operations to the other side. Thus the Isthmian Canal Commission outlined an itemized plan of projects, and most importantly, described a sequence of work to accomplish them that later Chief Engineers like Goethals would execute.

2. *A Sea-Level Canal or a Canal With Locks*

In brief, initial plans for modifying the physical environment of the Isthmian Canal Commission were as follows. The plan for the problem of harbor improvements at both Atlantic and Pacific ends of the canal was to construct breakwaters and dredge seawater entrance channels. The plan for the problem of how to handle uncontrolled runoff from the Chagres River watershed was to construct dams and other massive water control means. The summit level for the freshwater navigation channels was yet to be determined. The plan for the problem of the type, dimensions, and number of locks would depend upon the choice of summit level. Figure 3 illustrates the location of the canal proposed by the Isthmian Canal Commission in 1901.¹⁹ The darker grey area in the side-view transect figure shows the excavation already completed by the French canal companies. The lighter grey area represented the excavation that had yet to be completed for the proposed canal with locks. Figure 3 also shows that the line of the canal followed the Chagres (and Obispo) River, which still existed at the time of the making of the map, and the Rio Grande on the Pacific side. Constructing the

¹⁹ Source of map is U.S. Congress, Senate, *Report of the Isthmian Canal Commission, 1899-1901* (1901).

locks themselves after they had been sited involved forming cement lock chambers, devising a gravity-powered water control system, installing massive iron lock gates that could be removed and repaired, and installing supporting mechanical and power systems.

The Commission planned to begin work for a harbor on the Atlantic side to supply all of their operations, after which they would excavate in the central Culebra Cut area and also move to the Pacific side to conduct several projects simultaneously to those on the Atlantic side. However, the one preemptive decision that had to be made as early as possible was whether to plan for a sea-level canal or a canal with locks. The difference between a sea-level and a lock canal was one of degree, determined by the relationship between an organization's time and resources, expectations about future demands on canal capacity, and the environmental circumstances that had to be modified. Ultimately, the Commission's plan focused on taking advantage of the physiographic circumstances of the Isthmus of Panama by simply modifying how water naturally flowed through existing drainage basins. The Commission basically used natural river courses to build an artificial Atlantic-draining river that connected to an artificial Pacific-draining river through the continental divide, impounding a large artificial freshwater lake in the middle for the water supply. Through human engineering, the Commission took the natural advantages belonging to the Panama route, in terms of a shorter route with less curvature, and recreated the natural advantages that had belonged to the environment of Nicaragua – by creating an artificial Gatun Lake that mimicked the enormous freshwater resources of natural Lake Nicaragua at the summit.

The initial determination of the Isthmian Canal Commission during its first field visit in April 1904 was undetermined as to what the summit of the Panama Canal would be. However, to this author they were clearly skeptical of the feasibility of a sea-level canal at the beginning, at least under the time and resource constraints imposed by Congress and the President. Caveats about available time and resources are repeated almost every time any mention is made of a sea-level canal, and it is not surprising that frequent mention is made of the shortfalls of the initial French sea-level plan, not on account of its design but rather its application. In other words, the design was suitable for the circumstances presented by the physical environment of Panama, but not for the management circumstances the French company should have operated within, but did not.

For instance, the Commissioners noted that the only excavation work still being done by the French company was at the Culebra Cut, involving a few French steam excavators and dump trains with a workforce of about seven hundred. The Commission suggested that the French company's choice between a canal at sea-level or with locks should have been determined by the time and resources available to meet the terms of their contract. Meeting the terms of the company's contract with Colombia should have dictated the French company would choose a canal with locks, rather than a sea-level canal, so as to avoid forfeiture of their franchise. A New York Times article on 22 December 1879 entitled "De Lesseps's Plea" said that all faith and hopes of the French Panama venture rested on the personal credibility of Ferdinand De Lesseps, who had successfully led construction of the Suez Canal, and that it was "a question of a canal without locks or a canal enterprise without De Lesseps." The Commission said:

But the radical difference is that the French canal was a commercial enterprise based on a time concession. It must be completed at a cost on which the traffic would yield a reasonable revenue, and within a limited time. Under these exigencies of resources and of time the original intention of a sea-level canal was abandoned and successive reductions made in the amount of excavation work until a lock canal, with a summit level of 110 feet above mean ocean tide, was seriously proposed, and it was only on the reorganization of the enterprise, and an extension of the time limit, that a return was made to a plan with a summit level of 61.5 feet.

The Isthmian Canal Commission's decision making was not influenced by their ability to raise funds from private investors, but it still operated under time and money constraints imposed by Congress. The Commission stated that among its objectives was determining the practicability of a sea-level canal despite its greater costs. If a sea-level canal seemed impractical under the constraints imposed by Congress, and by many early indications it seemed that would be the case, the Commission would have to decide upon an appropriate summit level above sea level and then determine the depth of the channel and type, dimensions, and locations of locks.

An interesting factor in the Commission's field investigations was the importance given to the "second derivative" of lowering the summit level, i.e., widening the slope of excavation. The Commission reported that although the French company's investigations were valuable and accurate, the information was not adequate for the Commission's

plan for a much larger set of navigation channels. The Commission decided that they would have to completely resurvey the topography and subsurface features of the Isthmus. As a result of its subsurface investigations, the Commission adjusted the planned slope of excavation on either side of the interior freshwater channels to match the loose and unstable properties of the exposed subsurface, particularly in the upper strata of the Culebra Cut area. If the sides of the channel were to achieve the gentle slope necessary to reduce risk of instability, estimates of the amount of material that had to be excavated and then hauled away by railroad or other means had to be significantly increased.

The most relevant decision points would be a canal with a summit approximating sea-level, a canal with one set of locks on both sides and a summit level that was a bit higher, or a canal with two sets of locks on both sides and a summit level that was yet even higher. The basic problem the Commission faced was the uncertainty about exactly how much greater or lesser the time and resources would be as a result of raising or lowering the proposed summit level. The Isthmian Canal Commission not only wanted to completely resurvey the area, they also wanted to perform their own semi-controlled experimental testing to estimate how much work certain people and equipment operating in actual field conditions could perform and at what cost. However, simplifying assumptions about the relationship between time, resources, and summit level objectives may have been based upon questionable extrapolations from excavation trials under conditions that were not representative.²⁰

For instance, one (unadjusted for inflation) estimate by the 1905 Commission calculated that the extra cost of excavating a sea-level canal instead of a lock canal with a summit level of 85 feet was \$79,742,200. By comparison, the extra cost of excavating a sea-level canal instead of a lock canal with a summit level of 60 feet was only \$52,462,000. In a sense, leaving the extra 25 feet at the summit would save nearly \$30 million (unadjusted for inflation) dollars, about 13 percent of the entire cost of construction. The 1905 Commission's total estimated cost for

²⁰ For an example of the problems of simplifying assumptions about relationships between excavation, time and cost see Isthmian Canal Commission (1905) for the letter of O. H. Ernst, Colonel of Engineers, to T. P. Shonts, Chairman of Isthmian Canal Commission on 1 August 1905.

a sea-level canal was \$230,500,000, including \$38,450,000 for administration, engineering, sanitation, and contingencies but not including interest payments or any of the millions of dollars spent by the Canal Zone government for modifying the human-built environment.

There was a trade-off between summit level on the one hand, and time and resources on the other. There was also a tradeoff in terms of expectations about future demands on canal capacity. It is not incredibly difficult to find speculation about the impact of locks on future demands over canal capacity. However, it is difficult to find a determinative judgment on the matter. Perhaps the most determinative judgment comes from the report of the board of consulting engineers, published as part of the Isthmian Canal Commission's 1906 annual report.

A higher summit level meant more locks, which reduced the costs of excavation but also decreased the ability of the canal to meet future demands. However, a lower summit level meant fewer locks, which increased the costs of excavation but also increased the ability of the canal to meet future demand. Part of the Commission's reasoning for making the depth of the navigation channel at least 35 feet was its expectation it would ensure many years of commerce and compared well with the depths of the Suez Canal (<30 feet), Manchester Canal (26 feet), Kiel Canal (29.5 feet), North Sea Canal (32.89 feet), and entrance channel to New York harbor (40 feet). Nonetheless, the Commission understood that committing to a lock-canal would restrict commerce at some point and would make transforming to a sea-level canal a more difficult and costly process.

Like any high stakes decision making process with uncertainty and a lack of complete consensus among technical experts, the Isthmian Canal Commission, the President, and ultimately Congress made a choice based upon the consequences of being wrong. It was better to bear the negative consequences of constructing a canal that at some point in the future would have to be improved with larger locks and channels, or completely redesigned without locks, rather than bear the negative consequences of committing themselves to a sea-level project that risked exceeding the limits and expectations of time and resources allowed to them by Congress and the President. Chief Engineer Stevens and other members of the Isthmian Canal Commission between 1905 and 1907, none of whom represented irreplaceable personalities to the financial fortunes of the endeavor, recognized that the best decision was not to overpromise and then under-deliver.

Ordinary American engineers stuck in field conditions who had had experience using heavy equipment and supervising laborers to build railroads, dams, and harbors probably did not have any particular hang-ups or strong feelings that there was a special importance to be attributed to achieving another forty or sixty feet of channel excavation to summit level. I like to imagine that at least one impertinent junior American engineer blurted out the simple question, "Sea-level canal? Why not just put some locks on either end and be done with this, so we can get out of here?" The report of Chief Engineer John F. Stevens in 1905 conveyed approximately the same sentiment. Stevens, an important advocate of a lock canal, put the entirety of the Panama Canal project this way:

There is no element of mystery involved in it. No problem now apparent (I refer to purely physical problems) but what can be successfully solved – the problem is one of magnitude and not of miracles; although the time required and the consequent cost will be more dependent upon the kind of canal to be built to a far greater extent than has been, I fear, appreciated.

Stevens advocated a lock canal and as Chief Engineer attached his views to a minority report of a board of consulting engineers in 1906. The Commission accepted the minority report, and after a Senate and House vote in favor of a lock canal, President Roosevelt in June 1906 executed a plan for a canal with a set of locks on the Atlantic side, a set of locks on the Pacific side, and a central artificial lake.

3. *Controlling How Water Moves Through a Built Environment*

The priorities of the Isthmian Canal Commission were fundamentally Atlantic-oriented, beginning with the harbor and entrance channel adjacent to Colón but eventually extending to the Atlantic-draining Chagres River. A working harbor on the Atlantic side at Cristobal would be first. Most of the material, heavy equipment, and immigrant workforce would have to be delivered by steamships from the East Coast of the United States or the Caribbean, making port on the Atlantic Ocean side. The breakwaters and navigation channel for the harbor on the Pacific Side at La Boca were planned to begin after most of the harbor improvements at Cristobal had been completed.

Far more challenging than harbor improvements was the problem of controlling surface water runoff. The Commission's solution was to construct dams and build an artificial lake out of the Chagres River

drainage basin. There were two reasons for this. One reason was to avoid having to do a great deal of work excavating a deep freshwater navigation channel. Another reason for inundating the watershed was to reduce the risks of flooding and erosive runoff into a vulnerable artificial river channel surrounded by steep slopes. Thus the plan was to flood as much of the watershed as possible and then regulate upstream reaches with control measures at several strategic stream inputs. The Commission stated in 1904:

The floods of the Chagres River are at times so sudden and of such magnitude that from the inception of the work of the Old Panama Company to the close of the investigations of the former Isthmian Canal Commission, it has been considered of the utmost importance to control them effectually, whether the sea-level canal or a canal with locks to be constructed. In the former case it would be highly objectionable to receive the flood waters of the river into the canal, as it would be difficult to prevent damage by the currents induced on the one hand, and by the silt, sand, and gravel brought in on the other.²¹

There were three options for dams on the lower reaches of the Atlantic-oriented Chagres River. In addition, there were plans for supplementary dams in the middle reaches of the Chagres River. Finally, the Commission noted that one of its largest field survey parties was to be devoted to understanding the uppermost reaches the Chagres River at its headwaters near the continental divide, with a plan to eventually divert normally Atlantic Ocean draining river water the opposite way across the continental divide and towards the Pacific Ocean. The Commission planned a dredging project for the navigation channel in the deepest portions of the soon to be created 20 to 25 mile-long artificial Gatun Lake.

A dry excavation project would proceed through the continental divide using an efficient system of railroads to carry away massive amounts of excavated rock material overland until a waterborne system was possible. Excavation of the future freshwater navigation channel on the Pacific side of the continental divide would take advantage of the stream channel eroded by the Pacific-draining Rio Grande. Luckily, the Rio Grande did not have the same risks of violent flooding as its Atlantic-draining counterpart the Chagres River.

²¹ Isthmian Canal Commission *Annual Report* (1904, 40).

Finally, lock construction under dry conditions was to proceed as a separate engineering project. When the Culebra Cut, Pacific side navigation channel, and Pacific side set of locks were sufficiently completed under dry conditions, then water from the upper reaches of the Atlantic-oriented Chagres River watershed would be redirected and allowed to flow towards the Pacific Ocean. The railroad system for carrying away excavated rock material overland would be removed and replaced by a much more efficient waterborne system using barges, as channel modification would thereafter be a wet excavation or dredging project.

D. WHY AN ARTIFICIAL STRAIT WILL REACH MAXIMUM
SUSTAINABLE CAPACITY BETWEEN 2009 AND 2012
UNLESS ENHANCED

1. *The Third Set of Locks Project and Maximum Sustainable Capacity*

Since the Isthmian Canal Commission's report in 1904, a number of commissions have been established to explore the feasibility of a third set of locks or even a sea-level canal. In 1913, at the high point of employment during the initial construction phase of the Panama Canal, the total workforce totaled nearly 40,000 people. That number declined precipitously after 1913 until 1939. A major wartime construction effort for a "Third Locks Project" was begun in Panama by the United States federal government in 1939, led by a "Special Engineering Division." At one time during excavation for the Third Locks Project, in 1942, the total workforce exceeded 37,000 people, nearly as large as the largest workforce ever employed by the Panama Canal between 1904 and 1914 (see also Figure 18). However, the Third Locks Project and the Special Engineering Division were eventually terminated after the end of World War II on 30 June 1949.

Other commissions followed. An Atlantic-Pacific Interoceanic Canal Study Commission was established in April 1965 to investigate routes for a sea-level canal and even explore the possibility of excavation using nuclear explosives. As part an obligation resulting from the 1977 Panama Canal treaties, a Joint US-Panama-Japan Commission to Study Sea-Level Canal and Alternatives ("tripartite commission") was established in 1986. The tripartite commission's study was published in 1993 and recommended a third set of locks and ruled out construction of a sea level canal due to its high cost, low profitability, and

negative environmental impacts. The tripartite report's recommendations in 1993 were synthesized and expanded by the former Panama Canal Commission (1979–1999) and by the Panama Canal Authority's Capacity Projects Office.

The Panama Canal Authority published its plan for a "Third Set of Locks Project" on 24 April 2006, translated into a roughly 100-page English document. The Third Set of Locks Project is more or less a summary of a longer and more detailed "Panama Canal Master Plan," a synthesis of 140 studies and reports published on 7 June 2006 in a 500-page document available only in Spanish.²² The stated goal of the Third Set of Locks Project (2005–2014) is to expand the Panama Canal's "maximum sustainable capacity." The Panama Canal Authority intended to deepen both Atlantic and Pacific Ocean seawater access channels, construct a larger set of locks alongside existing locks, lower the summit by deepening the interior freshwater navigation channels, and raise the level of Gatun Lake. Excavations for the larger set of locks would take advantage of significant portions of the excavation that was initiated by the United States for a third set of locks just prior to and during World War II.²³

1.1 *Maximum Sustainable Capacity*

The Panama Canal Authority's proposal for the Third Set of Locks Project included the following three improvement projects:

The third set of locks project is a plan to expand the Canal's capacity composed of three integrated components: (1) the construction of two lock facilities – one on the Atlantic side and another on the Pacific side – each with three chambers, each which include three water reutilization basins; (2) the excavation of new access channels to the new locks and the widening of existing navigational channels; and, (3) the deepening of the navigation channels and the elevation of Gatun Lake's maximum operating level.

During the establishment of the tripartite commission in 1986, a gathering of consulting experts was convened to lend their thoughts about building a sea-level canal. These experts offered an interesting and simple insight. They said that the question was not whether or

²² Panama Canal Authority (2005), Autoridad del Canal de Panamá (2006).

²³ See Brad Reagan, "The Panama Canal's ultimate upgrade" *Popular Mechanics*, February 2007, for an explanation of how the third set of locks work, particularly their use of water-saving basins.

not to construct a sea-level canal, but whether the existing Panama Canal's capacity had to be enhanced, and at what point.²⁴ The basic rationale for the Third Set of Locks Project is that the Panama Canal is expected to reach its "maximum sustainable capacity" sometime between 2009 and 2012, after which the canal's level of service will deteriorate with the probability that it would irrevocably lose market share. The Panama Canal Authority arrived at this judgment based on a demand model suggesting that the maximum sustainable capacity of the Panama Canal was between 330 and 340 million (PC/UMS) tons. For reference, in 2005 at the time of the Master Plan report, 279 million (PC/UMS) tons transited the Panama Canal.

The term "maximum sustainable capacity" is defined by the Panama Canal Authority as the maximum volume of traffic that the canal can accommodate over the long run steadily and predictably with fast, reliable, and secure service and without discrimination. Maximum sustainable capacity refers to a level of service, convenience, or customer satisfaction – not an absolute level of throughput or maximum permissible draft, an important distinction. Above and beyond the number of vessels that can transit with the "highest" level of service, vessels will still be able to transit the Panama Canal at "acceptable" or "unacceptable" levels of service. However, providing acceptable or unacceptable levels of service poses risks that the Panama Canal will lose customers. The Panama Canal Authority states:

It will go from a Canal that serves growing transcontinental routes to a stagnant Canal, depending on a few routes in which users will be more sensitive to tolls increases. Without an expansion, the Canal would face new competitors as well as permanent and irreversible changes in trade patterns in which Panama would stop being relevant as a global maritime route.²⁵

Though each vessel market is different, important segments of the Panama Canal's market like container ships are much more susceptible to deviations in level of service than other vessels like dry bulk carriers.

²⁴ General Accounting Office, *Panama Canal: Establishment of Commission to Study Sea-Level Canal and Alternatives*, Briefing Report to the Honorable Webb Franklin, House of Representatives, April 1986 (Washington, D.C.: GAO, 1986).

²⁵ Panama Canal Authority (2005, 41).

1.2 *How Much the Third Set of Locks Project Will Cost*

A study funded by the Panama Canal Commission and produced by the United States Army Corps of Engineers evaluated the status and future of the Panama Canal just prior its transfer to the Republic of Panama on 31 December 1999. Many of the recommendations of the evaluation were incorporated into canal modernization programs between FY 1996 and 2005 costing nearly \$1.4 billion dollars.

To reduce the risk that the Panama Canal could lose its share of time-sensitive vessel markets like container ships before the end of Third Set of Locks Project in 2014, the Panama Canal Authority in 2005 began implementing a series of ten interim projects. The ten projects are estimated to cost \$496 million, and are not included in the cost of the Third Set of Locks Project. The ten interim projects include 1) improving the lighting system for the locks to maximize their use at night, 2) widening the Gaillard (Culebra) Cut, 3) building two vessel tie-up and landing stations near Pedro Miguel Locks, 4) using a more efficient “carousel” system to tow vessels through Gatun Locks, 5) updating the tug fleet, 6) improving the ship scheduling system, 7) deepening the Gatun Lake interior freshwater navigation channel, 8) deepening the Atlantic and Pacific seawater entrance channels, 9) modifying the existing locks to add about a foot more depth, and finally 10) adding some additional structures to the Gatun Dam and spillway.

The Third Set of Locks Project is estimated to cost \$5.25 billion. There are two ways to compare the Third Set of Locks Project with the original Panama Canal construction project between 1904 and 1914. One way is to deflate the Third Set of Locks Project to 1904 dollars. Another way is to inflate the approximately \$352 million originally appropriated by Congress on the construction of the Panama Canal between 1904 and 1914 to contemporary dollars.²⁶ A \$5.25 billion expansion project in 2007 dollars would be equivalent to over \$225 million in 1904 dollars using a consumer price index deflator method (or in 2009 dollars it would be equivalent to \$317 million in 1904

²⁶ There are multiple ways of converting historical dollars but for investment and government projects it has been recommended to use a GDP deflator method. See *Six ways to compute the relative value of a U.S. dollar amount, 1774 to present, 2010* (<http://www.measuringworth.com/uscompare/>). For most of the conversions in this book unless otherwise specified, the dollar amount was divided using inflation conversion factor data based on a consumer price index method provided by Robert Sahr, 2008 (<http://oregonstate.edu/cla/polisci/faculty-research/sahr/sahr.htm>).

dollars using a GDP deflator method). The other way around, the \$352 million original construction project between 1904 and 1914 would be equivalent to \$8.2 billion in 2007 dollars using a consumer price index deflator method (or \$5.84 billion in 2009 dollars using a GDP deflator method). Either way, the total estimated cost of the Third Set of Locks Project is equivalent to between two-thirds and ninety percent of what was spent by Congress for the original Panama Canal by 1914. If one goes further and adds the nearly \$1.4 billion spent between FY 1996 and 2005, plus the \$496 million being spent by the Panama Canal Authority for its ten interim projects in 2005, then the amount that will have been spent on enhancements to the Panama Canal between 1996 and 2014 is about \$325 million adjusted to 1904 dollars, roughly equivalent or even greater than what Congress spent for construction of the Panama Canal between 1904 and 1914.

1.3 How it Makes Operations Safer, More Productive, and More Efficient

The Panama Canal can be split into five channels corresponding to its Atlantic-draining aspects, its Pacific-draining aspects, and its central channel through Panama's continental divide. The five waterways include channels 1) from the Pacific Ocean to Miraflores Locks, 2) from Miraflores Locks to Pedro Miguel Locks across Miraflores Lake, 3) from Pedro Miguel Locks to Gamboa across the continental divide through the Culebra Cut area, 4) from Gamboa to Gatun Locks across Gatun Lake, and finally 5) from Gatun Locks to the Atlantic Ocean (see Figure 2).

The centrally-located channel from Pedro Miguel Locks to Gamboa across the continental divide through the Culebra Cut has the greatest restrictions on navigation due to its dimensions and the surrounding topography, geology, and weather conditions. During the 1st Universal Congress of the Panama Canal in 1997, it was first brought to the attention of the author that the constraint to total throughput of the Panama Canal was not the locks but the interior freshwater navigation channels. The locks reportedly had the capacity to transit between 44 and 46 vessels per day.²⁷ Unsafe hydrodynamic circumstances that occur whenever very large vessels pass in close proximity constrain the

²⁷ Personal communication, 1st Universal Congress of the Panama Canal, Panama City, Republic of Panama, September 7–10, 1997.

daily throughput in the narrowest interior channel in the Culebra or Gaillard Cut area to 38 vessels per day, which in effect bottlenecked the throughput of the entire Panama Canal system. It is not clear whether the constraints discussed during the 1st Universal Congress of the Panama Canal in 1997 reflected use of the “convoy” system, in which vessels transit in long groups from one ocean to another like two trains sharing the same track, rather than continuously in both directions like cars sharing a one-lane road.

There are also several structural bottlenecks that constrain how large vessels can safely transit the Panama Canal, although different rules apply based on the vessel type or peculiarities about its configuration.²⁸ Given the dimensions of the current locks and channels, the Panama Canal Authority prohibits transits of any vessels that exceed certain safety margins including a length at the waterline no longer than 965 feet (294.13 m), a maximum beam or width of the hull at the waterline no wider than 107 feet (32.61 m), and a maximum height above the waterline no higher than 205 feet (62.5 m) in order to clear the Bridge of the Americas. The maximum permissible draft or depth below the waterline has been set at no deeper than 39 feet 6 inches (12.0 m) Tropical Fresh Water (TFW) for some time, as long as Gatun Lake water levels are at least 81 feet 6 inches (24.8 m) and Miraflores Lake levels are at least 54 feet 6 inches (16.61 m). The shallowest part of the entire Panama Canal channel is at the hinges or sill of the south lock gate of Pedro Miguel Locks. Under maximum permissible draft circumstances there is a safety margin of 5 feet (1.5 m) in the interior freshwater channels, but only 1 foot 8 inches (0.50 m) over the south sill of Pedro Miguel Locks.

E. CONCLUSION

Explorers, surveyors, and engineers recognized in the physical environment of Panama that there was a set of river valleys and relatively low topographic relief that had created a relatively short and straight route across the isthmus connecting North and South America that would make it easier to build technologically-enhanced means for interoceanic exchange of goods, people, finance, and messages. The

²⁸ See Panama Canal Authority, *MR NOTICE TO SHIPPING No. N-1-2005* (Panama City: Panama Canal Authority, 2005).

geologic legacy left behind by a natural strait that once existed across Panama as late as 4–6 million years ago became known as route 8 by the Isthmian Canal Commission in 1901, and was selected by the United States federal government as the location for an American canal after purchasing the assets of a French company that had begun excavation in 1880.

The physical and built environment on the Isthmus of Panama has undergone three major modifications supporting three different periods of interoceanic transportation technologies in the past. The first technology was a trail and barge system built by Spanish colonial administrators called the Royal Road and Las Cruces Trail (1540–1740) to service Spanish flows of finance in the form of precious minerals from Peru. The second technology was a railroad built by the Panama Railroad Company (1852–1869) to service American flows of passengers, baggage, and freight. The third technology was the Panama Canal (1914-date) to service global flows of goods carried in vessels, originally constructed by the United States federal government but currently as of the date of the writing of this book being significantly enhanced by the Panama Canal Authority of the Republic of Panama.

PART TWO

FLOWS THROUGH THE ENVIRONMENT

CHAPTER THREE

INTEROCEANIC FLOWS IN TRANSIT THROUGH PANAMA'S HUMAN-BUILT ENVIRONMENT

A. INTRODUCTION

The three technologies and their most important periods of operation include the Royal Road and Las Cruces Trail (1540–1740), the Panama Railroad (1852–1869), and the Panama Canal (1914–date). Each of the three technologies served flows of different kinds. Use of the Royal Road and Cruces Trail was dominated by the flow of finances in the form of silver bullion conveyed from the Andean highlands of Peru across Panama to Spain, as well as commercial goods associated with fairs, and passengers or messages for the colonial administration. Most of the Panama Railroad's earnings before 1869 came from flows of American passengers and baggage. American freight goods were also a significant market for the railroad, and finances and mail taken together may have accounted for about ten percent of the Panama railroad's business. Use of the Panama Canal, of course, has been dominated by finished and unfinished goods conveyed in oceangoing vessels.

The Panama Canal's earnings from tolls can be broken down into seven market segments based on the category of vessel charged, including three types for transporting unfinished goods (bulk carriers, tankers, and refrigerated ships), two for transporting finished goods (container ships and vehicle carriers), one type for transporting passengers (cruise ships), and finally one non-specialized type of vessel (general cargo). General cargo vessels and vessels for transporting unfinished goods used to be the Panama Canal's most important market until recently, when vessels transporting finished goods became the Panama Canal's most important source of toll revenue.

B. THE ROYAL ROAD AND CRUCES TRAIL 1540–1740

The peak period of silver transport across the Isthmus of Panama was during the first half of the seventeenth century, followed by a

precipitous decline after 1650.¹ The overland transit across the Isthmus of Panama, however arduous, exposed Spanish royal transport to fewer dangers than a voyage from Peru to Spain around South America.

There were a number of colonial Spanish trails across the Isthmus of Panama and one meticulous but brief study merits mention as a particularly useful synthesis of different cartographic and descriptive sources.² There were two routes crossing the Isthmus of Panama for the *trajín* or overland transport of silver bullion between the Pacific Viceroyalty of Peru and Atlantic Spain. One is referred to as *El Camino Real* (“The Royal Road”), also known as the *Calle de Santo Domingo* or just simply the “Portobelo trail.” The other is referred to as the *Calle de la Carrera*, also known as the “Cruces trail.” There is no evidence for the use of wheeled vehicles on the Spanish roads. Both passengers and freight were carried on mules that moved in long trains of five hundred animals, if sixteenth century accounts can be believed, taking a trip that took four days. Figure 4 shows the relative rise and decline in the use of the Isthmus of Panama to transport finances as measured by royal treasure in *pesos ensayados*, proportional to the maximum value recorded.³

From the south on the Pacific Ocean side, the Portobelo trail began at Old Panama, narrowing at points to just two or three feet wide, crossed the continental divide and continued efficiently in a north to south direction along the course of an Atlantic oriented river before finally ending at Portobelo. The Portobelo trail was open during the summer and dry season but flooded during the winter. By 1740, the Portobelo trail had apparently become barely passable due to disrepair and by the time of the Panama Congress in 1826 it was permanently abandoned.⁴ The Cruces trail was an intermodal route involving an 8-foot wide, fully-paved fieldstone stone road and a navigable stretch of the Chagres River, the same river that was dammed by the United

¹ See possible conversions of pesos ensayados in John J. TePaske and Herbert S. Klein, *The royal treasures of the Spanish Empire in America*, Volume 2, Upper Peru (Bolivia) (Durham, NC: Duke University Press, 1982), and Fredercik P. Bowser, *The African slave in colonial Peru 1524–1650* (Stanford: Stanford University Press, 1974).

² Roland D. Hussey, “Spanish colonial trails in Panama,” *Revista de Historia de América* 6 (1938): 47–74. See the map and the discussion by Hussey (1938).

³ Source for transits of royal treasure in pesos ensayados is Ward (1993, 8), royal treasure shipped through Panama from Peru, 1551–1739. Ward spends considerable time discussing falsification of records of treasure shipped.

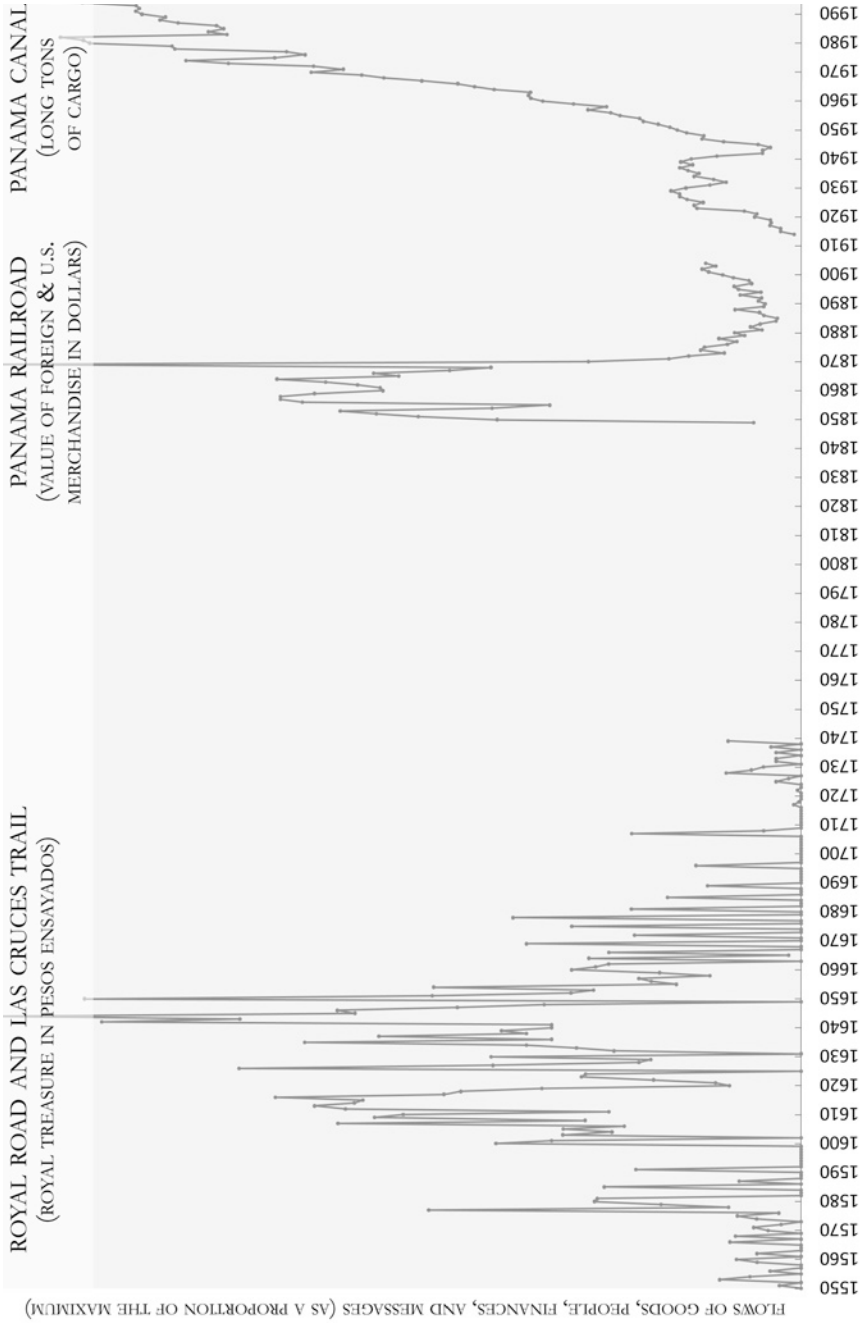
⁴ See Ward (1993) for a discussion of both the Portobelo and Cruces trails.

States Army Corps of Engineers to become the freshwater channel of the Panama Canal. The Cruces trail was used during the rainy season in the winter when the Portobelo trail was flooded and the Chagres River was navigable further upstream.

Because the Chagres River terminated at Fort Lorenzo on the Caribbean Sea just to the west of Limon Bay, the modern entrance channel to the Panama Canal, bullion had to be transported coastwise in its final leg to Portobelo. The leg from the mouth of the Chagres River to Portobelo was a dangerous trip because it was exposed to attacks by buccaneers, explaining why the all-land Portobelo trail was the official trail for transport. Around 1560, foreign corsairs began to appear off the coasts of Panama to attack the small craft making their way to and from the mouth of the Chagres River, after which Spanish colonial government projects were funded to fortify the Chagres River and improve transport over the much more defensible trail to Portobelo, including stopping points and other services like inns. As early as 1536, the Governor of Panama had proposed that mule carriers be bonded and taxed by the maritime port cities and the taxes spent on public works and road improvements. Eventually, in 1538 the Spanish colonial administration ordered periodic maintenance and repairs to the overland trail using funds from the royal treasury, to be repaid from a tax on merchandise and bullion in transit.⁵

During the second half of the 17th century, competition from cheaper and more efficient alternate routes from the West Coast of South America to Europe and the opening of commerce in colonial Spanish America redirected transport of mineral and commercial wealth from the Viceroyalty of Peru away from Panama. The Isthmus's competitors were principally French trading vessels coasting off Peru, South Sea Company ships carrying slaves and other merchandise, and indirect trade routes from the Andes down the rivers of South America to the coast of the Atlantic Ocean. Portobelo's maritime-commercial decay had been unfolding since the 1650s, indicated by artificially encouraged droughts of goods in order to create higher prices. However, the Cruces trail remained in active use until the beginning of construction for the Panama Railroad.

⁵ See Hussey (1938).



4. Flows on the Royal Road and Las Cruces Trail, the Panama Railroad, and the Panama Canal

C. THE PANAMA RAILROAD 1852–1869

In 1800, it would take five weeks to travel overland from New York City to the banks of the Mississippi River. By 1830, it took two weeks for people from New York to reach the Mississippi River. By 1857, it took less than five days to reach the Mississippi River from New York. Despite the faster rates of travel from New York City to inland port cities like St. Louis on the banks of the Mississippi River, travel by wagon road from St. Louis across the western interior to Oregon Territory and California took three to five weeks. Before the first transcontinental railroad in 1869, flows of goods, people, finances, or messages from the Atlantic Coast to California and Oregon Territory only had three other options.

The shortest route for finance and mail was a route overland across the Appalachian Mountains or up the Mississippi River to St. Louis, across the vast interior of the Mississippi River basin by wagon road to an interior city like Salt Lake City, and then on to the Pacific Coast by wagon road. The longest but probably most economical route for high-bulk low value goods was circum-continental, an all-water route by ship from the Atlantic Coast detouring almost as far east as south around South America to the Pacific Coast of North America. In some ways the most expeditious transcontinental route for passengers and higher-value lower-bulk freight was a part land-part water route from the Atlantic Coast south to the Caribbean Sea, followed by an overland transit at one of several different points including Colombia (Panama), Nicaragua, Tehuantepec (Mexico), then continuing on by ship to the Pacific Coast.

On 10 May 1847, an exclusive franchise for a railroad across Panama was granted by the Republic of New Granada to Mateo Klein representing the “Panama Company” of Paris. The “Panama Company” failed to make the necessary deposit of finances and on 28 December 1848 the exclusive franchise was transferred to the Panama Railroad Company of New York. The Panama Railroad Company began construction on a railway between Aspinwall (Colón) and Panama City in 1851.⁶ The New York based company recorded its first earnings in

⁶ See also U.S. Congress, Senate, *Report of Joseph L. Bristow, Special Panama Railroad Commissioner to the Secretary of War*, 59th Cong., 1st Sess., Doc. No. 429, 24 June 1905 (Washington, D.C.: GPO, 1906).

1852 on a partially completed railway, three years before the entire line was completed on 27 January 1855, and effectively paid off its initial capital investment of \$8 million (\$200 million adjusted to 2007 dollars) in 1858 with its net profits after only six years of operation.

The movement of passengers between New York and San Francisco was one of the important functions of the early Panama Railroad. All told, according to one source, between 1848 and 1869 the Panama Railroad served about 600,000 passengers traveling between New York and San Francisco.⁷ Figure 4 illustrates the rise and fall of transits on the Panama Railroad as measured by the relative value of merchandise both foreign and United States in unadjusted dollars, proportional to the maximum value recorded.⁸ For the period that the Panama Railroad Company reported gross receipts by category of transit between 1857 and 1868, on average 46 percent of the Panama Railroad's gross earnings came from transits of freight and baggage, 43 percent were from transits of passengers, 7 percent came from transits of treasure, and 3 percent came from transits of mail. The most profitable year for the Panama Railroad was 1868. The company reported annual gross receipts of about \$4.5 million (\$65 million adjusted to 2007 dollars) and annual net surplus earnings after expenses and other various costs, including an annuity to Colombia, of about \$2.5 million (\$36 million adjusted to 2007 dollars). After the famed linking of the Union Pacific and Central Pacific railroads on 10 May 1869 at Promontory in Utah Territory, the gross earnings of the Panama Railroad fell abruptly.

Information about earnings between 1868 and 1873 is not consistent in the Annual Reports of the Panama Railroad Company. However, the downward trend after the construction of the Union-Pacific Railway in May 1869 seriously impacted the Panama Railroad, as it did likewise to use of the Rio San Juan across Nicaragua and the Tehuantepec railway across Mexico. The Nicaraguan route appears to have been an even more temporary option than the Panama Railroad. Whereas the Panama Railroad line served as a temporary option between 1852 and

⁷ John H. Kemble, *The Panama route, 1848–1869*, reprint of 1943 ed., (New York: Da Capo Press, 1972). See Appendix II (p. 253) for an explanation of limitations with figures.

⁸ Source is U.S. Department of Commerce, Bureau of the Census, *Foreign commerce and navigation of the United States* (Washington, D.C.: GPO, various years after 1912). Data is the value of domestic and foreign merchandise (including coin and bullion) in transit across the Isthmus of Panama in unadjusted dollars.

1869 while the Union-Pacific railway line was being completed, the Rio San Juan route served as an even more temporary option between 1852 and 1855 while the Panama Railroad line was being completed. Use of Cape Horn as measured by the net tonnage of vessels entered and cleared between Atlantic and Pacific ports of the United States between 1853 and 1915 did not appear to experience a precipitous decline after the linking of the Union-Pacific railway in May 1869.

The Panama Railroad Company experienced a second peak in the earnings between 1883 and 1888, during the high point of the activities of the French *La Compagnie Universelle du Canal Interoceanique*. The gross earnings of the Panama Railroad Company appear to have increased to a level exceeded only by the company's very best year in 1868. Yet during the same period net surplus earnings after expenditures were at an all time low. In 1885, net surplus earnings fell to practically nothing. Not only did the rail infrastructure require major improvements but the company had decided to reduce its freight rates in 1885 with its two major customers, the Pacific Mail Steamship Company and *La Compagnie Universelle du Canal Interoceanique*. Lower freight rates resulted in an increase in the amount of traffic after 1885 but not enough to compensate for a loss of earnings due to the reduction in freight rates. Instead of earning \$868,000 (\$19.3 million 2007 dollars), which would have been the gross revenue of 1886 traffic based on 1885 freight rates, the company earned only \$119,000 (\$2.6 million 2007 dollars).

If its financial problems were not enough, the company's wharves and freight sheds at Colón (Aspinwall) were totally destroyed by a fire on 31 March 1885 as a result of civil unrest in the transit cities. A more detailed breakdown of the company's expenditures between the problem years of 1881 and 1894 illustrates where the company had to spend nearly all of its surplus revenues, e.g., to maintain the line of the road and repair the damage caused by fires. According to the 1885 Annual Report of the Panama Railroad Company, the price tag on the damage caused by the 1885 riots alone came to a grand total of \$844,000 (\$18 million 2007 dollars). Not surprisingly, the breakdown of total rail tonnage by through and local traffic suggests that by the end of the nineteenth century the Panama Railroad went from a coast-wise interoceanic carrier to a short-haul line handling local traffic for the construction of its replacement, the Panama Canal.

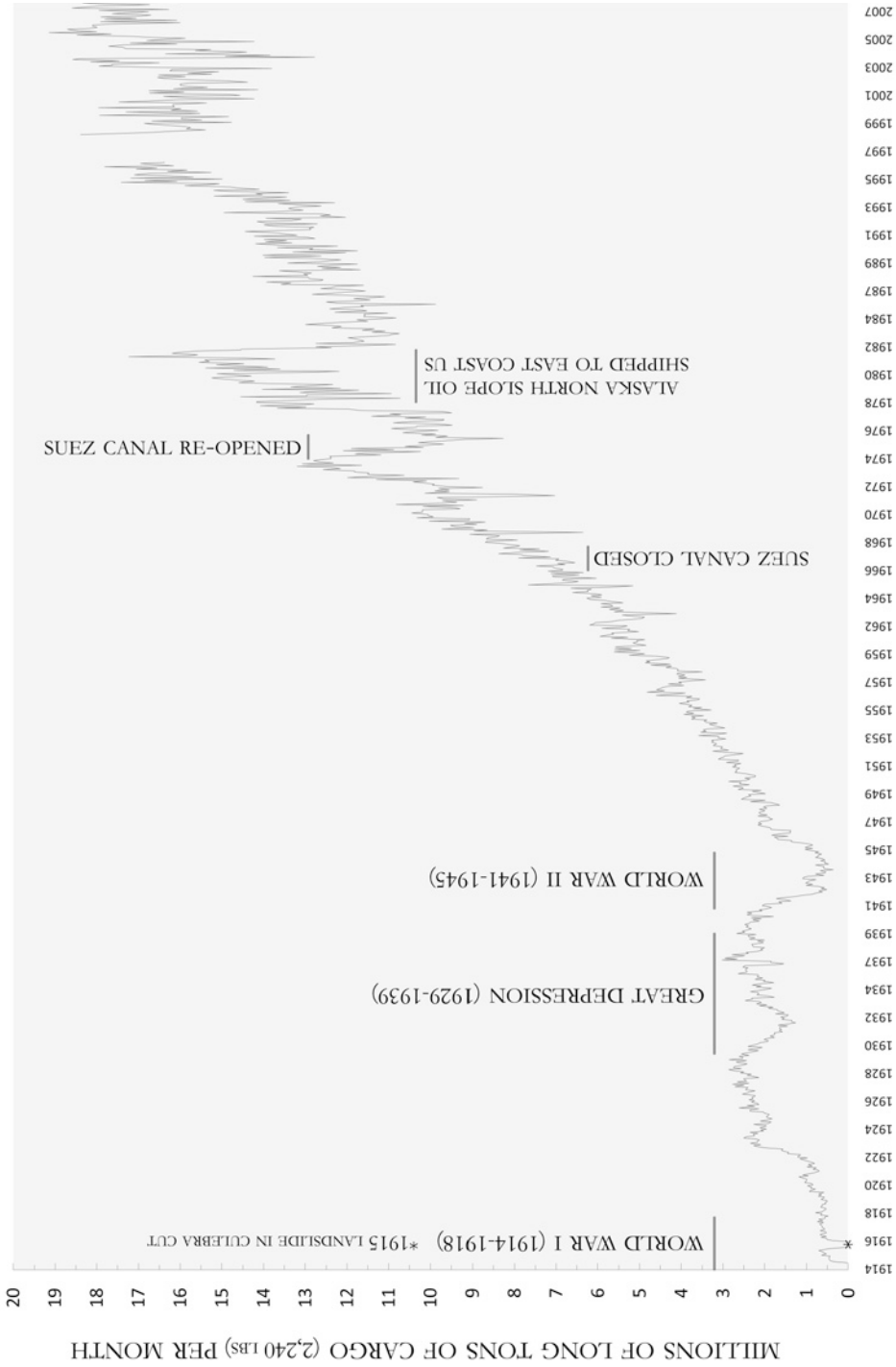
D. THE PANAMA CANAL 1914–DATE

It was not until after World War II that foreign waterborne commerce by tonnage through the Panama Canal experienced any increase, which to date continues to rise. Figure 5 shows monthly trends in long tons (2,240 lbs.) of cargo in transit through the Panama Canal from 1914 to 2008, correlated with important events like World War I, the Great Depression, World War II, and the disruption in use of the Suez Canal.⁹ Before World War II, the most important route using the Panama Canal was the coastwise trade between the Atlantic and Pacific coasts of the United States (see Figure 6). After World War II, the dominant trade route in terms of tonnage was the East Coast of the United States and Asia route (A in Figure 6), followed by the East Coast of the United States and West Coast of South America route (C in Figure 6), followed by the Europe to West Coast of South America route (E in Figure 6).

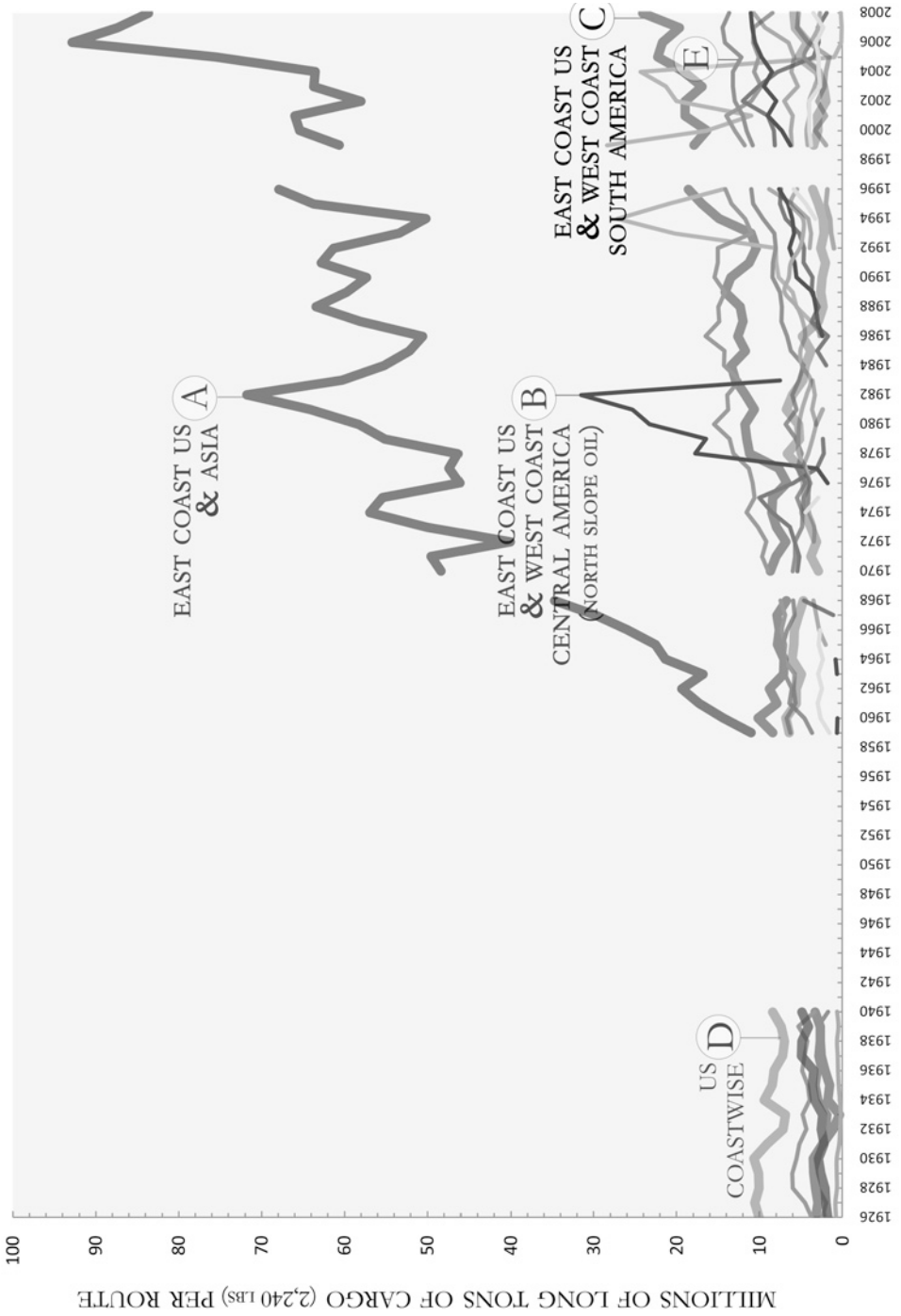
The third objective of the Panama Canal Authority's Third Set of Locks Project was to attract a larger share of the interoceanic transit business and compete with other routes like the Suez Canal and the transcontinental railroads in seven key market segments. Currently, the most important route generating income for the Panama Canal is the Asia to East Coast of the United States container vessel market segment. The growth in revenues from container vessels over those of bulk carriers has been a relatively recent development for the Panama Canal, and any of the seven key market segments may reasonably fluctuate above or below expectations to the year 2025 due to unexpected, unanticipated, or random events.

Inferences about trends and fluctuations in the use of the Panama Canal are circumscribed to a global "potential interoceanic service area" where there exists at least a marginal savings in distance over other alternatives like the Suez Canal. The Panama Canal's interoceanic transit market can be broken down into segments based on vessel specialization to carry certain types of goods or people. General inferences can be made about trends and major changes but more information is usually required in order to explain anything specific

⁹ The source for Figures 5, 6, and 7 are the Annual Reports of the various Panama Canal operating agencies, including the current Panama Canal Authority. All years are fiscal years unless otherwise indicated.



5. Monthly tonnage through the Panama Canal 1914–2008



6. The top twelve trade routes through the Panama Canal by tonnage 1926–2008

about their causes. For instance, one can recognize that container vessels replaced bulk carriers as the most valuable segment of the market for the Panama Canal in 2001 and then continued to rise sharply.

Inferences about the Panama Canal's market can be aided significantly after segmenting different vessel types by the geographic route they take and then correlating trends and fluctuations with changes in policy or historical events. Since 1926, the Panama Canal annual reports have listed the top 12 principal trade routes using the Panama Canal by origin and destination (see Figure 6). For instance, determining that most of the increase in container vessel traffic after 2001 occurred on the East Asia to the East Coast of the United States route highlights the economic development of China but can also be correlated with trade policies. On 11 December 2001, China became a member of the World Trade Organization. As part of its membership negotiations, China committed to reduce trade barriers, in return for which the United States and other nations reduced their limits on Chinese imports. In addition, determining that at the same time there was also a leveling off or decrease in bulk carrier traffic from the Gulf Coast of the United States to East Asia highlights the potential influence of competition with the United States from other countries not in the same position to use the Panama Canal or protectionist policies in China aimed at agricultural self-sufficiency.

Inferences can be aided even more by yet further segmenting the vessel and geographic route market by principal commodities. Since 1914, the Panama Canal annual reports have recorded long tons (2,240 lbs) of all principal commodities transported by vessels in transit and conventionally grouped into thirteen general categories including (in alphabetical order), canned and refrigerated goods; chemicals and petroleum chemicals; coal and coke; containerized cargo; grains; lumber and products; machinery and equipment; manufactures of iron and steel; miscellaneous minerals; nitrates, phosphates, and potash; ores and metals; other agricultural commodities; and petroleum and products.

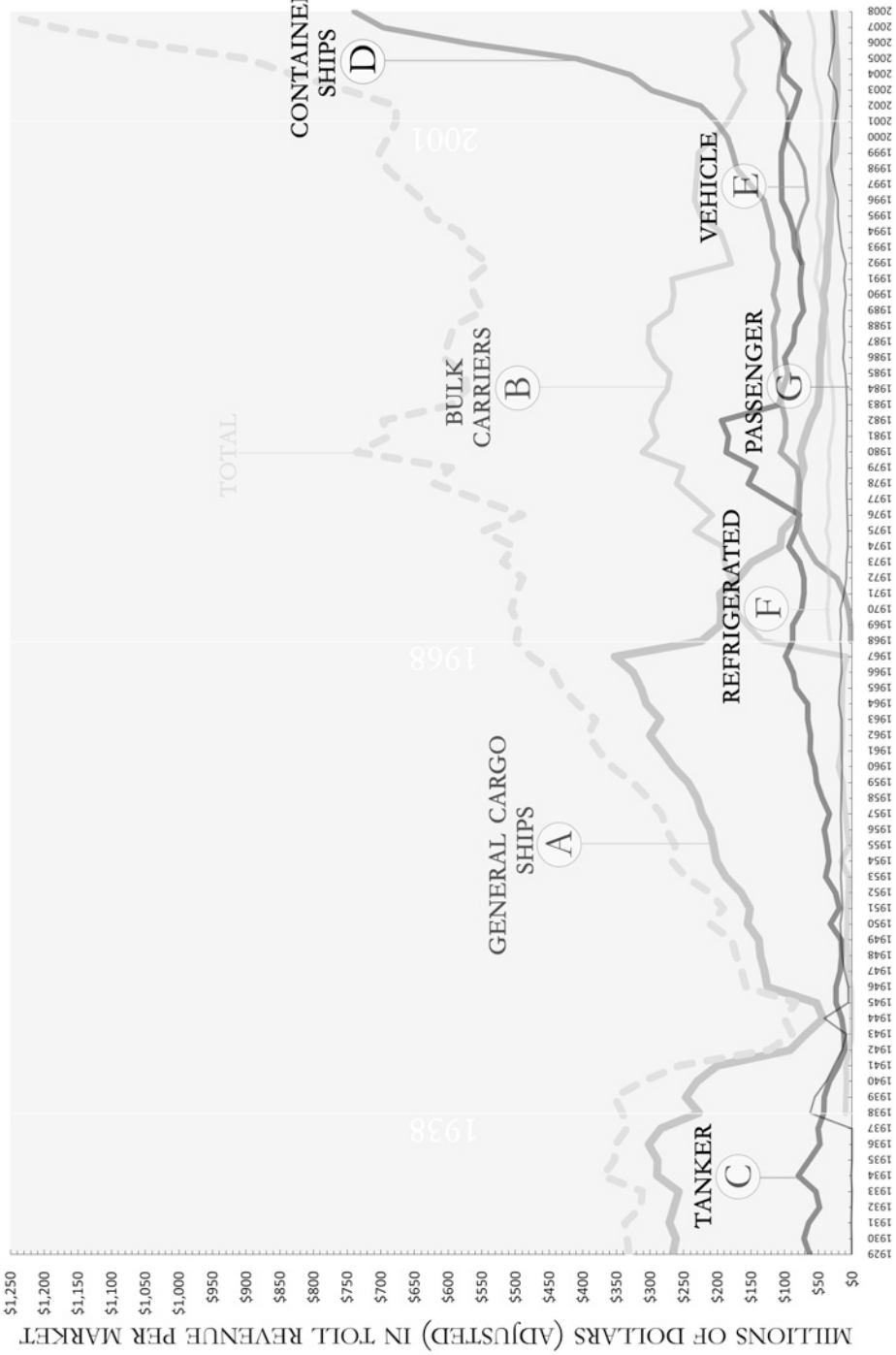
At a certain point, a market segmentation analysis pursued over a long enough span of time and with a fine enough level of granularity becomes, in effect, a detailed sample of globalization and the growth of the maritime world economy since 1914. For example, one can correlate the leveling off or decrease in bulk carrier traffic with the reduction in soybeans and other grains grown by producers in the Midwest, particularly Iowa, and exported from the Gulf Coast of the United

States to East Asia—highlighting the influence of competition from soybean producers in southern Brazil.

1. *The Panama Canal's Historical Market Segmented by Vessel Type*

The Panama Canal Authority suggests that the major historical trend in Panama Canal transits has been fewer transits but by larger ships, resulting in an overall increase in tonnage. The most significant recent trend in traffic through the Panama Canal was driven by personal consumption on the East Coast of the United States for manufactured goods from East Asia, especially China, carried in container vessels. The Panama Canal Authority used models to estimate growth in revenues by segmenting its transit market into seven general types of vessel, based on how the ship has been specifically built or outfitted to transport a particular type of good. Specialized bulk carriers, tankers, and refrigerated ships transport unfinished goods. Specialized container ships and vehicle carriers transport finished goods. Specialized cruise ships transport passengers, and finally, general cargo ships transport any type of goods and are thus the only non-specialized vessel market that the Panama Canal Authority considers.

It is easy to recognize that the seven market segments mentioned by the Panama Canal Authority simply continue categories that have been in use since 1929, revised in 1968 and 1992, distinguishing tolls paid by vessel type whether laden with goods or in ballast, and whether traveling from the Atlantic to the Pacific or from the Pacific to the Atlantic. The Panama Canal Authority's seven market segments are, in order by the date in which they appear in the annual reports of the operations of the Panama Canal, general cargo ships (1929), passenger ships or cruise ships (1929), tankers (1929), bulk carriers (1938), refrigerated ships (1968), container ships (1968), and vehicle or machinery carrier ships (1992). There are two other categories of vessels not mentioned by the Panama Canal Authority probably because they have never, historically, been a significant source of revenue for the Panama Canal. The two unmentioned categories include naval vessels (1929) and 'other' vessels (1929) such as barges, dredges, dry docks, tugs, yachts, and even the occasional swimming human being. Figure 7 shows Panama Canal toll revenues in adjusted dollars by vessel market segment between 1929 and 2008. Figure 7 illustrates that toll revenues from bulk carriers increased sharply in 1968 and by 1972 had replaced general cargo ships as the main source of revenues



7. Toll revenue in adjusted dollars by vessel market segment 1929–2008

from tolls until 2001, when tolls from container vessels increased dramatically, currently accounting for the dominant share of the Panama Canal Authority's total revenues.¹⁰

1.1 *Specialized Vessels Carrying Unfinished Goods*

There are three different types of specialized vessels using the Panama Canal that transport unfinished goods. The first type of vessel is the bulk carrier, designed to transport dry unfinished materials and unfinished products in loose form. Bulk carriers store unfinished goods that do not require refrigeration. Goods are handled at ports and terminals equipped with elevators, conveyors, or suction hoses. Bulk carriers specialize in grains and forestry products such as corn, soybeans, wheat, lumber, wood chips; as well as minerals, ores, coal, coke, manufactured iron and steel, nitrates, phosphates, potash, copper, aluminum, sugar, salt, and cement.

Another type of specialized vessel for unfinished goods are tankers, designed to transport liquid unfinished materials like crude oil or refined oil products like diesel fuel, gasoline, jet fuel, liquefied natural gas, and other chemicals. Finally, a third type of specialized vessel for carrying unfinished goods are refrigerated ships, fitted with holds for transporting perishable materials or agricultural products that require constant refrigeration including fruits, meats, and dairy.

1.2 *Specialized Vessels Carrying Finished Goods*

There are two types of specialized vessels using the Panama Canal that transport high value per weight finished goods. The first type of specialized vessels are container ships designed to transport finished products and merchandise packed into modular containers and often stacked high on deck. Another type of specialized vessel for finished goods are vehicle carriers equipped with ramps so that cars, trucks, tractors, or heavy equipment and machinery can essentially load themselves on and off the ship. There is one type of specialized vessel using the Panama Canal that transports people. Cruise ships carry passengers on pleasure trips through the Panama Canal as part of a tourist experience. Government warships, though never a significant source of toll revenue, represent another type of specialized vessel for transporting

¹⁰ The years 1938 and 1968 in Figure 7 represent years when new vessel types were accounted for.

military personnel as well as the onboard weapon systems they are trained to operate.

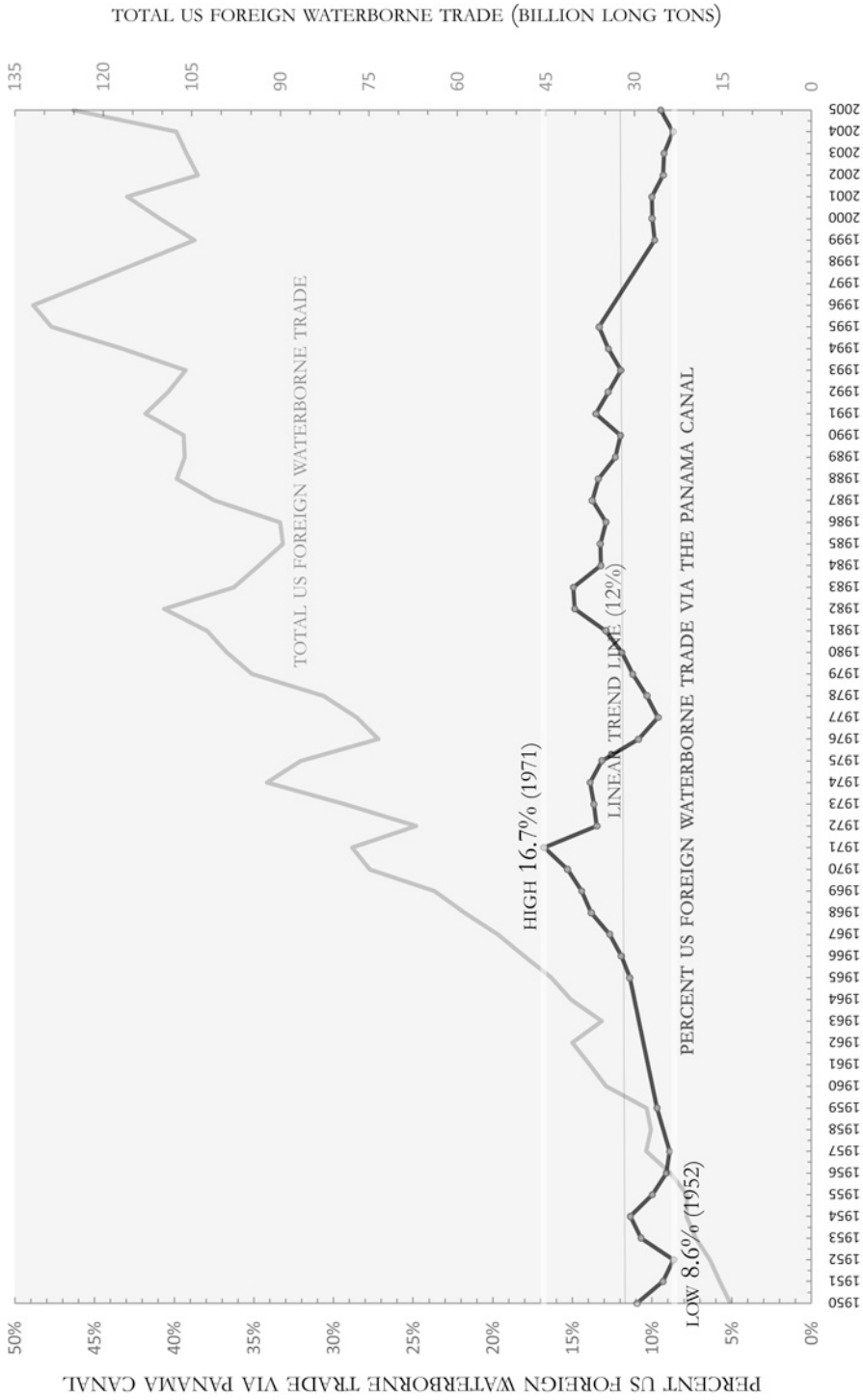
Finally, mixed among the six types of specialized vessels are unspecialized general cargo ships. Unspecialized general cargo ships might appear like something of an anachronism, relegated to transporting a small but wide variety of unfinished and finished products on regional routes. General cargo vessels had been the most important source of toll revenue for the Panama Canal since at least 1929, when the annual reports began listing toll revenues in dollars by vessel type. In 1972, general cargo vessels were finally supplanted by specialized bulk carriers as the most important source of toll revenue for the Panama Canal, a process that had begun with a rapid increase of bulk carrier traffic after 1967, coincident with the closure of the Suez Canal.

1.3 *Waterborne Trade of the United States through the Panama Canal*

Between 1967 and the time of the turnover of all operations to Panama in 1999, the trend in the proportion of global waterborne commercial trade that used the Panama Canal showed a slight decrease from about five percent to a little less than four percent by tonnage. The general statistics presented during the Senate Foreign Relations Committee hearings in 1977 and 1978 suggested that the Panama Canal was becoming less important to United States waterborne trade.¹¹ However, as shown in Figure 8, the actual trend in use of the Panama Canal as a percentage of all American foreign waterborne commerce in long tons between 1950 and 2005 has remained steady at about 12 percent, with a low of 8.6 percent in 1952 and a high of 16.7 percent in 1971.¹² In other words, since 1950 a steady average of 12 percent of all United States foreign waterborne trade by tonnage has arrived or departed through the Panama Canal. Another steady trend is that

¹¹ Norman J. Padelford and Stephen R. Gibbs, *Maritime commerce and the future of the Panama Canal* (Cambridge: Cornell Maritime Press, 1975). The figures in Padelford and Gibbs (1975) were not adjusted for fiscal and calendar year differences.

¹² Data in Figure 8 were calculated by converting monthly U.S. foreign waterborne trade data in tons to fiscal years and long tons in order to match Panama Canal data for routes departed from or bound for the coast of the United States, but not including the coastwise trade. Monthly U.S. foreign waterborne trade data comes from several sources including, U.S. Department of Commerce, Bureau of the Census, *FT 985: US foreign waterborne trade* (Washington, D.C.: GPO, 1953–1995) and comparable later publications from the U.S. Maritime Administration's *Waterborne Databank*.



8. Percentage of U.S. foreign waterborne trade through the Panama Canal 1950–2005

since the 1930s, about two out of every three long tons of cargo that transits the Panama Canal has departed from or been bound for a port in the United States.

E. CONCLUSION

Taking advantages of physiographic circumstances left behind by an ancient seaway long since raised from the sea, three major interoceanic transportation technologies have been built across the Isthmus of Panama. The three technologies and their most important periods of operation include the Royal Road and Las Cruces Trail (1540–1740), the Panama Railroad (1852–1869), and the Panama Canal (1914–date). Use of each built environment for interoceanic transit of goods, people, finances, and messages lends insight into the nature of flows through Panama's environment, sustaining one part of Panamanian society for centuries and furthering the process of globalization.

During either ascending or declining phases of the three major cycles of maritime-commercial activity (Spanish trails, Panama Railroad, Panama Canal), maintaining elite family status and wealth required having the geographic mobility to escape the relative lack of wealth in the interior as well as the fluctuation of foreign commercial transport as a function of the comparative advantages of Panamanian inter-oceanic technologies. By migrating to the interior of Panama during the declining phase of a commercial cycle, elite Panamanian families could maintain their status if they owned land or could secure administrative positions. By moving to the maritime cities of Panama during the ascending phase of a commercial cycle, elite families could accumulate wealth if they had the right connections with foreign merchants and could charge high markups on transit services by co-opting local political authorities, who were also likely to be family relations.

The ascending and descending phases of flows through the environment of Panama are of special interest because they were the driving forces behind a split disposition in Panamanian society, the origin of two different kinds of territoriality over foreign flows in transit, and essentially two different kinds of "Panamanian." Socio-geographic migrations between the interior of Panama and the port cities was first limited to the elite but by the early 20th century it was common among even the most non-elite. The next part will focus on both Panamanian and American territoriality in geographic perspective. American

territoriality involved enduring differences of opinion about the foreign policy of the United States and the expansion of the powers of the federal government over transportation improvements. Panamanian territoriality involved growing political rivalries and opposition between Panamanians from the interior and those from the port cities, who had fundamentally different points of view about what was best for the Republic of Panama with respect to the wealth of the Panama Canal, and the territory of the Canal Zone.

PART THREE

TERRITORIALITY OVER FLOWS THROUGH
THE ENVIRONMENT

CHAPTER FOUR

PANAMANIAN TERRITORIALITY IN GEOGRAPHIC PERSPECTIVE

A. MARITIME-COMMERCIAL AND TERRITORIAL- ADMINISTRATIVE SOCIETIES

To the untrained eye, all places in Panama look accessible to the sea. As one moves east to west along the Isthmus of Panama, the first environment one encounters is an eastern frontier of sparsely populated tropical lowlands and mountains known as the Darien province. Figure 9 shows the Isthmus of Panama, the Republic of Panama, and Darien area of eastern Panama. Continuing west to the middle of the Isthmus of Panama at its narrowest point are the two contemporary tropical lowland seaports of Colón and Panama City, essentially the same well-known termini of interoceanic transport since the first overland transport of silver between Peru and Spain on mule roads during the 16th century (the area labeled as “I” in Figure 9). The middle of Panama is oriented generally north and south from the Caribbean-Atlantic to the Pacific between the port cities along inter-oceanic technologies crossing the continental divide.

Continuing further west beyond modern Panama City one encounters a less well-known inland environment from the upland savannas of the Azuero Peninsula to the western border with Costa Rica, an area commonly referred to today as *el interior*. The shaded area in Figure 9 represents the major Pacific watershed of Panama where most all of the population lives, and the Azuero Peninsula is labeled as “II.” Life in the interior is not oriented roughly north and south between the Atlantic and Pacific. Life in the interior is oriented east and west along roads through the uplands and savannas, and in radial patterns around the principal cities of the Azuero Peninsula itself like Santiago. It was the environment of the interior of the Isthmus of Panama that gave rise to the “other Panama,” a different society than that of the maritime port cities.

Edward Fox in his geographic history of France distinguished coastal-riverine from interior areas of France as non-uniform environments



9. The Isthmus of Panama and the two Panamas

that would have naturally tended to redefine the nature and spatial range of flows of goods, people, finance, and messages.¹ Like Braudel, Fox combined his geographic observations distinguishing coastal-riverine and interior areas of France with evidence of long-term exposure to the growth of the capitalist world economy. Fox hypothesized that coastal-riverine areas of France would have possessed a greater degree of spatial and social orientation to maritime commerce than the interior territory of France. Therefore, the durable and enduring impacts of the growth of the capitalist world economy on social organization would not have been felt uniformly in France. Fox's hypothesis is that a "territorial-administrative" and a "maritime-commercial" society developed in these two different environments in France during pre-industrial times, that the two societies persisted throughout French history, and that their differences explain long term patterns in French political divisions.

Fox used his fully-developed hypothesis of maritime-commercial and territorial-administrative societies to explain a recurring pattern. During unmistakable periodic regime shifts in contemporary French politics since the 17th century, the coastal-riverine port cities of France and the interior of France were on opposite sides. Fox explained that one of the long-term impacts of non-uniform (i.e., geographic) orientation to long-distance maritime flows of goods, people, finances, and messages was a French society he called the "other France" that had a different institutional gamut of political negotiation and consensus inherited from its legacy of maritime-commercial interactions with the Mediterranean, Atlantic, Indian, and Pacific oceanic worlds. For our purposes, the "other Panama" was the one that most observers have taken for granted since it was isolated from the port cities and was neither the wealthiest nor the more politically dominant – the territorial-administrative society of the Panamanian interior.

¹ Edward Fox, *History in geographic perspective: The other France* (New York: W. W. Norton, 1971). See also the following: Edward Fox "The range of communications and the shape of social organization." *Communication* 5 (1980): 275–287; Edward Fox "The argument: Some reinforcements and projections," in Eugene D. Genovese and Leonard J. Hochberg, eds., *Geographic perspectives in history* (Bath, England: Bookcraft Ltd., 1989), 331–342; Elizabeth Fox-Genovese and Eugene D. Genovese "Social classes and class struggles in geographic perspective," in Genovese and Hochberg (1989), 235–255.

1. *The Two Panamas*

Characterizing Panamanian society as split between a “maritime-commercial” and a “territorial-administrative” society is an accurate description that can be independently confirmed. Two leading Panamanian scholars, Omar Jaén Suárez and Alfredo Figueroa Navarro, as well as an American historian specializing in colonial Panama, Christopher Ward, describe two societies as Fox’s hypothesis would have predicted given the geographic environment of the Isthmus of Panama.² Jaén Suárez says that throughout Panama’s history there have been two more or less socially and geographically distinct societies. One society was dominated by the bourgeois of Panama City (*la burguesía de la ciudad de Panamá*), an urban commercial elite who influenced the entire Isthmus of Panama from Panama City. The other elite society was ranchers and landowners in the interior of the Isthmus who dispersed themselves among the cities and villages of the western savannas and wielded power at regional and local scales (*la sociedad señorial, la de los grandes ganaderos del interior del país, dispersos en los pequeños poblados de las sabanas*).

Figueroa Navarro split Panamanian elite into the politically dominant commercial elite of the maritime cities, and a subordinate and scattered landowning elite residing in the towns and on the estates of the interior. Figueroa Navarro describes several distinguishing characteristics of the dominant commercial elite including their less colonial frame of mind, i.e., less loyalist, an anticlerical and pro-Mason disposition, their xenofilia and free port advocacy, memberships in groups devoted to the spread of Enlightenment ideals (*Sociedades de Amigos del País*), and their endorsement of education in chemistry, agronomy,

² See Omar Jaén Suárez, “Desarraigo y migración de poblaciones en Panamá: 1950–1960,” *Anales de Ciencias Humanas* 1 (1971), 29–58. See also the following: Omar Jaén Suárez, *La población del Istmo de Panamá del Siglo XVI al Siglo XX* (Panama: INAC, 1978); Omar Jaén Suárez, *Hombres y ecología en Panamá* (Panama: Smithsonian Tropical Research Institute, 1981); Omar Jaén Suárez, *La región de los llanos del Chirú: Un estudio de historia rural Panameña* (Panama: INAC, 1997); Omar Jaén Suárez, *La población del istmo de Panamá: Estudio de geohistoria* (Madrid: Ediciones de Cultura Hispánica, 1998). See also Alfredo Figueroa Navarro, *Dominio y sociedad en el Panamá Colombiana (1821–1903): Escrutinio sociológico* (Panama: Impresora Panamá, 1978); Alfredo Figueroa Navarro, *Los grupos populares de la ciudad de Panamá a fines del siglo diecinueve* (Panama: Impretex, 1987); Alfredo Figueroa Navarro, *Testamento y sociedad en el istmo de Panamá: Siglos XVIII y XIX* (Panama: Impresora Roysa, 1991). See finally Ward (1993). All translations of Figueroa Navarro, Jaén Suárez, and Alba Carranza appearing in the book are by the author.

geology, and physics as opposed to theology and law. In contrast to the dominant urban maritime elite, Figueroa Navarro describes the interior landowning elite as more colonial, negative towards the influence of the outside world, Catholic, ethnically and culturally Hispanic, i.e., of Spanish origin, and concerned with family solidarity and community stability.

The contrasting geographies of the Isthmus explain why Fox's expectations fit historical observations in Panama. The city of Santiago de Veraguas on the Azuero Peninsula is the spoke of the most distinguishably radial pattern of towns and villages on the Isthmus of Panama. It is fairly easy to recognize the Azuero Peninsula. It is the only sizeable area of the Isthmus of Panama jutting out into the Pacific Ocean and one of the only areas where a large radial spatial pattern of towns and villages emerged. Santiago and other cities like Las Tablas and Penonomé represent the historical core of the Isthmus of Panama's inland territorial-administrative society (see photo of the upland savannas of the interior in Figure 10). Large ranches and rural estates were most concentrated around Santiago and Las Tablas wherever there happened to be significant administrative or mineral activity.³ In poorer or further isolated parts of the western interior such as Alanje, Santa María, Antón, and San Carlos interior estates were scattered. For the majority of Panama's population in the Pacific watersheds of the interior, at least until the turn of the 19th century, a strong central-place hierarchy dominated interior town life.⁴ Interior inhabitants lived in small and relatively self-sufficient microcosms where only the elite communicated with the rest of the country and Panama City.

2. *Fluctuations in Wealth from Interoceanic Transportation and Migration*

Braudel's contribution to historical methods is particularly useful in elaborating the significance of Edward Fox's ideas to the history of straits in comparative perspective.⁵ Edward Fox speculated that after his two societies (maritime-commercial and territorial-administrative)

³ Jaén Suárez (1978).

⁴ Jaén Suárez (1978, 395).

⁵ Fernand Braudel, "History and the social sciences: the Longue Dureé," in *On History*, Sarah Matthews, trans. (Chicago: University of Chicago Press, 1980/1958).



10. The upland savannas of the Panamanian interior

become established, as they had in pre-industrial France, any number of things that may or may not have anything to do with geographic factors would allow them to persist.

Fox's hypothesis only specifies two societies engaging in travel and transport because they occupy two different geographic environments; it does not specify other relationships that, in many respects, could be considered natural second derivatives of the original hypothesis. Distinct social and spatial relationships should ebb or flow in response to cyclic or random fluctuations in the magnitude and extent of travel and transport. If there is a second derivative, middle duration cycle in Fox's original hypothesis pointing to historical trends in travel and transport activities affecting political rivalries, there may also be a third derivative, political manipulation of different value systems about wealth and status related to travel and transport, ultimately also affecting political rivalries.

By insisting that there are multiple historical times, Braudel believed that history written to encompass only a short time scale of events would never reveal that other relevant phenomena were also part of the unfolding story.⁶ The theoretical specifications of Fox's original hypothesis focus on the persistence of socio-geographic travel and transport relationships over the *longue durée*. Fox is silent on how medium-term cyclic economic fluctuations impinge on the relationship between or comparative strength of the two societies. Nor does Fox assess how, over the short-term, a political opposition might secure allies from across a societal divide by deploying nationalist or socialist rhetoric to induce racial minorities or non-elite social classes to switch temporarily their political allegiance. Finally, Braudel's *longue durée* of persistent constraints on human action includes not only geographic factors but also cultural ones. Is it possible that long after the material foundations of the clash between the maritime-commercial and territorial administrative societies of France or even Panama were attenuated by the communications (telegraph) and overland transport (railroads) revolutions, the core values associated with these two societies persist and continue to cause now hidden, now overt, conflicts between their respective elite?

Fox himself understood how implausible it might seem that two societies adapted from geographic conditions belonging to the pre-industrial

⁶ Braudel (1980/1958, 34).

if not the ancient past could persist as distinct and continue to influence political rivalries in the case of French political history despite changes in underlying French geography. The separateness Fox described between the two societies in France has been nuanced by reemphasizing that class dynamics, though geographic in origin rather than some non-geographic inevitable law of history, were still important to consider when interpreting Fox's original hypothesis.⁷ Jaén Suárez said that his own describing of two pre-industrial societies in Panama might lead to the impression that there were two neatly separate societies, which he says there were not. The Panamanian evidence suggests that over long periods of time there were half-century episodes when people decided to shift back and forth between the two societies. Shifting and mixing created by direct and derived economic opportunities of the Spanish trails, the Panama Railroad, and later the Panama Canal significantly mixed and blurred the lines between Panama's two societies.

Wherever channels of communication existed between the two societies, and in the case of pre-industrial Panama it was only at the level of elite families, socio-geographic migrations could occur. For the elite, inter-societal migration was a response to the comparative economic vitality of life on an estate in the western interior, versus life deriving commercial wealth from the transport of foreign goods or finance across the middle of the Isthmus of Panama. The value to be derived from the transport of foreign goods across the Isthmus was, in turn, a function of the vitality of inter-oceanic transportation technology.

B. THE TWO PANAMAS UNDER THE VICEROYALTY OF PERU UNTIL 1717

1. *Elite Settlement and Migration Between the Interior and the Port Cities*

The first Spanish colonists who settled in the city of Old Panama on the Pacific Ocean side were four hundred Spaniards who originally came from Andalucia and Extremadura in southern Spain.⁸ Cultural adaptations or systems of production familiar in the grasslands and

⁷ See Fox-Genovese and Genovese (1989).

⁸ Ward (1993, 32).

forested uplands of Andalucia and Extremadura in Spain would have been alien in the tropical lowlands around the port cities of Panama City, but less so in the central interior savannas of the Azuero Peninsula. Not surprisingly, the rural descendants of the original Spanish *encomenderos*, as holders of conquest-era rights to an estate and indigenous labor, preferred to settle only in the open savannas.⁹ During the period between 1540 and 1600 there was a rapid socio-geographic transformation.¹⁰ The *encomendero* elite left the western interior of the Isthmus of Panama and formed an upper class of urban merchants in the port cities, with their relatives acting as middle-level government functionaries. The impetus for the initial major shift from the interior to the maritime cities occurred around 1545, when the Andean silver mines of Potosí in the Viceroyalty of Peru went into production and began to produce silver bullion that had to be transported safely back to Spain.

An elite shift to maritime-commercial activities may not have been uncommon in Spanish America wherever indigenous population declines and natural environments closed off opportunities for interior settlement. It was the velocity with which a maritime-commercial shift occurred on the Isthmus of Panama that was unique. Indigenous population collapses during the first century of European colonization due to disease and displacement were particularly severe in Central America and the Isthmus of Panama, but that was only part of the explanation.¹¹ By as early as 1607, not a single *encomendero* remained on the Isthmus of Panama. Second generation Panamanians felt that despite a stigma attached to commercial activity it was the best opportunity they had to maintain their social and economic status within an increasingly mercantile Panama.¹²

2. *The Two Panamas and Colonial Disputes with Both Peru and Spain*

Panama's port city elite regularly engaged in formal and informal negotiations with commercial traders and government administrators

⁹ Jaén Suárez (1978, 492–3).

¹⁰ Ward (1993, 32–33).

¹¹ Adams (1989).

¹² Ward (1993, 33) said that Panama was the “first” among Spain's colonies to move towards maritime-commercial activities.

to operate the businesses necessary for transporting goods, people, finance (especially silver bullion), and messages across the Isthmus of Panama, which constituted everyday life among Panama's maritime-commercial society. The *encomenderos* who left the interior during the second half of the 16th century were the first residents of the Isthmus who negotiated transportation across the Isthmus of Panama with "outsiders," that is, outside people who though perhaps also engaged in maritime-commercial activities throughout the region were not from the port cities of Panama or from one of the provinces on the Isthmus.

The contemporary Republic of Panama (1903-date) corresponds roughly in territorial area to the extent of the colonial *Audiencia* of Panama (1538–1751).¹³ The *Audiencia* of Panama was originally broken into two provinces with several important *cabildos* or city councils. The province of Panama encompassed the area of the middle of the Isthmus of Panama and the port cities, while the province of Veraguas encompassed much of the Azuero peninsula and the rest of the Panamanian interior. The *cabildo* or city council was the primary unit of local government and each *cabildo* had its own local jurisdiction over building permits, sanitation and public health, prices and wages, taxes, and the police.

The *Audiencia* of Panama, including the two provinces of Panama and Veraguas and all the city councils, were subordinate to the jurisdiction of the Viceroyalty of Peru (1542–1824) until 1717, and afterwards to the Viceroyalty of New Granada (1717–1819) until Panama's independence. All the viceroyalties were subordinate to the domain of the Royal and Supreme Council of the Indies (1524–1834), which though persisting as a powerful governing body over the Americas for nearly three hundred years underwent significant changes and reforms during the 18th century. A separate *Casa de Contratación* or "House of Trade," established in 1503 in the Spanish city of Seville, had jurisdiction over commercial flows and administration of commercial law, and exercised direct authority over all captains and vessels engaged in transporting goods, people, and finance (including silver or gold) between Spain and viceroyalties overseas.

¹³ The official date for the founding of the *Audiencia* of Panama is given as 1538 in some sources and 1574 in other sources. The earlier date is listed here.

People of Spanish descent born in the Americas were usually prevented from holding high offices like that of a viceroy, but they were allowed to hold *cabildo* appointments and were usually elected by the city's property-holding class. Close relatives of the Panamanian maritime-commercial elite also filled middle bureaucratic positions in the *cabildo*. Thus elite maritime-commercial descendents of *encomenderos* who left the interior for the port cities at the end of the 16th century became politically engaged in sustaining the family-owned businesses that provided services for the overland transit, using the jurisdictional authority of the *cabildo* or city council of Panama. These maritime-commercial descendents of *encomenderos* were the first to articulate what several authors have described as the emergence of a "Panamanian" regional political identity, first expressed by elite merchants who separated their common interests from those of elite merchants or Spanish-born administrators from the Viceroyalty of Peru, the *Casa de la Contratación* in Seville, and the Royal and Supreme Council of the Indies.¹⁴

The mule and inn industry that serviced the overland transport of silver from Peru to Spain was the first significant source of transport-derived wealth for the Panamanian maritime-commercial elite. The Isthmus of Panama was not the only location hosting an important mule route in colonial Spanish America. However, the Panamanian mule roads were unique in that they were not directly connected to any interior sources of wealth. The merchant families of the Isthmus charged exorbitant prices relative to the other mule roads in Spanish America because they had a monopoly and because importing and sustaining mules in Panama was expensive.¹⁵ Everything about the Panamanian mule industry was imported. All of the mules were imported as well as all of their food. In fact, purchases of mules often exceeded the *Audiencia* of Panama's yearly defense costs.¹⁶ High markups on mule services allowed Panamanian elite to become wealthy and diversify their portfolios by purchasing real estate. Just as commercial elite charged high markups on the mule services, they also controlled the *cabildo* of Panama City and established taxes on travelers to maintain the roadways, inns, and other transit infrastructure. The infiltration

¹⁴ See Ward (1993, 69, 77–80), Jaén Suárez (1978, 506), and Figueroa Navarro (1978, 8).

¹⁵ Ward (1993).

¹⁶ See Ward (1993).

of the local *cabildo* and *Audiencia* of Panama by the relatives of elite maritime-commercial families was probably not uncommon in Spanish America but it was the key relationship that protected monopolistic markups on transport services and infrastructure, binding a local “Panamanian” maritime-commercial society with a cluster of commercial and government services around the transportation of foreign goods, people, finances, and messages across the Isthmus of Panama.

Many of the maritime-commercial elite in Panama intermarried with rich Spanish and Peruvian merchant families. One author argues that the *encomendero* heritage of the Isthmus of Panama had been “diluted” by the immigration of wealthy peninsular Spanish or Peruvian merchants. Does intermarriage with Spanish and Peruvian merchants dilute a territorial-administrative *encomendero* class or does it create a maritime-commercial society? Intermarriage among maritime-commercial elite families, common in the history of the Mediterranean well before the colonization of the Americas, allowed a new non-*encomendero* maritime-commercial elite extended family to evolve and span a social network of people in the business of transporting mineral wealth from the Peruvian Andes to Spain.

The trust of family commercial relationships decayed when mercantile interests from Cadiz, who took over the silver transit from the merchants of Seville after 1679, used their political influence in Spain in order to manage newly won commercial privileges in Panama. Even though a late 17th century breakdown in maritime-commercial relations between the merchant families of Spain in Cadiz and Panama City should have had serious political repercussions, it is not clear that it did, which bears explanation in the context of aspirations for political independence in the period between the Spanish trails and river-boat system (1540–1740) and the Panama Railroad (1849–1869).¹⁷

C. THE TWO PANAMAS UNDER THE VICEROYALTY OF NEW GRANADA UNTIL PANAMANIAN INDEPENDENCE IN 1821

1. *The Decline of the Panamanian Maritime-Commercial Elite*

The Viceroyalty of New Granada was established in 1717 out of the northern area of what was once under the domain of the Viceroyalty

¹⁷ Alex Perez-Venero, *Before the five frontiers: Panama from 1821–1903* (New York: AMS Press, 1978).

of Peru. The broken Panamanian monopoly on the royal transport of silver between Spanish American seaports on the Pacific Ocean and the rest of Europe, the inconsistency of commercial transits across the Isthmus after the middle of the 17th century, and attacks by pirates like Henry Morgan on Old Panama in 1671 pressured migrations of Panama's maritime-commercial elite back into the western savannas of the interior. The city of Old Panama itself was finished off by military destruction in 1740. The "returning" generation of Panamanian elite, as second or third generation descendents of the original *encomenderos* that had abandoned life in the interior at the end of the 16th century, came back to the interior as urban maritime-commercial elite who then gradually became territorial-administrative elite. Families that left the port cities and moved abroad may have been those that after several generations of intermarriage with Peruvian and Spanish merchants were too much a part of the cosmopolitan maritime-commercial world, and instead, looked to maintain their social and economic status as merchant elite in other port cities throughout Spanish America.

Urban elite maritime-commercial families who returned to the interior at the end of the 17th century adopted the ways of territorial-administrative society after a generation or two to the point where they fell out of touch with relatives back in the maritime cities:

[T]ransplanted one or two generations, ruralized, previously urban, families lived a basically agricultural existence and did not identify themselves with their city brethren, who were devoted to mercantile matters, despite carrying similar surnames.¹⁸

Recent elite arrivals from the maritime cities socially fortified the savanna elite, eventually adopting the distinct "mentality and lifestyle" of the western interior:

[T]hese recent arrivals [after the 1671 destruction of Old Panama City] demographically fortified a dominant group that otherwise was condemned to mestization or extinction, and enriched the possibility for more intense social relations. But at the same time they adopted with ease the mentality and lifestyle [*el compartamiento*] of their once separate neighbors, and rapidly the economic structures of self-sufficiency.¹⁹

¹⁸ Figueroa Navarro (1978, 128-129).

¹⁹ Jaén Suárez (1993, 497).

In short, the newly migrating elite from the maritime-commercial ports to the interior quickly adapted to the institutions and norms of the dominant group in that locale.

Opportunities to accumulate wealth and maintain status in the interior of the Isthmus of Panama were limited without mineral wealth, a large supply of indigenous labor, or a market for foodstuffs in the maritime cities. However, cattle ranching remained a staple of interior landowning elite livelihood in the interior savannas. Most importantly, it became the principal instrument of commercial interchange between the colonial elite of the interior and their wealthier and more politically influential port city relatives. Savanna ranching, landowning and bureaucratic elite engaged in cattle ranching far from the final consumer.²⁰ Cattle unlike other bulk foodstuffs can transport themselves overland to commercial markets, helping to explain how elite economic exchange relationships were maintained over long distances between the interior and the maritime cities. The fact that the landowning elite of the interior preserved an active business relationship with the maritime elite through the exchange of cattle from the interior to the seaports, or the through lending of money from the seaports to the interior, explains why it would have been possible for elite families on the Isthmus to have maintained the social connections to be able to shift back and forth between the interior and the maritime cities.

D. THE TWO PANAMAS UNDER GREAT COLOMBIA (1819–1831)

1. *The Two Panamas and “States’ Rights” Disputes with Great Colombia*

Interior landowners in Spanish America controlled all sorts of rights to land and large supplies of indigenous labor, rights stemming from the original privileges their *encomendero* ancestors acquired from Spanish monarchs after the military expeditions of the 16th century. At the end of the 18th century, when local and regional authorities representing the European Spanish bureaucracy claimed direct royal authority over the interior and legally challenged conquest-era *encomienda* rights in the courts, political conflict became unavoidable, eventually leading to

²⁰ Jaén Suárez (1978).

independence. On the Isthmus of Panama, the movement of settlers into interior farm, ranch, and mining lands did not produce a territorial-administrative political rivalry even after a long period of interior growth and development.

For simplicity's sake, people from what is today the territory of Colombia will be referred to as "Colombians." Likewise, people from predecessors of the modern Republic of Colombia, such as the Republic of New Granada (1831–1858) or the Grenadine Confederation (1858–1863), will also be referred to as "Colombians." However, people from what is now the territory of the Republic of Panama will be distinguished as "Panamanians," in the regional sense, even though historically speaking the territory of the Republic of Panama was administered from Bogota from colonial times until 1903. The spirit of Panama's officially declaring itself independent of Spain on 28 November 1821, and almost simultaneously declaring itself as part of President Simon Bolivar's "Republic of Colombia" or "Great Colombia" (1819–1831), may have been motivated by maritime-commercial expectations of an ideal political future and commercial growth when a classical liberal political regime would govern the Isthmus of Panama and provide the administrative structure for foreign investment in new interoceanic transportation technology. However, Panamanian rebellion from Spanish authority in 1821 did not result in Panama's becoming part of a classical liberal political regime.

For example, central government proposals by Simón Bolívar were met by a series of federalist counterproposals by Panamanian representatives dated 13 September 1826, early evidence of the semi-independent political goals of Panama's maritime-commercial elite. The fourth article of the 1826 Panamanian federal counterproposal called for Panama to become a "Hanseatic state" under the protection of foreign maritime powers and for measures to turn the tide of economic stagnation on the Isthmus of Panama by attracting foreign investment. The terms of the proposal included declaring the entire Isthmus of Panama a free trade zone, conceding to a foreign capitalist company the route for a road or canal, and arranging interior establishments for economic production "*los establecimientos interiores de un modo productivo*" in order to sustain the government's authority but no more than was necessary to insure public order.

E. CONCLUSION

An analyst armed with Fox's interpretation of the "two societies" who happens to consult the historical interpretations of early Panama will see that there have always been rival societies, a territorial-administrative society in the western interior and a maritime-commercial society (described by some researchers as a commercial "enclave") in the terminal port cities, both of which existed well before the United States intervened in Panamanian history in 1903.

Fluctuations in the transportation of goods, people, finances, and messages across the Isthmus of Panama compelled elite Panamanian families to migrate back and forth between the western interior and the maritime cities. Many, but not all, elite families in Panama shifted their socio-geographic orientations in response to at least three major commercial cycles over the last four hundred years, the Spanish trails (1540–1740), Panama Railroad Company (1849–1903) and Panama Canal (1903–present), each associated with either an ascending or declining phase in the use of interoceanic transportation technologies.²¹

The existence of two Panamas and the economic impulse to migrate between the interior and the maritime cities as a result of fluctuations in interoceanic transportation had political implications in Panama. The "two Panamas" represent a persistent sub-national social and geographic distinction between Panama's maritime-commercial society and its territorial-administrative society, corresponding roughly to the territorial extents of the colonial provinces of Panama and Veraguas, and geographically centered on the cities of Panama and Santiago, respectively. However, being "Panamanian" refers to a political distinction that emerged first among the merchant elite of Panama's maritime-commercial society in the colonial city of Panama, after which it could have diffused with modification to the rest of Panamanian society in the interior or perhaps developed separately during independence from Spain and later from Colombia.

Originally, being "Panamanian" meant having a regional sense of identity that materialized out of the particular social and geographic circumstances of former *encomendero* merchant elite from the city of Panama with respect to their political interests in protecting high mark-

²¹ See Jaén Suárez (1978, 1998) and Ward (1993).

ups on interoceanic transportation services. The origin of Panamanian identity among maritime-commercial elite may explain why desire for greater autonomy or, more radically, complete independence from Colombia during the 19th century was not supported equally at all times by the rest of the Panamanian society in the interior like Santiago de Veraguas, at least not until the political ideals of breaking Panama's subordination to Colombia were not simply synonymous with protecting the economic wealth of elite maritime-commercial society in the city of Panama. In instances such as Colombia's civil wars and other major conflicts between Liberals and Conservatives during the 19th century, leaders from Panama's territorial-administrative interior and its maritime-commercial port cities were, in fact, often on opposite sides and military forces from the Panamanian interior more than once marched to put down insurrections against Colombian authority in the city of Panama.

It is a matter of serious debate whether Panama's urban commercial elite can be considered an alien "enclave society" supported by the United States. Historically, the maritime-commercial elite were just as genuinely "Panamanian" as their extended family relatives who lived in the western interior, probably even more so. The urban commercial elite of the transit cities, not the elite of the western interior, were the politically and economically dominant group throughout most of Panama's pre-industrial history and were the most vocal advocates of a separate "Panamanian" identity against Spanish, Colombian, and in some cases American administrators. Panama's cosmopolitan maritime-commercial elite society predate the United States itself, having developed by the end of the 16th century as a society of elite families that at various times in their history had to shift their allegiances back and forth between the port cities and the interior.

Though they cultivated close social and business relationships with outsiders, including intermarriage, Panama's urban merchant class were not a creation of American hegemony or favoritism during the middle of the nineteenth century, thereafter to be supported by the terms of the 1903 Hay-Bunau-Varilla Treaty. As explained below, American activities to build and operate the Panama Canal in the newly formed Republic of Panama after 1903 became entangled in an evolving political rivalry between the two pre-industrial Panamanian societies, as each sought to gain political support among non-elite by redefining the ideals for Panama's political future.

CHAPTER FIVE

AMERICAN TERRITORIALITY IN GEOGRAPHIC PERSPECTIVE

A. TERRITORIAL ENLARGEMENT, POLITICAL REGIMES, AND INTEROCEANIC TRANSPORTATION

By 1789, the United States had achieved an improbable victory against Britain and emerged as a populated but militarily weak confederation, by European standards. To the east, the coast of the United States was isolated from conflicts and intrigues in Europe by the high seas of the Atlantic Ocean. To the west, sparsely settled United States territories were bordered by vast inland drainage basins and flanking islands belonging to a relatively weak Spanish colonial power. As the United States began to back its way westward into territorial enlargement over the remainder of Spain's empire, motivated to prevent territory on United States borders from falling into the hands of a more powerful European state, an enlarged United States began to emerge as two coasts separated by a continent.

1. *American Territoriality*

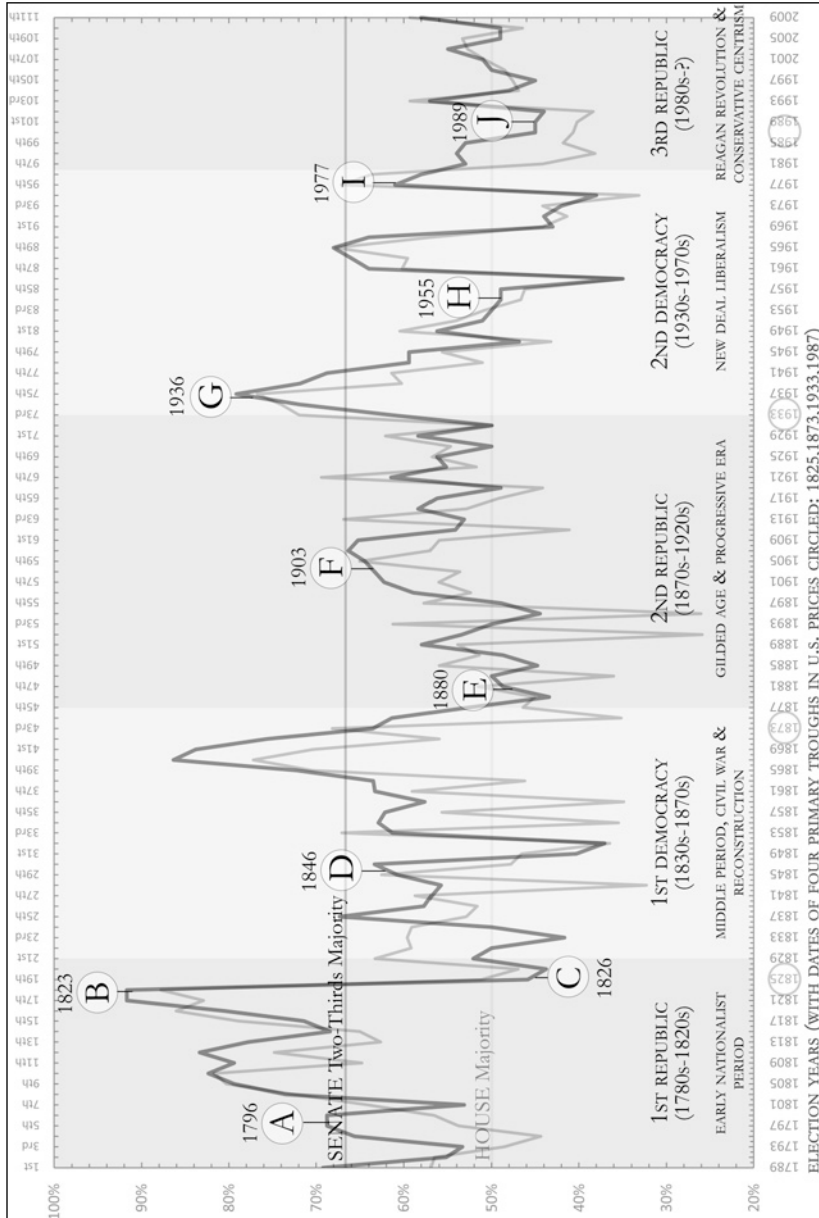
There has never been much debate in Congress that a territorially enlarged United States needed a means of transportation into its western interior for its general welfare and common defense. Likewise, there do not appear to have been any notable historical controversies about the need for an interoceanic canal somewhere in Central America. The policy dilemma that occupied representatives of all three branches of the federal government at one time or another was whether the United States federal government had the constitutional authority to build and operate an interoceanic canal in a foreign territory. Should an interoceanic canal in foreign territory be a matter for private enterprise instead? Should a consortium of foreign maritime powers and the United States share in the construction and operation of the canal through a divided enterprise? Should it be an American government canal under American control for a period of ownership in perpetuity? Finally, would a treaty be sufficient to resolve

potential disputes between the extraterritorial powers of the United States federal government and sovereign powers of the state adjacent to the canal?

One of two different principles tended to be the preferred or driving force behind policymaking with respect to federal government involvement in an interoceanic canal project. Sometimes United States policymaking was based upon an avoidant posture that questioned the constitutionality of the exercise of the powers of the federal government in foreign territory, and opposed an American canal under American control if it meant entangling alliances with foreign nations. At other times, United States policymaking was based upon a preventive posture that advocated extraterritorial exercise of the constitutional powers of the federal government in foreign territory in order to prevent a canal from falling into the hands of European governments. Evidence in policy statements made by Presidents and Secretaries of State suggests that the alternation between avoidant and preventive postures did not occur over the period of four year Presidential terms of office, but over the period of fifty-year changes in policy regime.

2. American Policy Regimes

It is sometimes thought the political party that controls the White House and the Senate controls American foreign policy. Notwithstanding votes on a few Congressional bills and subcommittee opinions in the Senate Foreign Relations Committee, the most important interoceanic canal treaties introduced into Congress by the President had to be ratified with bipartisan support. For instance, Figure 11 divides American history from 1789 to 2009 into policy regimes and shows that very few political parties at any time in American history held the Presidency and a two-thirds majority in the Senate or a majority in the House at the same time. In fact, only ten elected American presidents including George Washington (labeled as "A" in Figure 11) enjoyed at one point in their tenure a two-thirds party majority in the Senate, which still does not guarantee ratification. Republican President Theodore Roosevelt (labeled as "F") had nearly a two-thirds party majority in the Senate in 1904 when the Senate ratified the Hay-Bunau-Varilla Treaty. Democratic President Jimmy Carter (labeled "I") had nearly a two-thirds party majority in the Senate in 1978 during Senate ratification of the Panama Canal treaties abrogating the Hay-Bunau-Varilla Treaty. Other dates labeled in Figure 11 correspond to major events



11. American policy regimes 1780s-date

or treaty negotiations and signings, e.g., John Quincy Adams and the Panama Congress in 1826 (labeled “C”). A party majority in the Senate does not guarantee ratification, nor does ‘not’ having a party majority in the Senate mean ratification is unlikely.

Changes in interoceanic canal policy marked by major agreements like the 1903 Hay-Bunau-Varilla Treaty or the 1977 Panama Canal treaties occurred as gradual momentum shifts, and correspond well with the half-century alternations in American policy regime noticed by the American historical geographer Carville Earle.¹ In his historical geography of the United States, Earle argued that American political ideologies have alternated in five half-century phases between policy regimes of “republic” and “democracy.” Five American policy regimes of “republic” and “democracy” are used in this book as chronological breakpoints marking a new chapter in American policy over the exercise of the powers of the federal government to control and operate an interoceanic canal in a foreign territory. The five historical policy regimes and approximate dates include (see Figure 11): 1) the ‘1st republic’ (1780s–1820s), also known as the Early Nationalist Period; 2) the ‘1st democracy’ (1830s–1870s), including the Middle Period, Civil War, and Reconstruction; 3) the ‘2nd republic’ (1870s–1930s), also known as the Gilded Age and the Progressive Era; 4) the ‘2nd democracy’ (1930s–1970s), the period of New Deal Liberalism; and finally 5) the ‘3rd republic’ (1980–?), the era of the Reagan Revolution and Conservative Centrism.²

The terms “republic” and “democracy” refer to ideological similarities among a group of a dozen or so Presidents who may have led different political parties but served their terms of office within the same fifty-year economic cycle of crisis and recovery in the United States. According to Earle, Americans first fashioned their “republican” and “democratic” ideologies by crossing the ideological streams of doctrinaire 17th century English “liberalism” and “republicanism.” The terms “republic” and “democracy” do not refer to the contemporary Republican and Democratic Parties. Nor do the terms “liberal” and

¹ Carville Earle, *The American Way: A geographical history of crisis and recovery* (Lanham, MD: Rowmann & Littlefield, 2003). For an earlier version of the argument see also Carville Earle, *Geographical inquiry and American historical problems* (Stanford: Stanford University Press, 1992).

² See Earle (2003, 27). Turning points in American “historical periods” are considered approximate but conform to different policy regimes.

“republican” in 17th English political thought have the same meaning as being a liberal Democrat or a conservative Republican in modern American political life.

“Liberalism” and “republicanism” in the context of 17th century British political life were opposing political perspectives. However, early American political leaders were drawn to both perspectives simultaneously in their fight for independence and drafting of the Constitution. Americans wanted most of all their freedom from an oppressive government, which led them to adopt English 17th century “liberal” principles of internationalist free trade and elitism. At the same time, Americans also wanted a powerful nation capable of defending that freedom, which led them to adopt English 17th century principles of republican nationalism and egalitarianism. American “republics” crossed republican nationalism with liberal elitism, while American “democracies” crossed liberal internationalist free trade with republican egalitarianism.

Driving half-century alternations between the American ideologies of “republic” and “democracy” was a half-century-long sequence or “institutional repertoire” of crisis and recovery from recurring fifty-year economic crises symptomatic of the capitalist world economy (see policy regimes and primary price troughs in 1825, 1873, 1933, and 1987 listed in Figure 11). Hybrid political ideologies were a key to the American way of setting aside the ideologies and policies of a “republic” and supporting the policies of a “democracy,” and then back again, in relatively smooth transitions that kept political life in the United States from devolving into extreme forms of government like fascism or communism.

Proper treatment of the history of the territorial enlargement of the United States, the expansion of the powers of the United States federal government, or nuances about fifty-year economic cycles and alternating American political ideologies are outside the scope of evidence offered in this book. However, the relevance of policy regimes to interoceanic canal policy is an important chronological feature of the book.

3. *The Assembly of American Nations at Panama*

Perhaps the earliest opinions by an American President or Secretary of State concerning interoceanic communication across the Isthmus of Panama were in reference to the 1826 “Congress” or “Assembly”

of American Nations at Panama. The debate between President John Quincy Adams and Congress about the proper application of American foreign policy principles for an interoceanic canal in Panama illustrates the general controversies that would continue to arise over the next two centuries, and can be found in a confidential message sent to the Senate by President John Quincy Adams dated 26 December 1825 and published 21 March 1826.³

In his message to the Senate on 26 December 1825, Adams offered a rationale favoring American participation in the Assembly of American Nations at Panama. Adams nominated two Envoys Extraordinary and Ministers Plenipotentiary to accept Simón Bolívar's invitation to join representatives from Great Colombia, Mexico, and Central America. Prior to full Senate consideration of Adam's request to send ministers to Panama, the Senate Foreign Relations Committee weighed in with its own eight-page opinion arguing its views about the proper principles of American foreign policy concerning an interoceanic canal, stressing above all the avowed policy of avoiding entangling alliances. The conclusion of the Senate Foreign Relations Committee was that it was "not expedient, at this time, for the United States to send any ministers to the Congress of American Nations, assembled at Panama."

One focus of the controversy between the President and the Senate with respect to American participation in the Assembly of American Nations at Panama was whether Latin American nations would be openly discussing war plans against Spain in the presence of American representatives. The Senate also wondered whether the real purpose of the "Congress" was to maneuver the United States into an entangling military alliance against Spain on the heels of the Monroe Doctrine. Finally, the Senate questioned whether it was the President, or Congress, that had the constitutional authority to nominate special ministers to go to Panama.

The politics between President Adams and the Senate turned on several issues. Should United States representatives attend the Assembly of American Nations at Panama? How should the United States respond to foreign threats addressed to former colonies of Spain that

³ See American State Papers 5, Foreign Relations, Vol. 5, 19th Cong., 1st Sess., Publication No. 423, *Messages and documents communicated to the Senate and House of Representatives, and the executive proceedings of the Senate, from which the injunction of secrecy has been removed, on the subject of the mission to the Congress at Panama*, 21 March 1826 (Washington, D.C.: GPO, 1826).

had recently secured their independence? What were the advantages of the route across the Isthmus of Panama for the welfare and common defense of the United States? What were the federal government powers with respect to transportation improvement projects in foreign territory, even if such powers could be justified under the Constitution's call for securing the common defense and general welfare? These issues persisted throughout the history of American interest in an interoceanic canal and reflect general differences of opinion in the United States about avoidant and preventive postures.

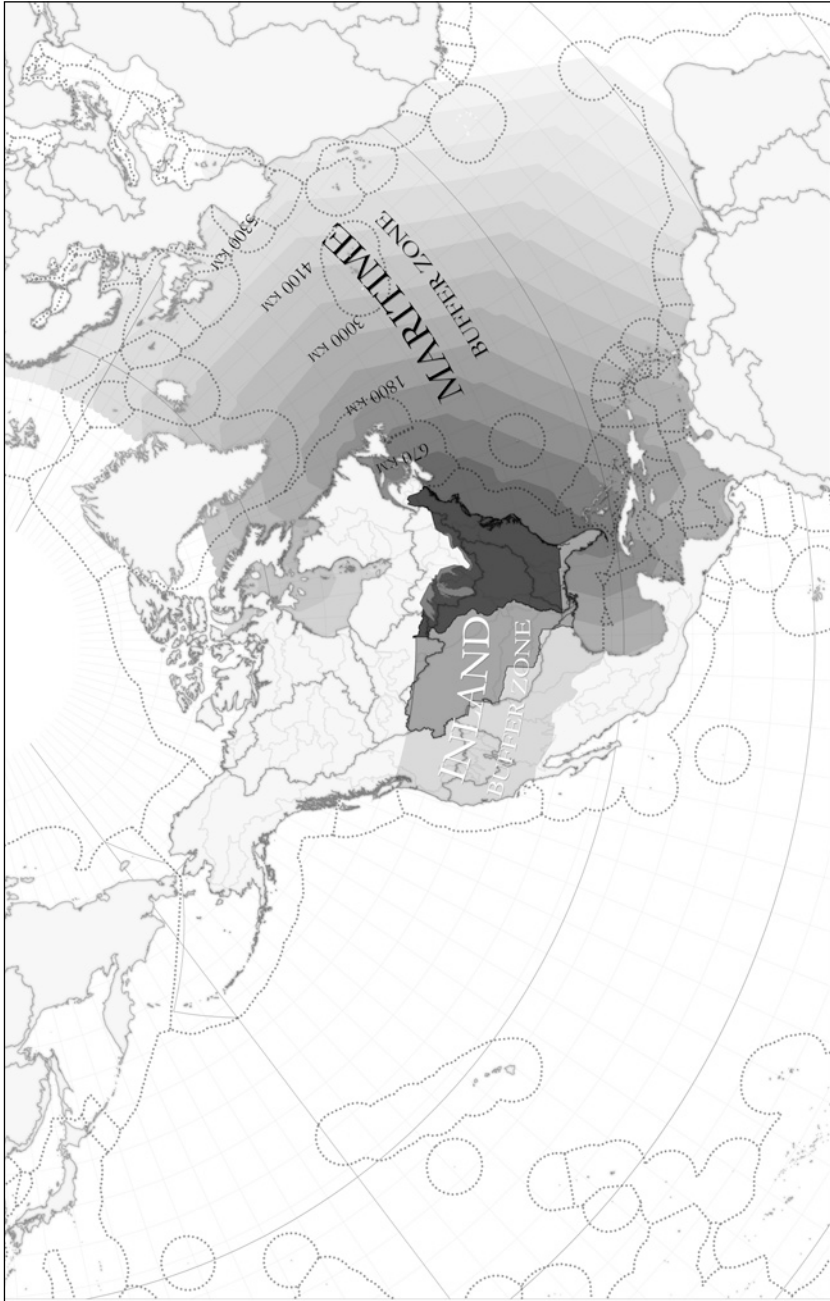
B. TERRITORIALITY AND TERRITORIAL ENLARGEMENT

The posture of the '1st republic' (1780s–1820s) focused simultaneously on avoiding entanglement in European conflicts while preventing the expansion or interposition of European influence into American affairs and the affairs of newly independent nations on the borders of the United States. Both postures were intended to be vigilant and compatible, as both originated out of the need to preserve the geographic circumstances that had given the United States a maritime and an inland buffer zone against outside threats.

1. *The Maritime Buffer Zone and the Avoidant Posture*

One geographic circumstance of the United States at the beginning of the '1st republic' was being surrounded by a maritime buffer zone of high seas separating it from the European continent (see Figure 12). Presidents adopted an avoidant posture to keep the United States from becoming entangled in political conflicts and intrigues between European nations. Presidents recognized the threat posed by a powerful European nation's capability to project military forces over long ocean distances. Thus they adopted the avoidant posture as a matter of self-defense. An avoidant posture meant that the United States would avoid entangling arrangements so that conflicts and intrigues in Europe could not find their way back to the United States.

The most famous American articulation of an avoidant posture was President George Washington's farewell address in 1796. At a time when the United States was a coastal Atlantic-oriented nation with only a few settled areas on the western side of the Appalachian Mountains, Washington recommended in his published farewell address on 17 September 1796 that Americans avoid entangling alliances.



12. Territorial buffer zones and expansion during the '1st republic' (1780s-1820s)

Washington stressed that the United States should not negate the intrinsic advantages of being geographically separated from conflicts between European nations, by making political alliances that could turn involvement in overseas conflicts back onto the United States itself. Still, Washington acknowledged the need for temporary defensive alliances with Europe in emergency situations. Washington wrote:

The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible.... Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities. Our detached and distant situation invites and enables us to pursue a different course. Why forego the advantages of so peculiar a situation? Why quit our own, to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor, or caprice? 'Tis our policy to steer clear of permanent alliances with any portion of the foreign world.... Taking care always to keep ourselves, by suitable establishments, on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.⁴

Washington's avoidant posture was implemented in the United States policy of neutrality during the war between Britain and France in 1793 via the 5 June 1794 Neutrality Act, the first among several during the '1st republic.' According to the neutrality act, it was an offense to prepare arms for, or enlist in the service of, a belligerent nation from within the territory of the United States. Similar statements to Washington's were not uncommon. Avoidant principles had been published by Thomas Paine in *Common Sense* in 1776 and restated by President Thomas Jefferson during his inaugural address on 4 March 1801 and in a 17 October 1803 message, in which he stated:

Separated by a wide ocean from the nations of Europe and from the political interests which entangle them together, with productions and wants which render our commerce and friendship useful to them and

⁴ For interpretations of original text of Washington's speech consult A. B. Bushnell, *The Monroe Doctrine: An interpretation* (Boston: Little Brown and Co., 1916), 11; and James W. Gantenbein, ed., *The evolution of our Latin American policy: A documentary record* (New York: Octagon Books, 1971), 6.

theirs to us, it can not be the interest of any to assail us, nor ours to disturb them. We should be most unwise, indeed, were we to cast away the singular blessings of the position in which nature has placed us, the opportunity she has endowed us with of pursuing, at a distance from foreign contentions, the paths of industry, peace, and happiness, of cultivating general friendship, and of bringing collisions of interest to the umpirage of reason rather than of force.

Sometimes referred to as a “policy of isolation,” the American avoidant posture did not rely passively on geographic distance. Avoidance required aggressive action to preserve the advantages of a maritime buffer via instruments like the 1794 Neutrality Act.

2. *The Inland Buffer Zone and the Preventive Posture*

Besides the Atlantic Ocean maritime buffer zone, the other fundamental geographic circumstance surrounding the early United States was an inland buffer zone lying in the domain of a relatively weak Spain (see Figure 12). Much of the area of Spain’s claims and possessions were in the vast Mississippi River watershed, including strategic islands flanking sea lanes into the Gulf of Mexico such as the Florida peninsula, Cuba, Puerto Rico, and other possessions in the Greater and Lesser Antilles. Among the Pacific-draining inland territories bordering the United States was the greater Columbia River watershed and the Pacific watershed of California. Meanwhile independent Pacific Islander indigenous peoples ruled over strategic Pacific islands including the Aleutians in the north Pacific, the Hawaiian Islands in the central Pacific, and Samoa in the South Pacific.

2.1 *Inland Territories Draining to the Atlantic*

In the wake of constant wars and conflicts in Europe, and the disintegration and possible transfer of former Spanish colonial possessions to other European powers, Presidents during the ‘1st republic’ adopted avoidant and preventive postures simultaneously but never in the same place at the same time. Presidents recognized the potential danger of any transfer of Spain’s colonial possessions to a more powerful European nation, so they adopted a preventive posture whenever there was a risk that powerful European nations would attempt to extend their system of control and influence over Spanish possessions in or near the borders of the United States.

The 1800 Treaty of San Ildefonso between France and Spain transferred Spain’s colonial territorial holdings in the greater Mississippi

River watershed to France under Napoleon Bonaparte. Although President Thomas Jefferson had advocated an avoidant posture when it came to political matters across the Atlantic Ocean in Europe, in the wake of events in Europe and the 1800 Treaty of San Ildefonso, Jefferson adopted a preventive posture to the possibility of French control over New Orleans and the greater Mississippi River heartland. Jefferson regarded French, rather than Spanish, control over the mouth of the Mississippi River as an enormous threat, saying on 18 April 1802 that there was “on the globe one single spot, the possessor of which is our natural and habitual enemy. It is New Orleans.” If France were to take possession of New Orleans, Jefferson felt that the United States would be forced to turn all its attention to its maritime forces, including a possible military alliance with the world’s most powerful maritime force, the British fleet.⁵ By negotiating the enormous Louisiana Purchase in 1803, which essentially corresponded to the western reaches of the Mississippi River drainage basin, Jefferson eliminated the possibility that – other than Florida – any former colonial possession of Spain in the Atlantic-draining inland of North America could fall into the hands of a more powerful European nation.

In January 1811, President James Madison reiterated the preventive American posture over former colonies of Spain on the borders of the United States, affirmed by a formal resolution of Congress on 3 March 1811, stating that the United States could not see “any part of a neighboring territory, in which they have, in different respects, so deep and so just a concern, pass from the hands of Spain into those of any other foreign power.”⁶ The issue of the remaining Atlantic-draining possessions of Spain on the borders of the United States, not including Caribbean islands, was resolved in 1821 when President James Monroe purchased the western and eastern portions of Florida from Spain plus other areas when the 1819 Adams-Onís Treaty (Transcontinental Treaty) entered into force establishing the new border between the United States and Spanish possessions.

⁵ Bushnell (1916). See also Roger Adams, *Strategy, diplomacy, and isthmian canal security, 1880–1917* (Unpublished Ph.D. dissertation, Florida State University, 1974), 10 n.20.

⁶ Bushnell (1916, 27).

2.2 *Inland Territories Draining to the Pacific*

Between 1800 and until 1821, when the disintegrating territorial holdings of Spain threatened to fall into the hands of a powerful France or even an independent Native American sovereign nation under British protection, Presidents Thomas Jefferson and James Madison advocated a preventative posture. The Louisiana Purchase of 1803, the War of 1812 with Britain, and the Florida Purchase in 1821 resolved the question of which power would exercise control over the greater Mississippi River drainage basin and its Caribbean Sea and Gulf of Mexico approaches. American Presidents during the '1st republic' seemed satisfied that offshore flanking islands like Cuba would remain as colonial possessions of Spain and would not be transferred to a more powerful European nation.

The limits of the vast geographic and political "world" of the Atlantic Ocean in North America can be defined by any lands draining to the Atlantic Ocean or the Gulf of Mexico, and include the Atlantic coast and greater Mississippi River watershed. The North American continental divide marks the physiographic boundary of a separate geographic and political "world" in North America potentially oriented to the Pacific Ocean. Between 1803 and 1846, the greater Columbia River watershed and any other lands in the Pacific "world" that drained to the Pacific Ocean emerged as a new theater for American preventive posturing over adjacent land areas belonging to Spain.

The situation in the greater Columbia River basin provided the context for President James Monroe to articulate the most famous policy with respect to Spanish possessions on the borders of or flanking the coast of the United States. To set the background for Monroe's message in 1823, in 1790 Spain reasserted claims over all territory of the Pacific "world," the swath of land extending inland from the Pacific coastline to the continental divide all the way to latitude 61° N on Prince William Sound along the Alaskan coast. Between 1792 and 1811, the United States made its own claims over a section of the Pacific "world" between latitude 41° N and latitude 54° N by reason of discovery, exploration, and settlement. The United States and Britain signed the Anglo-American Convention of 1818, in which they agreed to joint jurisdiction over the territory of Oregon Country from latitude 42° N to latitude 54° 40' N. In 1819, while Spain was still militarily engaged against forces in the Mexican War for Independence (1810–1821), the United States and Spain signed the 1819 Adams-Onís Treaty to resolve the border between the United States claims

and Spanish possessions in the west. The two countries agreed that the boundary between United States claims and Spain's territory in the Pacific "world" west of the continental divide would be latitude 42° N, the modern boundary between Oregon and California.

In 1821, Russia made claims over the Pacific "world" that overlapped the northern part of United States claims, extending as far south as latitude 51° N. Czar Alexander even made an incredible pronouncement on 7 September 1821 that exclusive rights of commerce belonged to Russian subjects from Alaska to Oregon Country at latitude N 45° 50', near the mouth of the Columbia River in Oregon, and would deny by threat of force the commercial rights of any other nation's citizens in the area.⁷ Between 1823 and 1826, Britain made claims over the Pacific "world" from latitude 38° N near San Francisco Bay to latitude 59° N in the Alaska panhandle, effecting overlapping the claims of both Russia and the United States.

President James Monroe like earlier Presidents recognized the unacceptable threat posed by Spanish possessions falling into the domain of a more powerful European state. Thomas Jefferson sent a letter to Monroe dated 24 October 1823 reiterating that "our first and fundamental maxim should be, *never to entangle ourselves in the broils of Europe*... Our second, *never to suffer Europe to intermeddle with cis-Atlantic affairs*." With significant input from his Secretary of State John Quincy Adams, prompting by former President Jefferson, and the encouragement of representatives of the world's foremost naval power in Britain who suggested a joint statement of preventive policy to deter Russia, Monroe presented a unilateral formulation of preventive policy in an annual message to Congress on 2 December 1823.

In his message to Congress on 2 December 1823, Monroe pointed out that it was not the current existence but the potential extension of a European imperial "system" of government that represented a direct threat to the borders of the United States. Generalizing to "any portion of this hemisphere" gave a certain emphasis to a preventive posture that nonetheless arose out of a situation affecting former Spanish territories directly adjacent to boundaries of the United States. Monroe said:

⁷ See Butler (1978) for Russian pronouncements made at the same time applying to activities along the Northeast Passage.

At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg, to arrange, by amicable negotiation, the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal has been made by His Imperial Majesty to the Government of Great Britain.... In the discussions to which this interest has given rise, and in the arrangements by which this interest has given rise, and in the arrangements by which they may terminate, the occasion has been judged proper for asserting as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.... We owe it, therefore, to candor, and to the amicable relations existing between the United States and those powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States.⁸

Monroe's policy was a more refined and elaborated preventive posture than that advocated by earlier Presidents of the '1st republic' like Jefferson and Madison, who were content with a buffer zone of Spanish colonial territory on the borders or flanking the coastline of the United States. Prevention had only sought to deter a more powerful European nation like France from seizing Spain's territorial holdings in Louisiana and Florida.

As a refined statement of the American preventive posture, Monroe continued the policy of preventing former or newly independent Spanish territories from falling into the hands of more powerful European states. Monroe had felt that Russia, part of the idealistic Holy Alliance, was a verifiable threat if not deterred.⁹ However, Monroe significantly enhanced the scope of the American preventive posture both geographically and politically. First, Monroe did not specifically

⁸ Cited in Gantenbein (1971, 323–324) and Bushnell (1916, 66).

⁹ See U.S. Congress, House, 46th Cong., 3rd Sess., Report No. 224, *Interoceanic canal and the Monroe Doctrine*, 14 February 1881 (Washington, D.C.: GPO, 1881), 4.

confine his geographic focus to current or former inland possessions of Spain adjacent to the borders of the United States or flanking its coastline, as other Presidents had. Instead, Monroe expanded the geographic scope to “the American continents” and “any portion of this hemisphere,” saying that the situation affecting the greater Columbia River was merely the occasion for asserting an ideal principle. Second and more importantly, Monroe made it policy to deter not only the extension of a European “system” of government over Latin American nations, whose independence Spain had not officially recognized, but also any political “interposition” of European governments into the political affairs of independent Latin American nations “for the purpose of oppressing them, or controlling in any other manner their destiny.”

3. *Latin American Governments and the Preventive Posture*

Before Monroe, the Presidents of the ‘1st republic’ adopted either an avoidant or preventive posture depending on the adjacency of the situation to the borders of the United States. An avoidant posture was applied with respect to conflicts and intrigues among European nations across the Atlantic Ocean. A preventive posture was applied with respect to the inland possessions of Spain on the borders of the United States.

Monroe’s December 1823 message to Congress expressed a preventive posture in more ideal terms with respect to any independent Latin American nations regardless of whether or not they were directly adjacent to or flanking the coastline of the United States. However, in practice it was not certain during the ‘1st republic’ whether the United States should be content that islands like Cuba and Puerto Rico remain with Spain and never fall into the hands of a more powerful European nation, or whether the United States should annex Caribbean islands to ensure that they never fell into European hands.

For the United States, an independent Latin American nation was a safer arrangement than a colonial territory under the domain of Spain, so long as recognizing their independence did not result in war with a European state. John Quincy Adams, despite a pivotal role in Monroe’s message to Congress, adopted an avoidant posture with respect to military support for a Latin American nation fighting for its independence. Like a premonition of United States support for Panamanian independence from Colombia in November 1903, Secretary

of State John Quincy Adams said during a Fourth of July speech in 1821 that if the United States involved itself in foreign conflicts, even supporting democratic independence movements among the former colonies of Spain, it could drag Americans to a moral low ground in their foreign affairs:¹⁰

[The United States] knows well that by once enlisting under other banners than her own, were they even the banners of foreign independence, she would involve herself beyond the power of extrication, in all the wars of interest and intrigue, of individual avarice, envy, and ambition, which assume the colors and usurp the standard of freedom. The fundamental maxims of her policy would insensibly change from *liberty* to *force*.... She might become the dictrates of the world. She would no longer be the ruler of her own spirit.

During debate within Monroe's Cabinet just days before Monroe read his message to Congress on 21 November 1823, Adams reflected on the unfortunate situation that the United States may have entangled itself in by recognizing the independence of Latin American nations, given the alleged intentions of the Holy Alliance in Europe to reestablish European royal rule in the former colonies of Spain by force:

I said if the Holy Alliance really intended to restore by force the Colonies of Spain to her dominion, it was questionable to me whether we had not, after all, been over-hasty in acknowledging the South American independence. It had pledged us now to take ground which we had not felt at all bound to take five years ago.... If they intend now to interpose by force, we shall have as much as we can do to prevent them, without going to bid them defiance in the heart of Europe... earnest remonstrance against the interference of the European powers by force with South America, but to disclaim all interference on our part with Europe; to make an American cause, and adhere inflexibly to that.

Then in the same year in 1823, Adams said that the United States should consider annexing Cuba due to its "commanding position with reference to the Gulf of Mexico and the West India seas," referred to at the time as the "Gibraltar of America."¹¹ Adams was neither hypocritical in terms of his political ideals nor was he contradicting himself. Adams was merely adopting an avoidant posture with respect to the possibility that supporting foreign independence movements in Latin

¹⁰ Walter LaFeber, *The American age: United States foreign policy at home and abroad since 1750* (New York: W. W. Norton & Company, 1989), 80.

¹¹ Adams (1974, 10 n. 20).

America or overseas could entangle the United States in foreign wars, and adopting a preventive posture with respect to territorial possessions of Spain directly flanking the coast of the United States that could potentially fall into the hands of a more powerful European state.

Adam's conundrum as Secretary of State about the proper balance between a preventive and avoidant posture came to a head in 1825 when Adams became President and the United States was invited to attend the "Congress" or "Assembly" of American Nations at Panama. Part of a newly independent Great Colombia after 1821, Panama was far from the borders of the United States. There were also serious concerns in the Senate about whether, in exchange for rights to an interoceanic canal, newly independent Latin American nations would seek an entangling military alliance with the United States against Spain, which had still refused to recognize the independence of its former colonial possessions.

Encouraged by the idealism of Monroe's December 1823 message to Congress, Presidents of later policy regimes would make the case that an interoceanic canal was "virtually" a part of the coastline of the United States and justified taking a preventive posture with respect to any form of European interposition into the affairs of Panama. It did not matter that Panama was far from the boundaries of the United States. It did not matter whether European interposition into the affairs of independent Latin American nations was for the purpose of control over territory, or control over flows through territory in transit via an interoceanic canal. It did not even matter whether it was a powerful European government or a European private enterprise, susceptible to the control of European governments.

C. CONCLUSION

Presidents over the next two centuries would turn to the '1st republic' model of simultaneous avoidant and preventive policy principles for their own interoceanic canal policies. For example, Presidents, Secretaries of State, members of Congress, and other key representatives of the United States would use certain words and turns of phrase such as "entangling alliances" and "foreign intrigues," or "Monroe doctrine" and "European system," suggesting whether they were taking an avoidant or preventive posture. However, the two postures worked at cross purposes when it came to use of the constitutional powers of the

federal government to control and operate an interoceanic transportation in foreign territory. An avoidant posture led to policies designed to avoid entangling alliances with foreign entities in exchange for exclusive American control over a canal. On other hand, a preventive posture led to policies designed to deter foreign entities from threatening American canal interests.

What were the consequences of failing to prevent European control and influence over territories directly adjacent to the borders of the United States? What were the consequences of failing to avoid entangling alliances with European nations far from the borders of the United States? Either an avoidant or a preventive posture could be adopted when it came to American policy about an interoceanic canal. An important factor in that preference was American political ideology. In any given policy regime over a roughly fifty year cycle, a specific posture with respect to the use of the powers of the United States federal government over an interoceanic canal through foreign territory held sway except when other factors overrode the prevailing ideology.

CHAPTER SIX

THE EXPANSION OF THE POWERS OF THE FEDERAL GOVERNMENT OVER INLAND TRANSPORTATION FROM THE 1780S TO THE 1880S

A. INTRODUCTION

The territorial enlargement and consolidation of the United States, and the expansion of the powers of the federal government over wagon roads, canals, and railroads during the ‘1st republic’ (1780s–1820s) and ‘1st democracy’ (1830s–1870s), are not a separate and irrelevant history to that of the Panama Canal. Enlargement and expansion created the need for the Panama Canal as well as the legal basis for its creation.

At the end of the ‘1st republic,’ territorial consolidation through transportation improvement projects was focused on connecting nodes and links in three separate Atlantic-oriented drainage basins that made up the United States but which had no natural water connection between them (see Figure 13), including the Atlantic coastal watershed east of the Appalachians (labeled “I”), the Great Lakes coastal watershed (labeled “II”), and the greater Mississippi River basin (labeled “III”).¹ For instance, the Erie Canal (labeled “1”) was built to connect New York City (“A”) and the Hudson River in the Atlantic coastal watershed with Lake Erie and inland waterway port cities like

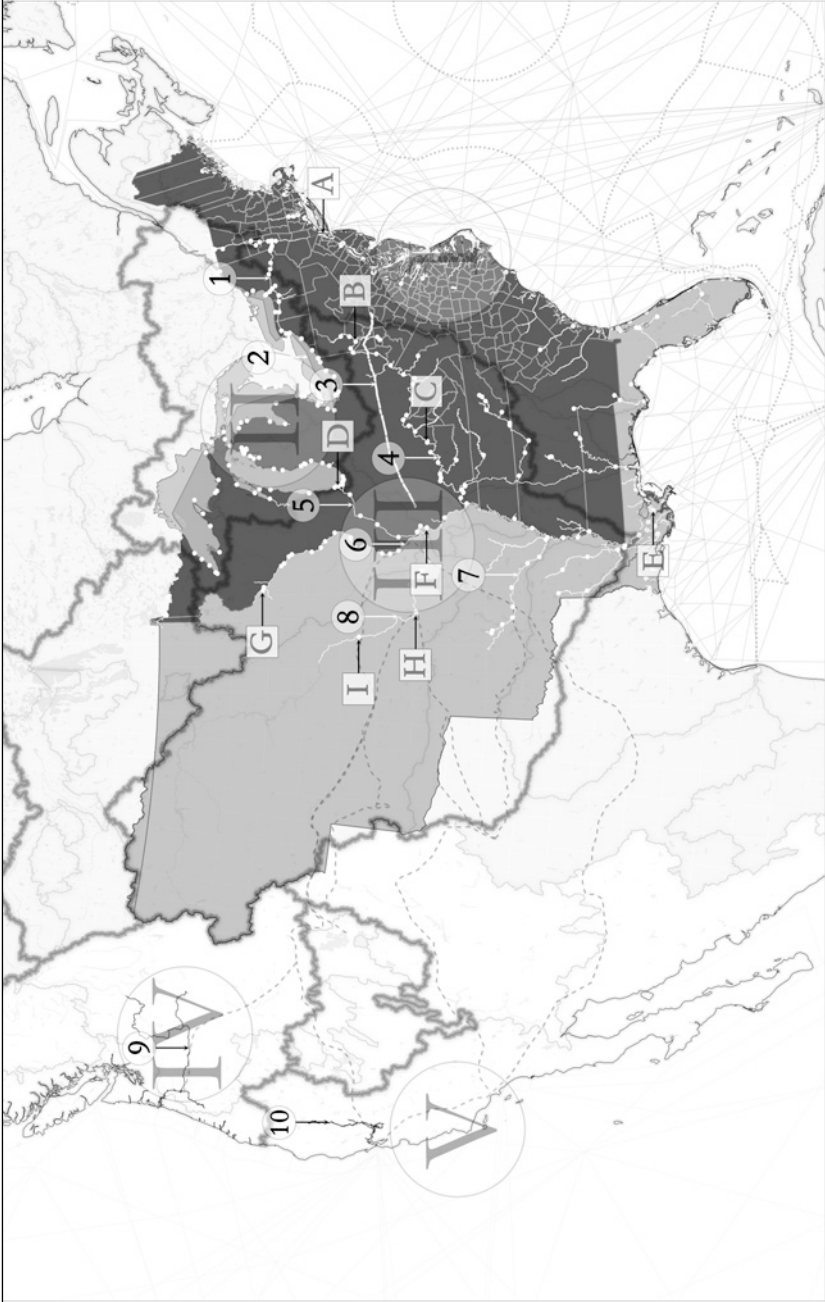
¹ Sources for Figure 13 assembled from various GIS data. The county boundaries represent the United States in 1790. The white rivers represent the contemporary navigable portions of United States inland waterways, and the white nodes represent ports and other inland waterway nodes. The dark territorial area represents the United States in 1789. The lighter grey territorial area represents territories added to the United States to 1829. The dashed lines are general locations of overland wagon roads, and the source for the Cumberland or National Road was adapted from the modern route of US Route 40, which closely followed the old road. Labeled features are major watersheds including I, Atlantic coastal watershed; II, Great Lakes watershed; III, Mississippi River watershed; physical features including 1) Erie Canal; 2) Great Lakes (Lake Ontario); 3) Cumberland or National Road; 4) Ohio River; 5) Illinois River; 6) Mississippi River; 7) Arkansas River; 8) Missouri River, 9) Columbia River, and 10) Sacramento River; and cities including A) New York City; B) Pittsburgh; C) Louisville; D) Chicago; E) New Orleans; F) St. Louis; G) Minneapolis; H) Kansas City; and I) Omaha.

Detroit and Chicago (“D”) in the Great Lakes coastal watershed. The Cumberland or National Road (“3”) was built to connect Washington, D.C. and the Potomac River in the Atlantic coastal watershed and parallel the Ohio River (“4”) in the eastern half of the greater Mississippi River drainage basin.

At the beginning of the ‘1st democracy,’ given territorial enlargements over other major drainage basins including the Columbia River basin (labeled “IV” in Figure 13) in Oregon Territory and the Pacific coastal watershed of California (“V”), territorial consolidation through transportation improvement projects was focused on connecting nodes and links not only among the United States Atlantic-oriented drainage basins but between major drainage basins oriented to the Atlantic and others oriented to the Pacific, with no natural water connection between them. The transcontinental railroads were built to connect inland waterway ports like St. Louis (“F”) and Minneapolis (“G”) in the Atlantic-oriented Mississippi River drainage basin and Chicago in the Atlantic-oriented Great Lakes drainage basin, across a vast interior to coastal ports like San Francisco and Seattle in the Pacific-oriented California coastal watershed and Columbia River basin.

There were two important differences between the within-Atlantic transportation improvement projects and the Atlantic-Pacific transportation improvement projects. One difference was that railroad projects replaced canal and road projects after 1850. Another difference was that after the 1860s the United States federal government exercised its authority over transcontinental railroad franchises, including the territorial buffers of public lands around the line of the railroads themselves, to the exclusion of the sovereign powers of the States. In 1888, the State of California took its dispute with the United States federal government to the Supreme Court over its sovereign right to tax the Central Pacific Railroad Company. The Supreme Court decided against the State of California and argued that the federal government’s constitutional jurisdiction over the Central Pacific Railroad Company, a public franchise granted by Congress and not by the States, therefore excluded the jurisdiction of the State.

By virtue of the 1888 Supreme Court decision, it was determined that the United States federal government exercised exclusive jurisdiction in a five-mile wide (later expanded) buffer zone around the line of the transcontinental railroads, to the exclusion of the powers of the sovereign States through which the railroad passed. Citing this same 1888 Supreme Court case, Secretary of State John Hay would argue two



13. Territorial consolidation and transportation improvements during the '1st republic' (1780s-1820s)

things in his diplomatic exchanges with Panamanian representatives in the summer of 1904. One was that the powers of the United States in the Canal Zone derived from the Constitution, not from a transfer of Panamanian sovereignty to the United States from the Republic of Panama. Secondly, Hay said that the federal government could extend its powers and authority – which were originally intended for transportation improvements to connect Atlantic and Pacific territories of the United States – to the Panama Canal and the five-mile wide Canal Zone in Panamanian territory because consent was given by Panama as part of the promises exchanged in the 1903 Hay-Bunau-Varilla Treaty.

B. EXPANSION OF THE POWERS OF THE FEDERAL GOVERNMENT OVER TRANSPORTATION DURING THE ‘1ST REPUBLIC’ (1780s–1820s)

1. *Wagon Roads and Canals to Connect the Atlantic Coastal Watershed with the Greater Mississippi River Watershed*

In 1800, at the beginning of the ‘1st republic,’ stagecoach service for flows of passengers and freight west from New York City inland from the coast was limited to a radius extending as far as Boston MA, Bennington VT, and Albany NY to the north; Richmond VA to the south; and the Appalachian Mountains to the west. Travel into the far interior of the United States beyond the Appalachian Mountains in the Mississippi River drainage basin relied on the use of navigable stretches of inland waterways like the Ohio River but would still require weeks. For example, from New York it took 10 days to travel by horse over the Appalachian Mountains to Pittsburgh PA (labeled as “B” in Figure 13) at the confluence of the Ohio River. It then took another 20 to 25 days to travel down the Ohio River before reaching the navigational barrier represented by the Falls of the Ohio in Louisville KY (“C” in Figure 13). It would then take another 28 to 30 days traveling on the Ohio River west from Louisville before reaching Cairo IL at the confluence of the Ohio River and the Mississippi River. Thus the total travel time from New York NY to Cairo IL on the inland waterway system was between 58 and 65 days. By sea, one could sail from New York City and reach Charleston SC in 10 days.² The trip from New

² Charles O. Paullin, *Atlas of the historical geography of the United States* (New York: Carnegie Institution of Washington and the American Geographical Society

York to New Orleans (“E” in Figure 13) required a minimum of 26 to 28 days sailing time.

As a result of the Louisiana Purchase in 1803 the overwhelming majority of the area of the United States was no longer ‘coastal,’ i.e., lying in a watershed draining directly to the coast, but ‘fluvial,’ i.e., lying in a watershed draining to a river, which then drained to the Gulf of Mexico or the Great Lakes and then to the Atlantic Ocean. By 1830, reaching the Mississippi River either overland from New York by way of the Ohio River, or by sea to New Orleans, took less than 14 days.³ The improvement in sea travel time between New York and New Orleans from 28 days to 14 days was due to the efficiency of steamship navigation over sail. However, the remarkable improvement in travel time between New York and Cairo IL from 65 days to 14 days was due to improvements in roads as well as canals and inland rivers as the United States consolidated its territories and built connections between its three major Atlantic-draining watersheds.

The first federal public land grant act by Congress to improve a river or construct a wagon road was on 30 April 1802, entitled “An act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and a State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes.” As a condition of its formation as the new State of Ohio, part of the proceeds of the public lands granted to Ohio were to be applied to mark out and construct public roads to the banks of the Ohio River. One of those public roads, the Cumberland or National Road (“3” in Figure 13), was financed through the sale of public lands, approved by an additional act of Congress on 20 March 1806. The Cumberland Road was constructed by the Army Corps of Engineers and began at the banks of the Potomac River in Cumberland MD in 1811, crossing the Appalachian Mountains to Wheeling WV and then on to the banks of the Ohio River by 1818. Congress approved extensions to the 1806 act and continued construction of the Cumberland Road, roughly parallel to the course of the Ohio River. Funding for

of New York, 1932), used several historical sources and empirical data on travel and inland commerce to map rates of travel in 1800, 1830, 1857, and 1930 from New York to selected cities then extrapolates to other parts of the United States based on comparable rates of travel.

³ Paullin (1932).

the road was eventually halted after reaching Vandalia IL in 1839, when Congress voted to instead fund railroads.

In 1808, the New York State Legislature approved a grant to survey a route for a canal linking the Hudson River directly with Lake Erie, as an alternative to a longer route to mouth of the St. Lawrence River. The Erie Canal (“1” in Figure 13), an “artificial river,” would take advantage of the naturally low topographic relief of the Mohawk Valley between the Catskill and Adirondack Mountains and also use the adjacent Mohawk River for its water supply. Congress authorized funding in 1812 for the estimated \$5 million project (\$78.1 million 2007 dollars) but delayed because of the War of 1812 with Britain. In 1817, Congress passed an act to finance construction of a canal between the Hudson River and Lake Erie called the Bonus Bill. The Bonus Bill was to have provided the State of New York with a partial \$1.5 million (\$23.4 million 2007 dollars) from the federal treasury but the bill was vetoed 3 March 1817 by President James Madison. Even though he had supported federal aid for internal improvements in the case of the Cumberland or National Road, Madison objected to the Bonus Bill on the grounds that it was an unconstitutional extension of power by the federal government over matters too broadly defined in terms of ‘common defense and general welfare,’ believing that such powers ought to remain exclusively with the States. The New York State Legislature itself approved financing for the Erie Canal using state funds and the first transits between Lake Erie and New York City began in October 1825.

An act of Congress approved 26 May 1824 granting land to the State of Indiana for a canal included a provision for a 90 foot right of way on either side of the line of the canal itself. On 2 March 1827 acts were passed to build canals that would connect navigable rivers in the States of Indiana and Illinois, i.e., the greater Mississippi River drainage basin, with Lake Michigan and the Great Lakes drainage basin. Land five miles (sections) in width was allotted on either side of the line of the canal to aid with construction. Alternate sections were reserved to the federal government. Although roads and canals were marked out under the authority of Congress, they still required the consent of the States through which they passed. As soon as the canal lines were fixed and land selections made, the States then had the power to sell the land. Canals were to remain public highways “for the use of the Government, free from toll or other charge whatever;

were to be commenced in five years, and completed in twenty years, or the States were bound to pay to the United States ‘the amount of any lands previously sold.’”⁴

C. EXPANSION OF THE POWERS OF THE FEDERAL GOVERNMENT
OVER TRANSPORTATION DURING THE ‘1ST DEMOCRACY’
(1830s–1870s)

During the period 1803 to 1852, there were at least 27 American explorations to determine the potential navigable extent of the greater Mississippi River to the west. The most notable was that of Captain Meriwether Lewis and Lieutenant William Clark between 1804 and 1806. Many of the 27 explorations of the West were sponsored by the federal government to discover if an interoceanic portage was possible between the Atlantic-draining headwaters of the Missouri River and the Pacific-draining headwaters of the Columbia River. Between 1792 and 1811, United States representatives made specific claims to territories and former possessions of Spain on the Pacific coast by reason of discovery, exploration, and settlement. United States claims extended as far north as 51° N encompassing much of the Fraser River portion of the greater Columbia River watershed, and as far south as 41° N to the present boundary of the State of California. In 1818, the United States claimed territory that overlapped with the claims of Britain in the greater Columbia River basin, and between 1818 and 1846 while negotiations between United States and British representatives were still ongoing, both sides agreed to joint jurisdiction over Oregon Country until the treaty of 15 June 1846 that settled the boundary line at 49° N and the middle of the Strait of Juan de Fuca.

The United States during the ‘1st democracy’ continued to consolidate its territorial gains in the greater Mississippi River drainage basin and the Great Lakes drainage basin. After the 1846 Oregon Treaty with Britain and the 1848 Treaty of Guadalupe Hidalgo with Mexico, the United States was also faced with consolidating territorial gains in the Columbia River basin, the Pacific coastal watershed of California,

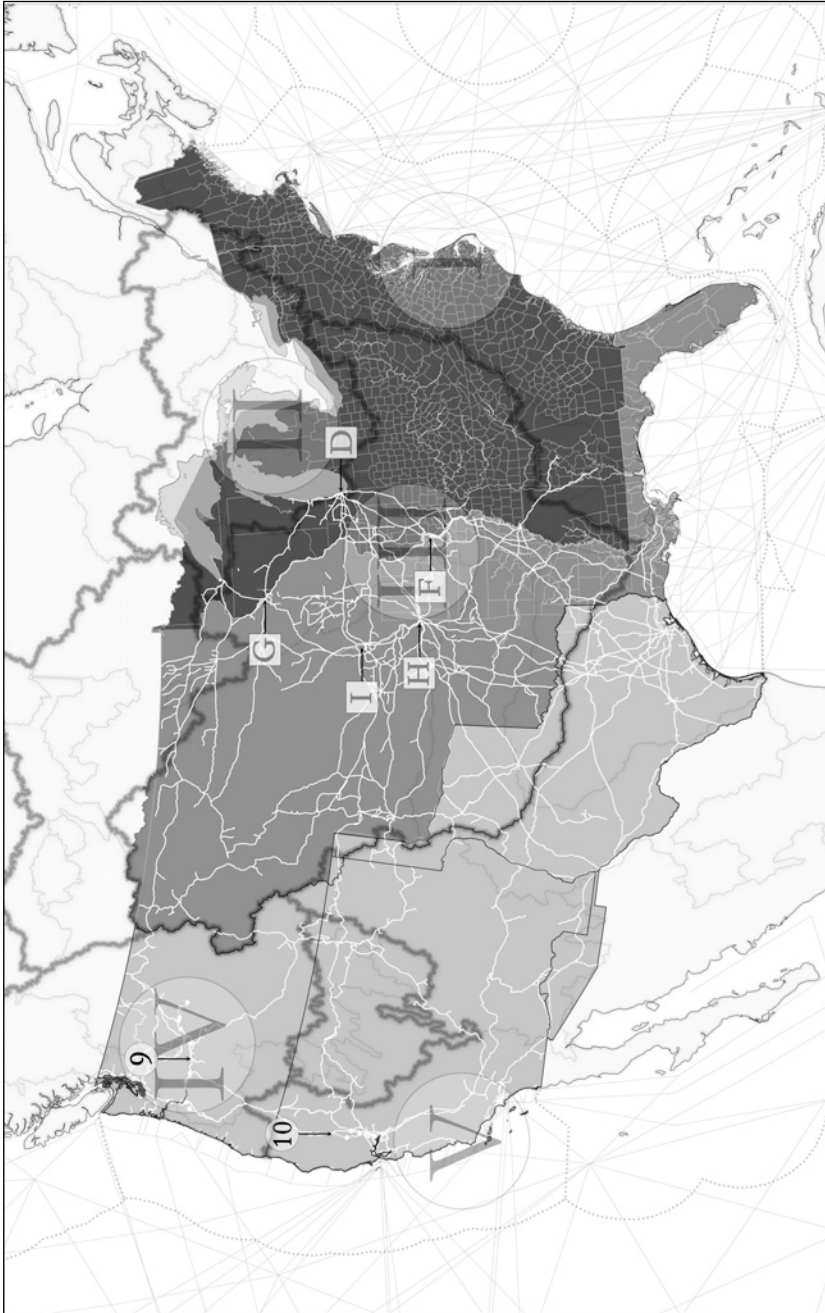
⁴ U.S. Congress, House, 45th Cong., 2nd Sess., Executive Document No. 73, *Report of the Lands of the Arid Region of the United States with a More Detailed Account of the Lands of Utah, with Maps by J. W. Powell* (Washington D.C.: Government Printing Office, 1878), 166.

and interior drainage basins in the West around Salt Lake City. Figure 14 (in comparison with Figure 13) shows the territorial gains of the United States across the continental divide during the '1st democracy' and the county boundaries of the United States in the year 1830. Figure 14 also shows a contemporary picture of the transcontinental railroad system that connects inland waterway cities within the Mississippi River drainage basin and the Great Lakes to Pacific inland waterway and coastal cities.

The Constitution gave Congress the power to regulate commerce between the States, powers by which it made public land grants for the construction of wagon roads and canals to connect the interior navigable rivers and lakes with the Atlantic and ultimately the Pacific coasts. The accepted procedure in Congress was to grant public lands for constructing wagon roads, canals, or railroads to the State or Territory within which that public land lay. It was then up to the State or Territory to take responsibility for assigning public lands to a road, canal, or railroad enterprise.

For instance, the first public land grant by Congress to a State or Territory for a completed railroad was on 3 March 1835 to the Territory of Florida. The corporation was given a right of way through public lands composed of a 30 foot buffer on either side of the proposed railroad line plus additional land where the railroad ended. More grants by Congress to the State of Louisiana followed, including a grant of public lands to the New Orleans and Nashville Railroad Company on 2 July 1836 that specified an 80 foot buffer on either side of the railroad line as well as additional lands for depots, watering-places, and workshops along the route. Other notable federal government public land grants in the greater Mississippi River basin were made on 8 August 1846 to improve the navigation of the Des Moines River in the Territory of Iowa and the Fox and Wisconsin Rivers in the Territory of Wisconsin, in order to unite them to other navigable water bodies. Alternate sections of public lands were granted within a strip of territory five miles on either side of the river to fund internal improvements.

Always a default statement as part of the conditions of the grant, it was declared that the "river should forever remain a public highway for the use of the Government, free from toll or other charge whatever; and provided that the Territory or State should not dispose of the lands at a price less than the minimum price of public lands." One of the facts about the Wisconsin grant approved on 8 August 1846 was



14. Territorial consolidation and transportation improvements during the '1st democracy' (1830s-1870s)

that only two days before, Congress had approved the admission of Wisconsin as a State.

1. *A Transcontinental Canal to Connect Atlantic-Draining Watersheds With Pacific-Draining Watersheds*

One interesting but impractical all-water transcontinental route that posed as a competitor to an interoceanic canal through Central America was a series of river improvements from the port of New Orleans up the Mississippi and Missouri Rivers to the Columbia River and the port of Astoria on the Oregon coast. On 4 March 1840, citizens from the State of Indiana signed a petition to Congress subtitled “The occupation and settlement of the Oregon Territory, and the construction of a road thereto; and remonstrating against the construction of the proposed ship-canal across the Isthmus of Darien.”⁵ In their petition, the citizens of Indiana expressed their concerns over the fact that American vessels trading in the Pacific Ocean and the Indian Ocean were exposed to great risk, expense, and natural dangers by having to sail around South America and around Africa, and also pointed out the political threats to American vessels from the maritime powers of Europe.

The petition asked the federal government to support an American canal wholly within the territory of the United States. The project would connect the “Oregon river” (Columbia River) to the head of navigation of the rivers of the West (Missouri and Mississippi) through grants of public lands by Congress “within five or ten miles of the navigable branch of the Oregon river and the portage road thereto.” The public land grants would contain special incentives and provisions of land for the mechanics and professional men whose labor would be required. Government agents would sign treaties of peace, amity, and commerce with Indian nations in Oregon Country and purchase land if necessary. Surveys of the Arkansas and Missouri Rivers would be required in order to locate and remove as many obstructions to navigation as possible. As for the news about recent petitions by other American citizens for action by the United States federal government to construct a ship-canal or other technology across the Isthmus of Panama

⁵ U.S. Congress, Senate, 26th Cong., 1st Sess., Senate Document No. 244, *The occupation and settlement of the Oregon Territory, and the construction of a road thereto; and remonstrating against the construction of the proposed ship-canal across the Isthmus of Darien*, 4 March 1840 (Washington D.C.: Government Printing Office, 1840).

(Darien), the citizens of the State of Indiana officially protested against it saying that though potential use of federal government funds might not be impractical in Panama, “such a work, being out of the limits of the United States, cannot be considered a safe investment of the people’s money, if constitutional...so long as our own inland resources of trade remain untried and unexhausted.”

2. *Transcontinental Railroads to Connect Atlantic-Draining Watersheds With Pacific-Draining Watersheds*

The period 1850 to 1871 is generally considered the era of federal public land grants for railroads rather than for wagon roads and canals.⁶ Although land grants for canals became less numerous and important than grants for railroads, between 1863 and 1869 there were still land grants made to the States of Wisconsin, Michigan, and Oregon for military wagon roads. A total of eight wagon road grants were administered in the same Congressional procedure as had always been followed, giving public lands in trust to the States who would then take responsibility for transferring the public land to private corporations.⁷

A different system of public land grants to railroads began 20 September 1850 with a grant to the State of Illinois, a system that differed very little until 1878. The terms of the grant included specific areas of land six sections (miles) in width on either side of the proposed line with stipulations of forfeiture in case of default. The terms of the grant also included an “indemnity” area extending fifteen miles on either side of the proposed rail line. Finally, public land grants provided that mail would be transported at prices Congress would direct. Nearly identical grants as that made to the State of Illinois in 1850 were made 10 June 1852 to the State of Missouri, 9 February 1853 to Arkansas, and 1856 to the States of Iowa, Florida, Alabama, Louisiana, Michigan, Wisconsin, and Mississippi. In some cases land was granted as the railroad progressed and it was left to the States to determine whether the land should be forfeited by the railroad for lack of progress. However,

⁶ Paullin (1932) counts 64 public land grants for railroads between 1850 and 1871, and 13 public land grants for wagon roads between 1823 and 1869 mostly in Michigan and Oregon.

⁷ Department of Commerce and Labor, Bureau of Corporations, *The Lumber Industry, Part I, Standing Timber* (Washington D.C.: Government Printing Office, 1913).

as late as 1862 there were still about 20 railroads that though uncompleted still exercised their use of public lands, a situation that eventually required a ruling by the Supreme Court.

Interest by Congress to build a transcontinental railroad had begun as early as 1842, and interest peaked again in 1845 with respect to connecting Lake Erie by rail with the Pacific coast. By 1862, the War Department had completed a number of surveys and explorations of the American West to determine the most practicable transcontinental route, which included the five routes currently followed by the Northern Pacific, Union Pacific, Denver and Rio Grande, Santa Fe, and Southern Pacific Railroads. However, public land grants directly from Congress to private enterprises were considered an unconstitutional invasion of State's rights. In order to continue the Congressional procedure of public land grants to the States it required, firstly, organizing Territorial and ultimately State governments in the sparsely settled western interior.

An act of Congress approved 1 July 1862 set a new precedent. A corporation named the Union Pacific Railroad Company was granted a public franchise directly by Congress. In other words, the grant was made directly from the federal government to a corporation and not to a State to be held in trust and then administered. The 1862 grant was not limited to any particular State but was "transcontinental" in character from the Missouri River to the Pacific Ocean. The grant was for a buffer of territory five miles on either side of the proposed rail line from the banks of the Missouri River to the Pacific Ocean, as well as other necessary land for rail and telegraph stations, terminals, warehouses, and workshops. By an act 2 July 1864, the buffer around the rail line was increased from five to ten sections (miles), increasing the total land grant from ten to twenty miles wide. The new procedure required only that the company file a map for a general or proposed route before the line was definitely located. Upon the filing of the map to the Secretary of the Interior, lands were officially withdrawn for use by the railroad. A standard clause was inserted into every grant, "And the said road shall remain a public highway for the use of the Government, free from toll or other charge upon the transportation of troops or other property of the United States."⁸ This clause applied to use of the railroad line by government rail cars carrying government prop-

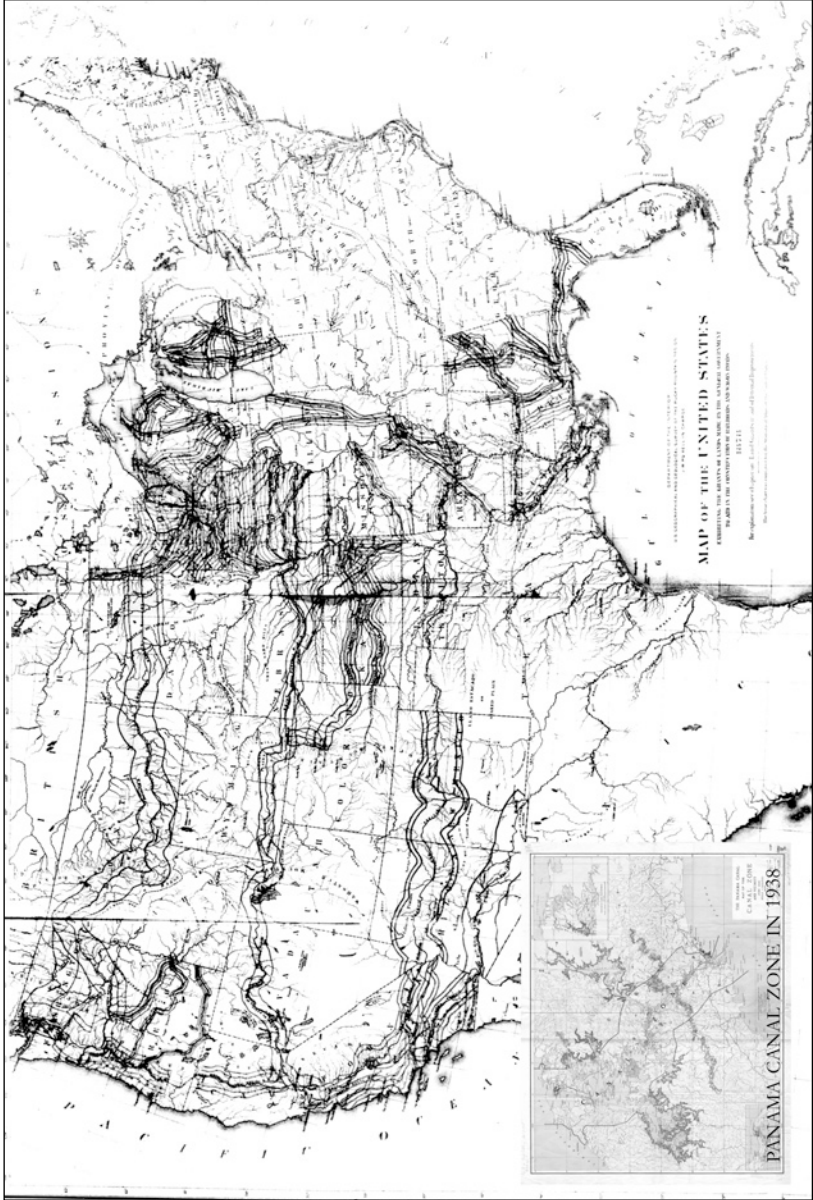
⁸ U.S. Congress (1878, 180).

erty or troops, not in terms of government property or troops being transported in the company's rail cars at the company's expense.

After the 1 July 1862 Union Pacific grant, the same procedure was followed to make public land grants to other transcontinental railroads to the north and to the south. A grant was made on 1 July 1864 to the Northern Pacific from Lake Superior to Puget Sound, with double its normal land area in the western Territories and provision for an area of indemnity. Another grant was made 27 July 1866 for the Atlantic and Pacific from Springfield MO to Santa Barbara CA, as well as the Southern Pacific lines from Oregon and California westward. On 3 March 1869, a grant was made for the Denver Pacific railroad. Finally, on 3 March 1871, grants were made for branch lines of the Southern Pacific and Texas and Pacific railroads from Marshall TX to San Diego CA. In the case of smaller grants, or if special circumstances applied, public lands continued to be granted directly to the States until 1871. For instance, in the case of the Texas Pacific railroad line, as a result of the special conditions of its entering the union, the State of Texas maintained sole responsibility for transferring public lands within its boundaries. For the rest of the Texas Pacific railroad line through New Mexico, Arizona, and California the federal government took responsibility for transferring the remaining public lands directly.

Figure 15 is an 1878 map showing land grants made by the federal government for the construction of railroads and wagon roads, with special emphasis on the railroad land grants west of the Mississippi River.⁹ What the map illustrates in a single glance is the fact that the western United States was riddled with the equivalent of 'Canal Zones,' five-mile wide primary buffers on either side of a proposed transcontinental transportation improvement within which the federal government exercised its powers to the exclusion of the power of sovereign States, like California (1850). The map also shows proposed locations of lines then not built as well as some forfeited routes, almost all of which were due to failure to construct the line during the specified time limit. The minimum extent of the public land grant was its primary limits, five miles on either side of the rail line. The maximum extent of a public land grant was its "indemnity limits," within which

⁹ Source of map is J. W. Powell in U.S. Congress (1878) cited above. See another version of this map in Paullin (1932).



15. Transcontinental railroad land grants, equivalent to 'Canal Zones' in the West

the railroad could select vacant alternate sections to make up for lands previously reserved or disposed.

Not including canals or wagon roads, railroad companies would receive more than 215 million acres (355,000 square miles, or seven times the State of Pennsylvania), only about six thousand square miles less than the original thirteen colonies, resulting in 15,000 miles of railroad.¹⁰ Nonetheless, by 1878 four public land grants for railroads were forfeited and twenty grants lapsed due to non-compliance with the terms of the grant. There was a great deal of public controversy over railroad company practices in terms of continued use of public lands despite violating the terms of federal contracts. Special acts of Congress from 1884 to 1889 forfeited several railroad grants until a blanket act was passed 29 September 1890 forfeiting public land grants on all portions of railroads that were not constructed. Chief among the forfeitures were the Texas Pacific grant in southern New Mexico, Arizona, and California and part of the Atlantic and Pacific railroad in northeastern New Mexico and California.

The financial panic of 1857, the Civil War (1861–1865), and the financial panic of 1873 may have contributed to the financial undoing of railroad projects, in which fully half or 40 out of the 80 subsidized railroads were not completed in the time or extensions established by Congress. However, for the most part railroad failures were due to “reckless and fraudulent management.”¹¹ Government officials were accused in at least six different scandals involving alleged bribery of Congressional, State, and Territorial officials by railroad companies in exchange for things like securing public land grants or preventing grants to competitors. Among the more infamous cases were those in Minnesota and Wisconsin involving the Northern Pacific railroad’s grant in 1867, the Texas and Pacific grant in 1871, and the *Credit Mobilier* scandal involving fraudulent use of funds meant for the construction phase of the Union Pacific railroad. Some investigations even led to the resignation of at least three members of Congress.¹²

The fact that 40 out of the 80 public franchises granted by Congress for railroads failed or had to forfeit their public lands due mainly to fraudulent mismanagement of construction funds provides

¹⁰ Bureau of Corporations (1913).

¹¹ Bureau of Corporations (1913, 248).

¹² Bureau of Corporations (1913, 244 n. 2).

an interesting baseline with which to compare the fate of the French Panama Canal Company (*La Compagnie Universelle du Canal Inter-oceanique*). Nonetheless, the New French Panama Canal Company was not compelled to forfeit its franchises with Colombia as a result of non-compliance with its contract, but instead was allowed to extend the terms of its contract three times.

D. EXPANSION OF THE POWERS OF THE FEDERAL GOVERNMENT OVER OTHER BUFFER ZONES

1. *Forested Watersheds Adjacent to Navigable Rivers or Impacting Water Resources*

The expansion of the powers of Congress to withdraw public lands in a buffer zone of a certain width around the line of railroads was related to the expansion of the powers of Congress to withdraw forested watershed lands in a buffer zone around navigable rivers and water reservoirs in order to protect public water resources. A key piece of legislation was the Forest Reserve Act of 3 March 1891, signed by President Benjamin Harrison essentially to repeal the Timber Culture Act of 1873. Another legislative act, the Forest Management Act of 1897, soon followed.

A two-decade long debate led to passage of the Forest Reserve Act of 1891 dealing with cases of fraud in grants for use of public lands by the railroads. For example, a timber case was brought against the Northern Pacific railroad because it had abused its rights to trade right of way sections for rich timber lands. Recognition that deforestation could increase the risk of fires and decrease water resources available for navigable rivers and public water supplies elevated protection of forested watersheds to a major national concern.

Congress had not been opposed to setting aside forested public land to preserve natural aesthetic resources, such as Yellowstone National Park in 1872, but recreational use or wilderness preservation were secondary issues. The driving force behind Congressional acts like the Forest Reserve Act of 1891 was to set aside forested or mountain watersheds adjacent to navigable rivers and water reservoirs as public lands in order to protect and preserve water resources. The Forest Reserve Act and the Forest Management Act are relevant to the Panama Canal because it gave Congress a constitutional basis for exercising additional jurisdiction over the Panama Canal's greater

watershed beyond the boundaries of the Canal Zone (see Canal Zone in Figure 17 below).

E. THE 1888 SUPREME COURT DECISION IN CALIFORNIA
V. CENTRAL PACIFIC RAILROAD COMPANY

1. *Federal Constitutional Powers over the Transcontinental
Railroads to the Exclusion of the States*

The Republic of Panama has engaged in what could easily be characterized as a form of State's rights dispute over to what extent the United States federal government can exercise its constitutional powers and authority in the Canal Zone to the exclusion of sovereign rights exercised by the Republic of Panama. In fact, there is a direct association between Panama's State's rights dispute with the powers of the United States federal government over the Panama Canal and Canal Zone, and the State of California's infamous and bitter disputes with the United States federal government over the transcontinental railroads.

2. *A State's Right to Tax the Value of a Public Franchise*

In the Supreme Court's 30 April 1888 decision in *California v. Central Pacific Railroad Company*, the court cited the powers of Congress to regulate commerce in Article I, Section Eight of the Constitution. Congress had exercised its powers to a very limited extent in the past, the only exceptions being the Cumberland or National Road, until authority over transportation improvements into the interior crossing the domain of several States was required as a result of the territorial enlargement of the United States. The Supreme Court supposed that unless Congress exercised sole jurisdiction, no one authority would be able to regulate the consistent use, operation, and maintenance of the vast transportation system in its entirety.

The question before the Supreme Court was, assuming the Central Pacific Railroad Company has "franchises" granted by the United States federal government to serve national purposes, can the State of California legitimately tax those public franchises? The judgment of the Court was that the State of California might tax the outside visible property of the company within the boundaries of the State, but as for public railroad franchises that served national purposes connecting the

Atlantic and Pacific coasts of the United States, the State of California “can neither take them away, nor destroy nor abridge them, nor cripple them by onerous burdens,” nor tax them.

The Court explained its answer with respect to the question, “What is a franchise?” Based on feudal traditions in which a royal privilege or prerogative of the King subsists in the hands of one of his subjects, a franchise is “a right, privilege, or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest, and for the public security.” Such rights, privileges, or power of public concern exist in every society, the Court suggests, saying that in the United States franchises are under the authority of the legislative branch of government. The Court lists several examples:

No private person can establish a public highway or a public ferry or railroad, or charge tolls for the use of the same without authority from the legislature, direct or derived. These are franchises. No private person can take another’s property, even for a public use, without such authority, which is the same as to say that the right of eminent domain can only be exercised by virtue of a legislative grant. This is a franchise. No persons can make themselves a body corporate and politic without legislative authority. Corporate capacity is a franchise. The list might be continued indefinitely.

In light of the nature of franchises, the Court asks how it can be possible that a franchise granted by the Congress of the United States can be subject to taxation by a State without its consent. Taxation is a burden that “may be laid so heavily as to destroy the thing taxed or render it valueless,” which can be arbitrary and with no limitations whatsoever except those set by the taxing power itself based upon its own estimation of the value of the franchise. Furthermore, the Court says that the value of a franchise to the wider public good it serves is not something measured like property. The Court stated:

The taxation of a corporate franchise merely as such, unless pursuant to a stipulation in the original charter of the company, is the exercise of an authority somewhat arbitrary in its character. It has no limitation but the discretion of the taxing power. The value of the franchise is not measured like that of property, but may be ten thousand or ten hundred thousand dollars, as the legislature may choose. Or, without any valuation of the franchise at all, the tax may be arbitrarily laid. It is not an

idle objection, therefore, made by the company against the tax imposed in the present cases. It only remains to consider whether the Southern Pacific Railroad Company, as well as the Central Pacific, was invested with any franchises derived from the government of the United States. Of this we think there can be no question.

3. *Social Saving and the Value of a Public Franchise*

A social saving(s) can be used as an estimate of the public good a transportation technology generates, measured in dollars as a proportion of a nation's gross national product (GNP). A social saving estimates the difference between a current situation and what people either alone or as part of organization would have had to spend in order to conduct their customary business activities in a hypothetical world. In the hypothetical world all things can be assumed to be equal except for the absence of a certain transportation technology.

The social saving methodology has been used mostly to compare massively different situations, like history as we know it versus an entirely different world in which the transcontinental railroads did not exist and instead Congress only made grants for roads, river improvements, and canals. In his tour de force calculations, the economic historian Robert W. Fogel stirred controversy when he developed his social savings methodology to estimate that the American transcontinental railroads would have accounted for less than five percent of United States GNP in the year 1890, a provocative suggestion that was intended to challenge the assumption the railroads were indispensable to the growth of the American economy.¹³

Fogel's methodology has been applied to the Panama Canal for the year 1924, similarly attempting to make a provocative suggestion that the public social savings of the Panama Canal for the United States would have paid off the initial investment by Congress, estimated at \$372 million in 1924 dollars, within a single year.¹⁴ The

¹³ See Robert W. Fogel, "A quantitative approach to the study of railroads in American economic growth: a report of some preliminary findings" *Journal of Economic History* 22 no. 2 (1962): 163-197. See also Robert W. Fogel, "The new economic history I: Its findings and methods," *Economic History Review* 19 no. 3 (1966): 642-656; and Robert W. Fogel, "Notes on the social saving controversy," *Journal of Economic History* 39 no. 1 (1979): 1-54.

¹⁴ For review and criticism of Fogel's famous calculations of the social savings of the American transcontinental railroads see Colin M. White, "The concept of social savings in theory and practice," *Economic History Review* 29 no. 1 (1976): 82-100; and

public social saving estimate for the Panama Canal in the year 1924 are summed together based on simplifying assumptions about the direct effects of the Panama Canal, i.e., potential savings due to lower shipping costs because of shorter distances, and the indirect effects of the canal, i.e., potential savings due to higher volumes of foreign and domestic trade and lower freight rates due to greater competition to the railroads.

Like Fogel's original estimates, most of the public social savings are the result of indirect effects. The difficulty with such calculations is that they are entirely dependent upon a few key simplifying assumptions, offered completely absent of a sensitivity analysis demonstrating how alternate but equally likely assumptions about one or two key variables could completely change the results. Not to mention, social savings calculations use assumptions about hypothetical worlds that challenge the historical imagination to say the least. For instance, notwithstanding the dreams of the citizens of Indiana who in 1840 petitioned Congress for a system of canals to link the Columbia River with the Missouri and Mississippi Rivers, why would Congress have been more likely to support canals and roads instead of railroads after 1850 when history demonstrates the exact opposite was true?

Regardless, though an interesting exercise, a social saving estimate is irrelevant. The Supreme Court decision in 1888 was not about by what method a State could presume to estimate the value of a transportation franchise running through its borders in order to tax it, but rather whether a State had any right at all to tax franchises granted by Congress for transcontinental transportation. The 1888 decision of the Supreme Court in *California v. Central Pacific Railroad Company* was that regardless of speculation about the commercial value of a franchise for public welfare or the common defense, Congress had the constitutional authority to grant franchises for transcontinental railroads, but the States do not have the authority to tax those franchises without the consent of Congress.

Paul A. David, "Transport innovation and economic growth: Professor Fogel on and off the rails," *Economic History Review* 22 no. 3 (1969): 506–525. For specific applications of Fogel's methodology to the Panama Canal see both Maurer and Yu (2008) and Hutchinson and Ungo (2004), who though not citing one another use the same method. The inference is that the United States federal government constructed the Panama Canal as some sort of foreign investment opportunity.

F. CONCLUSION

With respect to most important details about matters of governance and jurisdiction, the Panama Canal owes its much misunderstood structure and function to American experience with the transcontinental railroads, including everything from the problem of foreign immigrant labor to the bitter State's rights disputes over the power to tax the railroad; requiring a landmark decision between the government of the State of California and the United States federal government in 1888. Unfortunately for the State of California, their State's right dispute could only be leveraged as far as the Supreme Court rather than, for instance, in the court of world opinion. Replace a public franchise for a transcontinental railroad passing through the State of California – with a public franchise for an interoceanic canal passing through the Republic of Panama, and one understands a great deal more about the Panama Canal and Canal Zone than has generally been offered.

The fact that Secretary of State John Hay would invoke the 1888 Supreme Court decision in *California v. Central Pacific Railroad Company* highlights the fact that the disagreement between the Republic of Panama and the United States federal government over the Panama Canal and Canal Zone was really a States' rights dispute. Panamanian political leaders in the port cities had long and bitter experiences advocating States' rights against centralizing forms of government established by the constitutions of Great Colombia (1819–1831), the Republic of New Granada (1831–1858), and the Republic of Colombia after 1886. Even Panama's sovereign upgrade from a subordinate entity of the Republic of Colombia to an independent sovereign nation in 1903 represents a situation oddly comparable to Wisconsin's upgrade from a Territory to a State in August 1846. Wisconsin became a State in order to administer public lands granted within a strip of territory five miles on either side of the Fox and Wisconsin Rivers for internal transportation improvements. After the 1846 Bidlack-Mallarino Treaty, Panamanians in the port cities engaged in a State's rights dispute simultaneously with the Republic of New Granada and the United States federal government, which through the 1846 treaty interposed itself between the federal State of Panama and its attempts to charge taxes and fees on passengers, freight, and mail conveyed by the Panama Railroad.

CHAPTER SEVEN

INTEROCEANIC TRANSPORTATION AND THE TWO PANAMAS UNDER THE '1ST DEMOCRACY' (1830S–1870S)

A. AMERICAN TERRITORIALITY OVER INTEROCEANIC TRANSPORTATION DURING THE '1ST DEMOCRACY' (1830S–1870S)

The '1st republic' (1780s–1820s) was the period of territorial enlargement in the Atlantic "world." The beginning of the '1st democracy' (1830s–1870s), also known as the Middle Period, Civil War, and Reconstruction, was also a period of territorial enlargement into the Pacific "world," but it was mostly a period of consolidation of inland territories through internal transportation improvements. Adding territory on the Pacific side of the continental divide led to expanded federal powers over transportation improvements for the general welfare and common defense of the United States, which had become two coasts separated by a continent but with no natural water connection between them.

With the exception of the treaty with Russia for the purchase of Alaska in 1867, most of the territorial enlargement of the United States into the Pacific "world" occurred during the tenure of Democratic President James K. Polk (1846–1850). The 1846 Oregon Treaty with Britain resolved the border dispute over Oregon Country, and Oregon Territory (1848–1853) became a territorial possession of the United States. As a result of the Mexican-American War (1846–1848) and the 1848 Treaty of Guadalupe Hidalgo, Mexico was forced to accept the loss of Texas (1845) and the territories of Upper California (*Alta California*) and New Mexico (*Nuevo México*). A final adjustment between Mexico and the United States was signed in 1853, an agreement called the Gadsden Purchase, which added a section of territory possessing certain physiographic advantages for a southern transcontinental railroad route. Still, in the absence of transcontinental railroads before 1869, overland travel for American passengers and troops on wagon roads from gateway cities like St. Louis or Kansas City to Oregon Territory or California took at least three to five weeks.

On 3 March 1835, under the tenure of Democratic President Andrew Jackson (1829–1837), a Senate resolution about a treaty with New Granada was adopted:

Resolved, That the President of the United States be respectfully requested to consider the expediency of opening negotiations with the Governments of Central America and New Granada for the purpose of effectually protecting, by suitable treaty stipulations with them, such individuals or companies as may undertake to open a communication between the Atlantic and Pacific oceans by the construction of a ship canal across the isthmus which connects North and South America, and of securing forever by such stipulations the free and equal rights of navigating such a canal to all such nations on the payment of such reasonable tolls as may be established to compensate the capitalists who may engage in such undertaking and complete the work.

The resolution illustrates that the policy of the United States during the '1st democracy' was avoidant when it came to an interoceanic canal owned and operated by the federal government in foreign territory. At the beginning of the '1st democracy' the constitutionality of the powers of Congress over railroads and canals was still uncertain when it came to the reserved powers of the States. Any potential use of the powers of Congress over an interoceanic canal in a foreign territory was beyond consideration. Interoceanic communication by rail or canal or other means in foreign territory was left to private enterprise, aided by creating a regime of neutrality and free transit in treaties with interoceanic communication-adjacent sovereign states in Latin America and non-adjacent maritime powers in Europe.

The policy of the '1st democracy' was to prevent powerful European governments from gaining exclusive control and influence over interoceanic communication through Latin America, but avoid entangling alliances with Latin American nations. Presidents during the '1st democracy' asserted that the United States had an equal stake in protecting the free and neutral use of interoceanic communication across Central America. That policy was implemented in the 1850 Clayton-Bulwer Treaty between the United States and Britain, which stated that neither nation would attempt to enforce exclusive control over use of any form of interoceanic communication across the isthmus that separated North and South America. Presidents during the '1st democracy' also asserted they would avoid entangling defensive alliances with newly independent Latin American nations against Europe in exchange for exclusive American privileges, an avoidant posture demonstrated by cautions articulated during ratification of the 1846 Bidlack-Mallarino Treaty and the disavowal of the 1849 Hise Treaty with Nicaragua.

Under the protective umbrella of the 1846 Bidlack-Mallarino Treaty between the United States and New Granada, in 1848 the Panama

Railroad Company acquired an exclusive railroad franchise from the Republic of New Granada. Including the Panama Railroad Company's contract, there were at least 32 international agreements concerning rights, privileges, and grants of land for interoceanic canals or railroads during the period of the '1st democracy.' Of the 32 agreements, 25 were between adjacent and non-adjacent governments, 6 were between adjacent governments and private enterprises, and 1 was between two non-adjacent governments (1850 Clayton-Bulwer Treaty).¹

Of all the agreements signed during the period of the '1st democracy,' none stands out more than the 1846 Bidlack-Mallarino Treaty between the United States and the Republic of New Granada. Whereas the entangling alliance in the 1849 Hise Treaty with Nicaragua was disavowed, the 1846 Bidlack-Mallarino Treaty was ratified. The 1846 Bidlack-Mallarino Treaty was a remarkable exception to the general policy during the '1st democracy' to avoid entangling alliances.

1. *The 1846 Bidlack-Mallarino Treaty*

The Bidlack-Mallarino Treaty, also known as the Treaty of Peace, Amity, Navigation and Commerce, was signed in Bogota on 12 December 1846 and ratified by the Democratic majority Senate of the 29th Congress on 3 June 1848. Article 35 of the treaty was added by representatives of New Granada just four days before the treaty was signed. Article 35 stated the United States would guarantee New Granada's sovereignty over its territory in Panama in exchange for exclusive rights of free transit across the territory of Panama:²

And, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages and for the favours they have acquired by the 4th, 5th and 6th articles of this treaty, the United States guarantee positively and efficaciously to New Granada, by the present stipulation, the perfect neutrality of the before mentioned Isthmus, with the view that the free transit from the one to the other sea, may not be interrupted or embarrassed in any future time while this treaty exists; and in consequence,

¹ See Gerstle Mack, *The land divided* (New York: Alfred A. Knopf, 1944) for surveys, treaties, and other events of interest to the interoceanic canal across Central America, whether in Nicaragua, Panama, or elsewhere, which is fairly exhaustive.

² See (U.S. Congress 1977b, 362). See also William M. Malloy, comp., *Treaties, conventions, international acts, protocols, and agreements between the United States and other powers 1776-1909*, 2 vols. (Washington, D.C.: Government Printing Office, 1910), 147. See also David Hunter Miller, *Treaties and other international acts of the United States of America* (Washington, D.C.: Government Printing Office, 1931), 157.

the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.³

1.1 *Every Step and Misstep Towards an Entangling Alliance*

A sample of candid reflections by early American and Colombian political decision makers from almost 600 diplomatic letters between 1831 and 1860 reveals interesting details about why American representatives signed and ratified the 1846 Bidlack-Mallarino Treaty, as well as some of the causes of civil unrest in the Panamanian port cities.⁴ One can look at every step and misstep of diplomatic maneuvering between representatives of the United States and Colombia leading up to the 1846 Bidlack-Mallarino Treaty and probably conclude the signing of the treaty was a mistake. Firstly, terms very similar to Article 35 had been unsuccessfully offered by Colombian representatives at least twice before. Secondly, the American representative Benjamin A. Bidlack had just arrived in Bogota to serve his duties and was acting without up-to-date instructions. Thirdly, Bidlack agreed to the controversial Article 35 even though it was introduced into the treaty at the last minute.

On three separate occasions in May 1835, April 1843, and December 1846, Colombian representatives insisted on an entangling alliance as a condition for eliminating reciprocal import duties. Colombian representatives were sharply warned after the first instance in May 1835. Speaking on behalf of President Andrew Jackson, Secretary of State John Forsyth wrote that the apparent attempt to enter the United States into “entangling alliances” was “peculiarly unfriendly” given that avoiding such alliances was the “cherished” foreign policy of the United States. Forsyth’s point of view was that a reciprocal lowering of duties was offer enough and that Colombia’s demands for a political alliance were not only unfriendly but unreasonable, since the United States had already recognized Colombia’s independence from Spain,

³ U.S. Congress (1977b, 8–9). See also Gantenbein (1971, 6).

⁴ Of the sample of 584 letters in the Diplomatic Correspondence set, 77 had direct bearing on American concerns about British interests in Panama, Panamanian secession, and the 1846 Bidlack-Mallarino Treaty. References to diplomatic correspondence include the author, the recipient and the date sent and unless otherwise cited are from William R. Manning, comp., *Diplomatic correspondence of the United States: Inter-American affairs, 1831–1860. Vol. 5: Chile and Colombia* (Washington, D.C.: Carnegie Endowment for International Peace, 1935).

the only country Forsyth considered as possibly threatening Colombian territory. Another instance occurred in April 1843 during similar commercial treaty negotiations. Colombian representatives seemed to want exactly the same sort of thing as in May 1835 but apparently chose not to insist on an "alliance" by name.

An entangling alliance was offered at least a third time in December 1846 to the newly arrived American representative, Benjamin A. Bidlack. According to Bidlack, Colombian Minister of Foreign Affairs Manuel María Mallarino advised him to agree to a guarantee of sovereignty as a special "condition" for the commercial privileges in the treaty. Otherwise, Mallarino said, his government would be obliged to grant the same sorts of commercial privileges to the British – unconditionally – because of an existing trade agreement with Britain. Bidlack responded that a guarantee "might be considered very little short of a treaty of alliance, and that such treaties were inconsistent with the established and cherished policy of the United States." However, Bidlack accepted Mallarino's explanation for why it was, technically, not an entangling alliance. Mallarino said that the treaty was not a "general alliance" but "only a Gurantee [sic] limited to the Isthmus, such as would not be at all inconsistent with the early declared policy of the United States in relation to the South American Republics as reiterated by President Polk to the Congress of 1845.⁶" Mallarino also offered a number of rationales for the preventive merits of the treaty against British designs over Latin American territory. Nevertheless, the formal protocol to the treaty dated 9 December 1846 stated that the treaty "might quoad hoc be considered at least a quasi alliance; and, to some extent, contrary to the policy of the United States."

1.2 *Senate Advice and Consent to Ratification of an Entangling Alliance*

The Bidlack-Mallarino Treaty was introduced into the United States Senate by President James K. Polk on 10 February 1847 for advice and consent to ratification. Discussion of Article 35 figured highly in Polk's message.⁵ Polk stated:

⁵ According to Miller (1931, 158) Secretary of State James Buchanan wrote the presidential message that Polk presented to the Senate. See also (Manning 1935, 360 *passim*).

No person can be more deeply sensible than myself of the danger of entangling alliances with any foreign nation. That we should avoid such alliances has become a maxim of our policy consecrated by the most venerated names which adorn our history and sanctioned by the unanimous voice of the American people. Our own experience has taught us the wisdom of this maxim in the only instance, that of the guaranty to France of her American possessions, in which we have ever entered into such an alliance. If, therefore, the very peculiar circumstances of the present case do not greatly impair, if not altogether destroy the force of this objection, then we ought not to enter into the stipulation, whatever may be its advantages. The general considerations which have induced me to transmit the treaty to the Senate for their advice may be summed up in the following particulars.

If Polk himself said that Article 35 of the Bidlack-Mallarino Treaty was an entangling alliance, why would he endorse the treaty for Senate consideration? Why did more than two-thirds majority of the Senate vote for ratification?

It is not a revelation to suggest that Polk had a more territorially expansionist, i.e., aggressively preventive, agenda than many of his Democratic peers. Polk favored a policy of annexing the remainder of Spain's former territories in the Pacific "world" by force so that they would not fall into British hands, and perhaps also to court the political support of Southern Democrats looking to expand the institutions of slavery to new western territories. Polk distinguished himself from other Democratic leaders by his willingness to threaten war with Britain over Oregon Country, and his willingness to go to war with Mexico over Texas, Upper California, and New Mexico.⁶ Nonetheless, Polk provided four reasons why the Senate should not vote against the treaty. First, Polk said Article 35 benefited the United States more than New Granada. Second, Polk insisted that because Article 35 applied only to the Isthmus of Panama and not all of New Granada it did not violate the policy of avoiding entangling alliances with foreign nations. Third, Polk said that Article 35 was not an alliance for a political object but for a purely commercial purpose, the pursuit of which all maritime nations share.

The fourth and most elaborated of Polk's rationales is that the United States took on an obligation in Article 35 not for itself alone

⁶ Mary Wilhelmine Willams, *Anglo-American isthmian diplomacy, 1815-1915* (Washington, D.C.: American Historical Association, 1916), 53, said that the 1846 Bidlack-Mallarino Treaty was, by design, part of President Polk's expansionist agenda.

but for the entire maritime world. In fact, Polk assured Congress that other non-adjacent powers like Britain and France would sign similar neutrality agreements with New Granada. The neutrality of the Isthmus of Panama had to be defended in the interests of civilization and commerce; otherwise the freedom to use an interoceanic canal would be subject to the whim of hostilities between the great maritime powers. Guaranteeing New Granada's sovereignty over Panama thereby guaranteed that the territory would not be annexed by a non-adjacent maritime nation, and was a means to prevent conflicts between European powers and the United States over exclusive control. New Granada would never consent to give the territory up to become a neutral state and even if it would, Polk says, the Isthmus of Panama "is not sufficiently populous or wealthy to establish and maintain an independent sovereignty." Polk said that if the agreement was not ratified by the Senate, the United States would not have the distinction of being the first non-adjacent nation to protect the neutrality of interoceanic communication across Panama.

2. Neither European Governments nor the United States Should Have Exclusive Control

The United States during the regime of the '1st democracy' expanded the constitutional powers of the federal government to grant railroad franchises across western United States territories, and simultaneously, attempted to contain European governments from expanding their extraterritorial powers over interoceanic communication across Latin American nations. In other words, the policy of the '1st democracy' was to consolidate its Pacific "world" with its Atlantic "world" through transportation improvements both internally and externally. The foreign policy of the '1st democracy' was to prevent European governments from maneuvering with one another for exclusive control over an interoceanic canal or railway between North and South America as a means of consolidating their global maritime empires, as had been the case around the Mediterranean entrance to the Suez Canal. The general détente between the United States and European powers was that no non-adjacent power, including the United States, would annex or establish fortifications around the line of an interoceanic canal or railway in foreign territory, and that construction and operation would be left to private enterprises protected by joint guarantees of free use and neutrality.

2.1 *The Disavowal of the 1849 Hise Treaty with Nicaragua*

On 30 June 1847, two years before the Hise Treaty was signed, Britain proclaimed contested territory on the Caribbean coast of Nicaragua in the name of the independent Mosquito Kingdom. Britain had a long-standing formal relationship with the Mosquito Kingdom going back to the eighteenth century. It is probable, therefore, that representatives of Nicaragua negotiating the terms of the 1849 Hise Treaty felt the treaty could be used to respond to Britain's claim of a protectorate over the Mosquito Kingdom.

Article 4 of the Hise Treaty gave the United States the right to erect fortifications and station troops along the line of the canal for protection and defense. Article 5 stated that United States fortifications could be used to preserve the peace and neutrality of Nicaraguan territory. Potentially most entangling was Article 12. Article 12 obligated the United States to use its armed forces to protect and defend all territories rightfully within Nicaragua or to recover territories wrongfully wrested from Nicaragua. Article 12 stated that United States obligations did not apply to wars of aggression or territories not rightfully within Nicaragua. In combination with Article 12, Article 6 even stated that vessels of countries at war with or carrying contraband to countries at war with either the United States or Nicaragua shall not be allowed to pass through the interoceanic canal.

If Nicaragua claimed it was at war with Britain over the territory of the Mosquito Kingdom, then British vessels would be excluded from using a Nicaraguan canal. The treaty promised that the United States would enforce such a blockade of British vessels with its own armed forces until such time as Nicaragua did not consider itself at war with Britain. Whig President Zachary Taylor refused to submit the Hise Treaty to the Senate. Hise, who allegedly acted without authority, was recalled. The disavowal of the 1849 Hise Treaty with Nicaragua and almost simultaneously the signing of the 1850 Clayton-Bulwer Treaty between the United States and Britain effectively ensured that neither the government of the United States nor Britain would attempt by force to deny use of interoceanic communication to each other or to other nations, even in times of war.

2.2 *The 1850 Clayton-Bulwer Treaty*

On 28 December 1848, the Panama Railroad Company signed an agreement for an exclusive privilege to construct a railroad across the Isthmus of Panama. President Zachary Taylor's Secretary of State John

M. Clayton said that Thomas W. Ludlow, President of the Panama Railroad Company, sent a letter to the Department of State requesting that the American minister at London cooperate with the Colombian minister to draft a neutrality agreement with Britain similar to the 1846 Bidlack-Mallarino Treaty so that the capital to be invested in the Panama Railroad Company would be secure.

Clayton wrote to United States Minister to Great Britain Abbot Lawrence in London on 13 December 1849 that he was to prevent foreign debt from becoming an avenue for British interference in New Granada's affairs by asking that Britain sign a neutrality agreement with New Granada similar to the 1846 Bidlack-Mallarino Treaty. New Granada's debt became an issue for the United States, given its promises in the 1846 Bidlack-Mallarino Treaty. In fact, Clayton asserted his own version of what later became the Roosevelt corollary to the Monroe doctrine regarding pre-emptive United States action to prevent European intervention in the affairs of Latin American governments to collect on debts.⁷

If Britain would not sign a treaty with New Granada, and such would probably be the case, then Lawrence was to ask about bilateral negotiations between the United States and Britain for the same purpose. Clayton said:

It is obviously of the utmost importance, especially in consideration of the opinions expressed by Lord Palmerston with reference to the Spanish American States who are dilinquent [sic] debtors of British subjects, that the British Government should guaranty the neutrality of the Isthmus of Panama as amply as this has been done by the United States. For this purpose, it would be preferable that Great Britain and New Granada should themselves enter into treaty stipulations. It is scarcely probable, however, in the existing state of the relations between those two countries, that this could be accomplished. You will, nevertheless, avail yourself of a suitable opportunity to suggest it to Lord Palmerston... If, however, you shall ascertain that the British Government would not enter into such a treaty with New Granada, you may then sound Lord Palmerston as to the disposition of his Government to conclude one with the United States for the same purpose.

⁷ See letter from Clayton to Foote on 19 July 1849, referring to the obligations the United States agreed to in 1846 treaty and the threat posed by British indemnification for New Granada's debt.

In a letter dated 15 December 1849, Clayton also instructed the American representative in Bogota to press New Granada about signing a neutrality treaty with Britain.

The United States and Britain proceeded as non-adjacent powers to begin negotiations for a bilateral neutrality agreement. In London on 14 December 1849, United States Minister to Great Britain Abbot Lawrence wrote to British Secretary for Foreign Affairs Lord Palmerston saying:

No other nations in the world have so important interests to be affected by it – no others have the requisite capital at command – no others have shown a willingness to guaranty the neutrality essential to its safety – and capital, always timid, would shrink from it without such guaranty – much more were it the cause of disagreement between these two nations. Though Great Britain or the United States may each be in a position to do this work single handed, yet neither would probably desire to do so. It may therefore be assumed that the two Countries desire to go on with the work, through their respective capitalists, together and harmoniously, and that, in the absence of any obstacles, it would be soon completed and in operation.

The proposed negotiations would settle American and British differences over an interoceanic canal or railroad and would lead to the ratification of the 1850 Clayton-Bulwer Treaty.

The Clayton-Bulwer Treaty was signed on 19 April 1850. The United States and Britain agreed that neither nation would attempt to deny use of an interoceanic canal or railway to the other, with several provisions prohibiting the building of adjacent fortifications. Article 8 of the treaty stated that the agreement concerned a “particular object” as well as a “general principle” of neutrality. The particular object was agreeing that any interoceanic canal or railroad across the isthmus between North and South America would be neutral and equally accessible to the two non-adjacent powers. The general principle was that neutrality and equal access would be afforded to all the nations of the world, “canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.”

3. Exclusive Franchises Granted to Private Corporations Cannot Fall Into the Hands of a European Government

American concerns about possibly being denied free and neutral use of interoceanic communication through Central America were focused on,

but not limited to, the power of European governments. American concerns also extended to European private corporations, for two reasons. One reason had to do with whether a private corporation had the means to construct an interoceanic canal of sufficient capacity. For example, United States Chargé d'Affaires at Bogota Robert B. McAfee's wrote to the Minister of Foreign Affairs of Colombia Lino de Pombo on 31 May 1834 that a communication across the Isthmus of Panama would be a project worthy of the united "exertions and influence" of all the governments of the continent. However, McAfee questioned whether a private company alone had the means to build a canal "commensurate with the hopes and expectations of the commercial world."

Another American concern was whether the financial interests of a private enterprise could fall into the hands of a powerful European government. When Latin American governments granted exclusive franchises to a private corporation, there were often concluding articles stating that if the company's rights or assets were transferred to a foreign government the franchise would be null and void. For instance, Article 23 of the original franchise for a railway granted to the French Panama Company by New Granada in 1847 stated that the privilege could not be ceded to a foreign government under penalty of abrogation. Article 28 of the Panama Railroad Company's contract with New Granada also stated that contract privileges cannot be transferred to any outside government.

It is a reasonable speculation supported by evidence from Congressional hearings to say that the beginning of the financial takeover of the French Suez Canal Company in November 1875 by British Prime Minister Benjamin Disraeli, who used private funds to gain an interest over the French Suez Canal company after purchasing the shares of the debt-ridden Khedive of Egypt, was what created the preventive policy of Republican President Rutherford B. Hayes that would define the '2nd republic' (1870s–1930s). Only a few years after the financial takeover of the French Suez Canal company by Britain in 1875, and the signing of the Wyse Concession in 1876 for a French interoceanic canal company in Panama, Hayes asserted in March 1880 that the policy of the United States was an American canal under American government control.

B. THE TWO PANAMAS UNDER THE CENTRALIZED REPUBLIC OF
NEW GRANADA (1831–1858)

1. *The Two Panamas and “States’ Rights” Disputes with the Republic
of New Granada*

1.1 *British Annexation as a Solution to Panama’s State’s Rights
Dispute with the Republic of New Granada*

Colombian representatives clearly wanted a promise from the United States to guarantee New Granada’s sovereignty over the Isthmus of Panama. The United States was clearly motivated to guarantee the sovereignty of New Granada over the Isthmus of Panama in order to prevent the territory from falling into the hands of a European government, perhaps on the pretense of indemnification for a debt. But why was New Granada motivated to secure a defensive alliance with the United States? There were at least two possibilities. One was that New Granada’s sovereignty over Panama was threatened by Britain as a form of repayment for New Granada’s financial debt, and New Granada sought to interpose the United States as a shield. Another possibility was that New Granada’s sovereignty was threatened because of domestic Panamanian separatist movements.

The evidence from diplomatic correspondence is not very clear that New Granada’s debt with Britain was likely to have led to British annexation of Panama. Confidential Agent of the United States to Colombia Charles S. Todd’s letter to Secretary of State John Quincy Adams on 29 March 1823 relayed early rumors of a failed British scheme to annex the Isthmus of Panama. In 7 December 1835, Colonel Charles Biddle, appointed as Special Agent of the United States to Colombia by President Andrew Jackson to inquire about an interoceanic railroad across the Isthmus of Panama, warned that “influential men” presumably in Panama but possibly in Bogota had made overtures to Britain to place the Isthmus of Panama under the protection of the British government. Interestingly, Biddle said that he believed New Granada would be dismembered in two years and probably nine months with Panama seceding as an independent state.

It is not clear that British representatives seriously considered annexing the Isthmus of Panama, although Biddle’s concerns were not without some precedent given British interests in several former territories of Spain. Though British representatives may have thought about, but

never acted on, a unilateral protectorate over the Isthmus of Panama the author is only aware of one actual British proposal offered to the United States in 1842, which was for a multilateral protectorate over Panama between Britain, the United States, and France. Possible joint United States and British protection over Panama was the more likely possibility. For example, until the 1846 Oregon Treaty the United States and Britain exercised joint jurisdiction over Oregon Country. After signing the 1846 Bidlack-Mallarino Treaty, President Polk said that he fully expected Britain would sign an agreement with New Granada guaranteeing Panama's neutrality, something that was encouraged by Secretary of State Clayton in 1849. Nonetheless, bilateral negotiations between the United States and Britain in late 1849 had already begun in order to explore general principles that would guarantee that neither nation would attempt to deny use of interoceanic communication to other nations by other means, that is, means other than guaranteeing New Granada's sovereignty.

In nearly every case in which American representatives reported to Washington D.C. about possible British designs on the Isthmus of Panama, whether as indemnity for New Granada's debt or as part of a grand geopolitical maneuver to control routes of interoceanic communication, facts are offered and duly qualified as speculation, perception, or hearsay. In more than one case, representatives of New Granada liberally offered their own imaginative speculations about Britain designs in Panama, in fact, likening them to those of Russia over the Dardanelles in order to command the entrance to the Black Sea. For instance, in a letter on 25 February 1837, Colombian Chargé d'Affaires at Washington Domingo Acosta warned Secretary of State Forsyth that the British would certainly attempt to seize Panama, under the pretext of indemnification. Acosta even suggested that the United States rise up and assert its rightful geographic stake on the Isthmus of Panama, just as Britain had done over the Bosphorus in the Mediterranean Sea, concluding piously that he had no other motive other than "the welfare of his nation and that of all America." Perhaps because the consequences of ignoring such information would potentially put the United States at a severe disadvantage, American representatives stationed in Colombia felt compelled to note any and all reports of possible British designs on Panama no matter what the credibility of the source.

1.2 *An Entangling Alliance with the United States as New Granada's Solution to its State's Rights Problem with Panama*

The evidence is much clearer about political dissent in the Panamanian port cities as the principal motivating factor behind New Granada's intent to sign an entangling alliance with the United States. After declaring independence from Spain in November 1821 Panama joined the short-lived Great Colombia union. In 1831, Great Colombia broke up into what now represents Venezuela, Ecuador, Peru, Colombia, and Panama. Colombian representatives met in 1831 to approve a new centralizing constitution and in 1832 the Republic of New Granada was officially formed. Panama remained a subordinate entity within New Granada. Among the many political changes in Panama under the centralizing Republic of New Granada was a period of reorganization that subdivided Panama's traditional provinces. The longstanding province of Veraguas was reorganized as two provinces, Veraguas and Chiriqui, in 1849. The province of Panama was also reorganized as two provinces, Panama and Azuero, in 1850.

There were many different separatist movements emerging on the Isthmus of Panama between 1831 and 1840, which some later observers described as struggles for Panamanian independence. There are two aspects of the separatist movements suggesting they were not independence movements. One aspect is that it is difficult to find any declarations of separation from Bogota that actually demanded Panama become a free and independent sovereign nation. Another aspect is that Panamanian declarations of separation were proclaimed by people living in the society of the port cities, identified through signatures on Panama's acts of secession in 1821, 1830, 1831, and 1840; and not people from the society of the interior.⁸ In fact, the society of the Panamanian interior more than once opposed the political ambitions of the maritime-commercial elite in the port cities by military force.

American representatives writing to Washington D.C. from Bogota describe Panamanian political dissent in the port cities between 1831 and 1860 in terms that sound to this author like a "State's rights" dispute. A State's rights dispute is a political challenge by representatives

⁸ Figueroa (1978, 131) said that the monopoly of power in Panama City and adjacent regions was in the hands of a small elite group, which he identified based partly upon the signatories of the acts of independence in 1821, 1830, 1831, and 1840. Figueroa (1978, 134) says that European observers saw Panama's small urban oligarchy as more like a tribe ("*tribu*") than a social class.

of a federal State against the federal government over the constitutional balance of powers. State's rights advocates claim the States possess certain powers and authority that are excluded to the federal government, even if the Constitution does not explicitly name those powers. Panama's elite maritime-commercial society disputed Bogota's measures to impose a centralized authority, but separation from New Granada meant different things to different people.

Sometimes the maritime-commercial elite separatists in the port cities demanded a new constitution to reform the Republic of New Granada (1831–1858) and guarantee Panama's federal State's rights. For example, in a letter on 5 December 1840 the "Chief of the State of the Isthmus" Tomás Herrera announced to President Martin Van Buren that a new "State of the Isthmus" wished to be recognized as an independent sovereign nation, but then in a curious twist said that the State of the Isthmus would remain independent only until such time as a new federal system could be arranged with New Granada giving Panama the sovereign rights of a State. Another plan proposed a loose federal arrangement that would shift the Isthmus of Panama's political dependency to Ecuador based on close commercial relations. Still another separatist plan proposed a semi-independent sovereign state under the protection and patronage of the great foreign maritime powers, e.g., a combination of Britain, France, the United States, or others.

The political ambitions of the maritime-commercial elite were to create a government whose purpose was to sustain and generate wealth from direct, indirect, induced, and parallel commercial activities and services associated with foreign flows in transit; not a government motivated to consolidate the territory of the interior, insure public order, and defend against attack by foreign nations. By creating civil unrest and political disorder in the port cities, the maritime-commercial elite often had to be opposed by military leaders sent from Bogota or from elite landowners in Panama's own territorial-administrative interior. The territorial-administrative elite of the interior may have supported some of the ideals of Panamanian independence against New Granada, but they were not prepared to go to war with Bogota over the right of the maritime-commercial elite to accumulate wealth in the port cities.

Nonetheless, there were important exceptions to the leading role played by the maritime-commercial elite in the port cities in insurrections against New Granada. When the lower echelons of Panama's maritime-commercial society in the port cities supported Panamanian

independence under a military government in 1830, the elite of the two societies united against it. General José Domingo Espinar, the *Comandante General del Istmo* (General Commander of the Isthmus), had to use threat of force to prevent the maritime-commercial elite in the port cities from soliciting a protectorate from Great Britain in the turmoil surrounding the breakup of Great Colombia.⁹ Yet according to one Panamanian historian's interpretation, General José Domingo Espinar had his own personal ambitions to govern Panama in the unfolding breakaway of Ecuador, Peru and Venezuela from Great Colombia in 1830.¹⁰ In September 1830, Espinar himself rebelled against the central government of Great Colombia, allegedly in response to his being transferred to another command. Espinar's revolt, politically supported by those living in the *arrabal* (literally "suburb" or "slum") meaning the urban lower classes, represented the first time in Panama's history that such an important political move had been undertaken without the direction of the maritime-commercial elite.¹¹

Espinar believed that he had to consolidate his control over the territory of Panama by not only controlling the port cities but also the interior of the Azuero Peninsula and its core at the city of Santiago de Veraguas. Espinar's plans for an invasion of the Panamanian interior was thwarted by one of his own officers named Colonel (or General) Juan Eligio Alzuru, who staged a military coup against Espinar's authority in 1830 supported by José de Fábrega, an elite interior *latifundista* (large landowner) from Santiago de Veraguas. The temporary alliance between the territorial-administrative and maritime-commercial elite in 1830 against Espinar eventually disintegrated and the political maneuvers of Panama's maritime-commercial elite – opposed by the territorial-administrative elite – continued as the Republic of New Granada consolidated its sovereign authority over Panama.

2. *The 1846 Bidlack-Mallarino Treaty and American Flows across Panama on the Panama Railroad*

President George Washington had warned Americans in 1796 that "to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that

⁹ Perez-Venero (1978, 22 n. 46).

¹⁰ See Figueroa (1978).

¹¹ Figueroa (1978, 245).

character; that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet with being reproached with ingratitude for not giving more.... There can be no greater error than to expect or calculate upon real favors from nation to nation." Certain turns of phrase in Washington's warnings like "pay with a portion of its independence," and the great error in thinking that giving "equivalents" means one can expect "favors" without being reproached for not giving more – they are all eerily echoed in diplomatic correspondence between the United States and New Granada.

For instance, there were two sets of promises made between the United States and the Republic of New Granada in the 1846 Bidlack-Mallarino Treaty. One set of promises were equivalents of each other. The United States and Republic of New Granada agreed to lower import duties on each other's products. Since the abolishment of differential duties was reciprocal, in Bidlack's understanding they could not fairly give either the United States or New Granada any claim for "other equivalents." Later, it was clear that representatives of New Granada did not necessarily agree. However, for the most part this first set of promises was not uncommon in the commercial world and generated little misunderstanding.

However, the second set of promises in the 1846 Bidlack-Mallarino Treaty were not equivalents of each other and led to a great deal of misunderstanding. The United States was promised favorable rights of transit through Panama in exchange for which the United States promised to guarantee the rights of property and sovereignty of New Granada over the territory of Panama, purportedly against threats to the freedom and neutrality of interoceanic communication. Bidlack said that the American guarantee of New Granada's sovereignty was a favor that he expected would be reciprocated through New Granada's promise to guarantee a free "right of way" or "right of transit." Bidlack entered an understanding to the treaty that in exchange for the United States guaranteeing New Granada's sovereignty over the Isthmus of Panama, New Granada promised to guarantee a non-discriminatory right of transit across the Isthmus of Panama.

Within a decade after signing the 1846 Bidlack-Mallarino Treaty, United States representatives had committed the great "error" of miscalculating what favors could be expected as a result of non-equivalent promises made between nations. Colombians and local Panamanians did as little as they could to uphold promises not to apply discriminating charges and duties that singled out American flows, which was a

promise that American representatives mistakenly expected had been made through Article 35 of the 1846 treaty and through the Panama Railroad Company's contract.

For instance, in a letter dated 6 June 1853, Colombian Chargé d'Affaires at Washington Victoriano de Diego Paredes protested to Secretary of State William L. Marcy that American troops had crossed the Isthmus without advising Colombian officials of the province of Panama beforehand. Secretary of State Marcy's reply was that the United States had counted on New Granada to see the American obligation to guarantee Colombia's sovereignty over the Isthmus of Panama as more than a fair exchange for allowing the free transit of American citizens and property across the Isthmus, including United States troops. Marcy said:

When, however, independent States enter into treaties with foreign powers, they expect to relinquish their sovereignty in part with the expectation of receiving from the power with which they treaty, full equivalents therefor. The Undersigned considers that by the treaty above referred to, New Granada has received from the United States an ample equivalent for any sacrifices she may have made in entering into it.

In his reply on 19 July 1853, Paredes argued that his government had never regarded the first set of promises as equivalents. Rather, New Granada had agreed to lower its import duties in exchange for the American guarantee of the neutrality of the Isthmus of Panama. Seemingly, then, there was no obligation or favor to be asked of New Granada with respect to free transit across Panama. In any event, Paredes felt that New Granada could not be reproached by the United States for not giving more to the United States, since it had already surrendered its most "precious rights" of sovereignty. Paredes said:

[I]t is no less certain, on the other side, that nations, in surrendering a portion of their sovereignty, do so in an explicit and conclusive manner . . . this article had no other object then that of counterbalancing, by means of a guaranty of the Isthmus, those privileges and prerogatives granted to the United States, especially in what concerns the exemption from the payment of duties called differential . . . if it be true, that the treaty through[ou]t, is essentially liberal to both parties, this liberality could not have been carried to such an extreme, on the part of New Granada, as to involve the surrender of her sovereignty and the sacrifice of her most precious rights . . . such as to allow, under all circumstances, the transit of troops by the aforesaid Isthmus.¹²

¹² Letter from Paredes to Marcy dated 19 July 1853.

2.1 *The Federal State of Panama*

Liberal Party constitutional reforms in Bogota in 1853 led to the creation of a new federal State of Panama in 1855, the same year that the Panama Railroad line was completed. It is sometimes challenging to separate diplomatic correspondence to the United States from the Panamanian representatives versus the Colombian representatives of the Republic of New Granada. Nonetheless, the source of the discriminatory laws against American flows on the Panama Railroad after 1853 was the federal legislature of the State of Panama, not the legislature of the Colombian federal government in Bogota.

Before 1856, the difference of opinion about the legitimacy of the Panamanian laws in light of Article 35 of the Bidlack-Mallarino Treaty seems to have been handled as well as could be expected through diplomatic channels. Declaring that it was not obligated to surrender the exercise of sovereignty over things within or passing through its territory, officials of the federal State of Panama passed legislation to collect vessel tonnage duties on vessels and passenger taxes on goods and people in transit across the Panama Railroad. The Panamanian legislature even passed a law to charge postage on United States mail conveyed in transit by the Panama Railroad. Authorities of the State of Panama stated that the 1846 treaty merely gave citizens of the United States the same privileges as Colombian citizens with respect to transit across the Isthmus of Panama, and that charges and duties applied equally to both citizens of the United States and New Granada. American representatives complained that the charges and duties were, in effect, discriminatory against American flows since all knew that the overwhelming majority of tonnage, passengers, and mail in transit on the Panama Railroad were from the United States.

Articles in the Panama Railroad Company's reformed contract of June 1850 stated that flows of people, goods, finance, and messages in transit not meant for importation into New Granada were exempt from taxes, import duties, or postage. Article 16 of the Panama Railroad Company's contract said that transit of all foreign mails is free, unless by nations at war with Colombia. Article 21 stated that passengers, merchandise, etc., in transit are free of duties and that the terminal ports are free ports; and Article 6 gave the company control over regulation and use of the terminal ports. In exchange, the Panama Railroad company paid fixed annuities to the New Granada of which a portion went directly to the State of Panama. Article 3 required the company to pay Colombia \$1,000,000 (\$26,315,789 adjusted to 2007 dollars) upon approval of the contract and an annuity of \$250,000 per year (\$6,578,947 adjusted to

2007 dollars) until the expiration of the contract, with 10 percent of the annuity directly to the Government of the State of Panama. Nonetheless, most American political representatives pointed to Article 35 of the Bidlack-Mallarino Treaty, claiming that “free transit” exempted American flows of goods, people, finances, and messages in transit across the territory of Panama on the Panama Railroad from indiscriminant taxes, import duties, postage, or other fees.

Tonnage duties, passenger taxes, and postage became minor matters after the 15 April 1856 Panama City riots, or the “Watermelon War” as it has been labeled. The origin of the phrase comes from the fact the incident started when a drunken American passenger ate a piece of watermelon from a street vendor, refused to pay for it, and then pulled a gun. A comparable incident might be the 1838–1839 “Pastry War” between Mexico and France, at least in terms how a minor food incident became violent under the pretext of indemnifying a debt, completely out of proportion to the original offense.¹³

An original report filed by A. B. Corwine dated 18 July 1856 is the United States investigation of the 15 April 1856 riots, comparing two principal sources of evidence. One source was eyewitness testimony Corwine gathered himself. Another was testimony taken from the official account presented by Panamanian Governor Francisco de Fábrega. In comparing the two sources of evidence, Corwine says that there were discrepancies in the testimonies used for the Colombian report that could not be rectified with testimonies he had collected, as well as facts from the official Colombian report that implicated officials of the State of Panama. In any event, American investigators alleged that federal representatives of the government of New Granada and local representatives of the State of Panama failed in their duties to protect the lives and property of American passengers in transit, allegations that ranged from negligence to complicity.¹⁴ Petty thefts of passenger valuables in transit (and not by Panamanians) were common and probably to be expected in the port cities. However, the April 1856 riots were the most serious of many incidents in the port cities over

¹³ The 1856 “Watermelon War,” at least in the origins of its name, is similar to 1838–1839 “Pastry War” between Mexico and France. The origin of the war was allegedly a French pastry chef who complained his shop had been looted by Mexican officers.

¹⁴ According to a letter from Morse and Bowlin to de Pombo and Gonzalez on 13 February 1856, the riots caused the deaths of eighteen Americans and wounded forty or fifty others. There were two reported Colombian deaths, neither directly related to actions at the Panama Railroad station house.

the previous six years where authorities in Panama were “unable to maintain law & enforce order on this Isthmus & afford adequate protection to the transit.”¹⁵

The more common explanation and one stated in the Colombian report in 1856 is that economic oppression and racial prejudices imposed upon the urban residents of Panama City by American passengers in transit simply exploded over a trivial dispute. Historicist interpretations of the April 1856 riots accept this version of events but unfortunately treat the incident in isolation from other instances of social unrest in the Panamanian port cities. There seems little purpose in re-narrating factual knowledge known to many scholars and available in the National Archives about the April 1856 riots.¹⁶ Investigating other cases of civil unrest in the port cities, including those involving or not involving American citizens in transit on the Panama Railroad, would at least serve as a rudimentary comparison for the purpose of understanding the political and racial mixture of the cosmopolitan port cities and its impact on local Panamanian politics and Colombian governance. A comparative perspective of other instances of civil unrest in the port cities would shed important light on social unrest due to prejudices or economic oppression in the port cities directed against the maritime-commercial elite and government officials of New Granada.

Even without the benefit of insightful comparative scholarship, there is at least one interesting feature of Panamanian Governor Francisco de Fábrega's testimony about the April 1856 riots that bears mentioning. Fábrega reiterated several times that he had neither the power nor the means to control the situation. Fábrega makes a peculiar effort to point out how few were the police under his command. Fábrega's testimony clearly implicated the government of the State of Panama and the Republic of New Granada as utterly unprepared to maintain order in the port cities, having at the ready a mere twenty five police to control thousands. Interestingly, the Panama Railroad Company was not severely implicated for failures to take security measures. For instance, Article 14 of the Panama Railroad Company's contract stated that the company could propose what it deemed proper for the police, security,

¹⁵ See several articles of contemporary observers reporting about their experiences across the Isthmus of Panama, *The maritime heritage project, Ports of the world: Panama* (<http://www.maritimeheritage.org/ports/centralAmericaPanama.html>).

¹⁶ See Manning (1935, 388 n. 2).

and preservation of its facilities. Regardless of who failed to exercise their duties, it was clear that the source of civil unrest came from a large and economically disadvantaged population, many presumably non-Hispanic immigrants of African origin, and other lower echelon residents living in the port cities.

In a letter from Bowlin to Marcy dated 17 September 1856, a few months after the riots, Bowlin wrote that new mail and tonnage taxes were “calculated” to inspire the Caribbean black population of the port cities to more desperate deeds as they “can easily be made to believe, that they have a personal interest in these sums, and they are unjustly withheld from them by our Government and people.” In another letter written by Minister Bowlin to Secretary of State Marcy dated 5 November 1856, Bowlin makes an extraordinary suggestion. Bowlin said the true aim behind the continued “obnoxious laws” and “extortionate exactions” of representatives of the State of Panama, whose interests he differentiates from the government at Bogota, was to “drive the U.S. from necessity to take possession of the Isthmus,” in other words, establish a security presence in the racially charged port cities. Bowlin believed that annexation by the United States was “their true, ultimate and sole aim” because of the effect that an American guarantee of order would have on real estate values. Finally, in another letter from Bowlin to Pombo dated 10 November 1856, Bowlin claimed in colorful terms that tonnage and mail taxes were being held out to the urban non-elite and Caribbean black population as some kind of reward to them for intimidating American citizens in transit.

Supposing there is any grain of truth to Bowlin’s opinions or the conclusions of the Corwine report, exploiting or failing to prevent the economically oppressed in the port cities from attacking American passengers would have two consequences. One consequence was that it would seriously embarrass the federal government at Bogota as unwilling or unable to protect American citizens and property in transit, leading to a situation where the United States could abrogate the 1846 treaty and take possession of the Isthmus of Panama. Another consequence was that the deaths of American citizens provided a ‘demonstration’ of just how bad the state of public order had become in the port cities, given the gulf in wealth between the maritime-commercial elite and those living in the *arrabal*. Either outcome would result in new security and public safety measures implemented by the Panama Railroad and the United States itself.

After the 1856 riots, an American proposal called the "1857 project" was drafted and included with a 3 December 1856 letter from Secretary of State Marcy to Special Commissioners Morse and Bowlin for New Granada to cede its control over a portion of the territory of the Isthmus of Panama so that it might become a semi-independent maritime municipality under the protection of the United States. Marcy said that the "1857 project" was similar to British proposals for Greytown at the terminus of the Rio San Juan route in Nicaragua and the Bay Islands off the north coast of Honduras. Marcy stated that it, in fact, had the approval of Great Britain. Secretary of State Marcy said that the 1857 project was not a full grant of territory but a federalist arrangement, like the United States itself. He noted that certain powers would be transferred to a higher authority while the rest would be reserved to the original sovereign of the territory. In a letter to Secretary of State March on 6 February 1857, Bowlin casually mentions a curiosity. He said that the day after he submitted the 1857 project to Colombian authorities for their review, a senator from the State of Panama proposed the same thing to the Colombian Senate.

C. THE TWO PANAMAS UNDER THE FEDERALIST GRENADINE CONFEDERATION (1858–1863) AND UNITED STATES OF COLOMBIA (1863–1886)

1. *The Two Panamas and "States' Rights" Disputes Against the United States After the 1846 Bidlack-Mallarino Treaty*

A major influx of foreign merchants and Caribbean blacks to Panama occurred during the construction of the Panama Railroad between 1851 and 1855 and at the beginning of construction by the French Panama Canal Company in 1881. The number of Caribbean immigrants of mixed African origin in Panama between 1881 and 1911, probably Panama Canal laborers, was put at about 43,000.¹⁷ For the maritime-commercial elite, the imported Caribbean black labor force was a market for consumer goods and housing, and also an urban mass beyond elite control. What made the situation potentially threatening for the Panamanian elite was that Caribbean black immigration

¹⁷ Jaén Suárez (1978, 453).

associated with the construction of the Panama Railroad and French Panama Canal coincided with a period of political turmoil between Liberals and Conservatives, resulting in constitutional reforms during the Liberal-dominated period aimed at restraining the power of Conservatives.

The centralized system of provinces under the Republic of New Granada was replaced by a federal system of states under the Grenadine Confederation (*Confederación Grenadina*) from 1858 until 1863, and a federal system of nine states under the United States of Colombia (*Estados Unidos de Colombia*) from 1863 until 1886. The Liberal constitutional reforms in 1853 that created the federal State of Panama abolished certain property and literacy requirements for the right to vote and gave urban residents of Panama City and Colón new political influence in elections in Panama.¹⁸ A black Liberal Party was even formed, independent of the traditional Liberal and Conservative Party leadership.

The maritime-commercial elite in the port cities had essentially two rivals and one opposition in the political arena.¹⁹ Two of the urban elite's political rivals were territorial-administrative. One rival was the landowning elite of the Panamanian interior particularly in Santiago de Veraguas. The other rival was the central government in Bogota. The opposition to the urban elite came from within urban maritime-commercial society itself, the maritime Panamanian commercial lower classes and ethnically marginal urban groups on the outskirts of Panama City in the *arrabal*. The political strength of those living in the *arrabal* or urban lower classes meant they might want bureaucratic positions in the government, the start of a "civil rights" issue in Panamanian society.

Racial and class-based violence was not unique to the situation with American passengers on the Panama Railroad in April 1856, which is why the explanation based on American prejudices alone suffers from a lack of comparative rigor. The political numbers of the Caribbean black population threatened the political power of the maritime elite several times during civil disturbances in 1856, 1885, and between 1900 and 1902 when the Colombian War of One Thousand Days nearly became a race and class war. One option the maritime elite had for

¹⁸ See Bergquist (1978, 12).

¹⁹ Figueroa Navarro (1978, 117).

counterbalancing the political influence of the urban lower-class was outside enforcement by the United States. One historian of Panama called the eventual political arrangement between the maritime-commercial elite and the United States an "alliance" against the lower echelons of society in the port cities:

Separated from the Hispanicized blacks by race and class, and separated even further from the new wave of Antillean blacks, the Panamanian upper class looked to the canal-building powers as countervailing forces in the domestic arena. This tendency was natural in that it represented an extension of informal relations dating back to the colonial period. During the nineteenth century these cultural and social ties to the outside world had been further strengthened by the influx of foreign merchants who married into local families. Commercial relations, administrative ties through the transit companies, common racial and class characteristics – all supported the formation of a tacit internal-external "alliance."²⁰

For instance, after the 1856 Panama City riots United States military forces were called in to restore order in Panama City on 20 September 1856. Until Panamanian independence in November 1903, United States military forces landed in Panama several more times in order to restore order and calm civil unrest in the port cities and elsewhere over periods ranging from one day to nearly a month, including September 1860 in Panama City; May and September 1873 in Panama; January, March, and April 1885 in Colón and April 1885 in Panama City; March 1895 in Bocas del Toro; November 1901 in Panama City and Colón; four different occasions in 1902; and lastly, in November 1903 during Panamanian independence.

D. CONCLUSION

Territoriality over the environment of Panama during period of the '1st democracy' (1830s–1870s) was an interaction between a predominantly American avoidant posture, and a maritime-commercial elite in Panama engaged in a State's rights dispute with centralized and

²⁰ Steve C. Ropp, *Panamanian politics: From guarded nation to National Guard* (Stanford: Hoover Institution Press, 1982), 10. See also Steve C. Ropp, *In search of the new soldier: Junior officers and the prospect of social reform in Panama, Honduras, and Nicaragua* (Unpublished Ph.D. dissertation, University of California, Riverside, 1971).

federalist forms of government in Bogota. Though predominantly an avoidant policy regime, the more expansionist elements of the regime of the '1st democracy' (1830s–1870s) entangled the United States into an alliance with Colombia by signing the 1846 Bidlack-Mallarino Treaty. The United States intended to prevent powerful European governments from gaining exclusive control over interoceanic communication. However, as an unintended and unanticipated consequence of its preventive policies, the United States was the only non-adjacent nation to sign a guarantee of New Granada's sovereignty against foreign threats.

The treaty obligations assumed by the regime of the '1st democracy' to guarantee Colombia's sovereignty over Panama conflicted with the aspirations of the elite of Panama's maritime-commercial society for a semi-independent federal State. When Panama achieved federal rights as the State of Panama, its maritime-commercial elite leaders proved ill adapted at maintaining civil order among the Caribbean black immigrants living in the *arrabal* around the port cities without outside assistance. After riots caused the deaths of several American citizens in transit on the Panama Railroad, the United States federal government intervened several times during periods of civil unrest to maintain order and security in the port cities. By the 1870s and the end of the '1st democracy,' around the same time that economically disadvantaged non-elite inhabitants of the port cities were gaining new political power as a result of Liberal constitutional reforms, a fifty-year period of economic crisis and recovery was recycling in the United States. A predominantly preventive policy regime, the '2nd republic,' emerged to assert that the policy of the United States was a canal under American government control.

CHAPTER EIGHT

INTEROCEANIC TRANSPORTATION AND THE TWO PANAMAS UNDER THE '2ND REPUBLIC' (1870S–1930S) BEFORE PANAMANIAN INDEPENDENCE

A. AMERICAN TERRITORIALITY OVER INTEROCEANIC TRANSPORTATION

The predominantly avoidant policy of the '1st democracy' was to prevent a canal under exclusive European control, but avoid entangling alliances with Latin American nations. United States representatives advocated treaties with European maritime powers and established a general principle that no one nation would attempt to deny use of interoceanic communication to others. The 1846 Bidlack-Mallarino Treaty and the 1850 Clayton-Bulwer Treaty supported the predominantly avoidant policy of the '1st democracy' for a canal under the control of no one single government. The policy of the United States at the time was not an American canal under American control, owned and operated by the United States federal government.

The policy regime of the '2nd republic' (1870s–1930s), the period of the Gilded Age and the Progressive Era, ushered in a shift to a preventive policy with respect to any European involvement – whether by a government or a private corporation – in the ownership, administration, and operation of an interoceanic canal. There were at least 23 international agreements and contracts either signed or ratified for an interoceanic canal or railroad during the first half of the '2nd republic' (1870s–1930s) before Panamanian independence and the 1903 Hay-Bunau-Varilla Treaty. Two were between adjacent governments, five were between adjacent and non-adjacent governments, thirteen were between adjacent governments and foreign corporations, and one was between two non-adjacent governments (1901 Hay-Pauncefote Treaty between the United States and Great Britain). The most important agreement concluded during the '2nd republic' was the 1903 Hay-Bunau-Varilla Treaty between the United States and the Republic of Panama, which established a canal under the control of the United States federal government in a foreign territory.

The shift away from the avoidant policy of the '1st democracy' (1830s–1870s) had become clear by the time of an 8 March 1880 message to Congress by Republican President Rutherford B. Hayes, two years after an exclusive franchise for an interoceanic canal was given to the Interoceanic Canal Association of France in 1878. Hayes stated that the policy of the United States was a canal under American control. In a curious turn of phrase, Hayes said that an interoceanic canal through Central America was “virtually a part of the coast line of the United States.” Hayes stated that the United States could not “consent to the surrender of this control to any European power, or to any combination of European powers.” Since American commercial and ultimately national security interests over a canal across any part of Central America were paramount to those of other nations, the United States would demand exclusive control “to protect our national interests,” which nonetheless would be compatible with the wider needs of maritime commerce. Hayes stated:

The policy of this country is a canal under American control. The United States cannot consent to the surrender of this control to any European power, or to any combination of European powers.... An interoceanic canal across the American isthmus will essentially change the geographical relations between the Atlantic and Pacific coasts of the United States and the rest of the world. It will be the great ocean thoroughfare between our Atlantic and our Pacific shores, and virtually a part of the coast line of the United States. Our merely commercial interest in it is greater than that of all other countries, while its relations to our power and prosperity as a nation, to our means of defense, our unity, peace, and safety, are matters of paramount concern to the people of the United States. No other great power would, under similar circumstances, fail to assert a rightful control over a work so closely and vitally affecting its interest and welfare.... [I]t is the right and the duty of the United States to assert and maintain such supervision and authority over any interoceanic canal across the isthmus that connects North and South America as will protect our national interests. This I am quite sure will be found not only compatible with, but promotive of, the widest and most permanent advantage to commerce and civilization.

American representatives repeated and clarified Hayes' new policy. For instance, a month after Hayes' message to Congress, in April 1880, the American foreign minister in Bogota wrote to a Colombian government representative that the United States would not consider itself excluded from the United States of Colombia's contract with the French interoceanic canal enterprise, that is, “by any arrangement

between other powers or individual to which it is not a party, from a direct interest, and if necessary a positive supervision and interposition in the execution of any project which, by completing an interoceanic connection through the Isthmus, would materially affect its commercial interests, change the territorial relations of its own sovereignty, and impose upon it the necessity of a foreign policy, which, whether in its feature of warlike preparation or entangling alliance, has been hitherto sedulously avoided.”¹ In another example, on 24 June 1881 Secretary of State James A. Blaine drafted a circular letter explaining Hayes’ policy of a canal under American control.² Blaine stated that any attempt by a consortium of European citizens to participate in the ownership or operations of an interoceanic canal, regardless of whether it had ties to European governments, would “partake of the nature of an alliance against the United States.” Blaine said that in the event of war with the United States the passage of hostile armed vessels through an interoceanic canal in Panama, “would be no more admissible than would the passage of the armed forces of a hostile nation over the railway lines joining the Atlantic and Pacific shores of the United States.”

1. *The United States Should Have Exclusive Powers Over Those of Any European Government*

1.1 *The Disavowal of the 1884 Frelinghuysen-Zavala Treaty with Nicaragua*

On 8 December 1885, Democratic President Grover Cleveland disavowed an agreement signed during the administration of Republican Chester A. Arthur and withdrew the 1884 Frelinghuysen-Zavala Treaty concerning the Nicaraguan canal from Senate consideration. Article II of the treaty called for a perpetual alliance between the United States and Nicaragua, in which the United States would protect the territorial integrity of Nicaragua. Cleveland stated the treaty violated the avoidant policy of Washington against entangling alliances. Cleveland also effectively disavowed Hayes’ policy of a canal under American control saying that neither the United States federal government nor

¹ U.S. Congress (1977b, 46–47).

² Harmodio Arias, *The Panama Canal: A study in institutional law and diplomacy. Reprint edition* (New York: Arno Press & The New York Times, 1911/1970), 43–44.

any other single government should control what ought to be managed for the benefit of the entire world. Cleveland said:³

Maintaining, as I do, the tenets of a line of precedents from Washington's day which prescribe entangling alliances with foreign states, I do not favour [sic] a policy of acquisition of new and distant territory or the incorporation of remote interests with our own.... Whatever highway may be constructed across the barrier dividing the two greatest maritime areas of the world must be for the world's benefit, a trust for mankind, to be removed from the chance of domination by a single power, nor become a point of invitation for hostilities or a prize for warlike ambition. An engagement combining the construction, ownership, and operation of such a work by this government, with an offensive and defensive alliance for its protection, with the foreign state whose responsibilities and rights we should share, is, in my judgment, inconsistent with such dedication to universal and neutral use.

The disavowal of the 1884 Frelinghuysen-Zavala Treaty parallels the disavowal of the 1849 Hise Treaty. Both treaties were agreements for exclusive American control over a canal in Nicaragua in exchange for an entangling alliance against Britain and its territorial interests over British Honduras and the Mosquito Kingdom in Nicaragua. However, in all other respects, the disavowal of the 1884 Frelinghuysen-Zavala Treaty was an exception to the rule. Although the policy of the '2nd republic' was not to form entangling alliances with Latin American nations, its policy had shifted away from the '1st democracy' policy of a canal under no one government's control to a canal under the control of the United States federal government.

1.2 *The 1901 Hay-Pauncefote Treaty*

The 1901 Hay-Pauncefote Treaty between the United States and Britain was signed 18 November 1901 in Washington, and entered into force on 21 February 1902. The Hay-Pauncefote Treaty abrogated the 1850 Clayton-Bulwer Treaty, removing the only existing agreement with a European power that might have prevented the United States federal government itself from acquiring exclusive control. Article II of the Hay-Pauncefote Treaty stated that a canal may be constructed under the auspices of the United States federal government, but only the United States federal government. Article III stated that the canal

³ Arias (1911/1970, 50).

was to be free and open to vessels of commerce and war on terms of entire equality of use and charges.

Specific provisions of Article III of the Hay-Pauncefote Treaty stated that without impairing the abrogated Article VIII of the 1850 Clayton-Bulwer Treaty, the same principles governing use of the Suez Canal in the 29 October 1888 Convention of Constantinople (Istanbul) would be adhered to. The canal can never be blockaded but the United States could position military police along the canal to protect it. The canal and everything associated with it were to be immune from attack. The area within 3 marine miles of either end of the canal was to be neutral. However, a warship of a belligerent cannot remain there for more than 24 hours, and vessels of another belligerent cannot leave within 24 hours of the departure of another. Vessels of war of a belligerent will be transited with least possible delay, but no belligerent could embark or disembark troops or munitions.

2. *Exclusive Franchises Granted to Private Corporations Cannot Fall Into the Hands of a European Government*

2.1 *The French Panama Canal Company (1878–1894)*

In May 1876, a Frenchman named Lucien N.B. Wyse negotiated an exclusive franchise from the United States of Colombia for an inter-oceanic canal. In March 1878, Wyse signed an enlarged contract with the United States of Colombia on behalf of the International Interoceanic Canal Association of France, which entered into force 18 May 1878. The 1878 contract awarded exclusive rights of canal construction to the International Interoceanic Canal Association of France led by Ferdinand De Lesseps. The contract between Colombia and the Interoceanic Canal Association (“Wyse Concession”) was amended 20 May 1878 and again on 10 December 1890 with the Republic of Colombia.⁴ The *Compagnie Universelle du Canal Interoceanique* was incorporated under French law on 3 March 1881. De Lesseps gave only passing notice to American preventive postures against an interoceanic canal controlled by a foreign private enterprise. De Lesseps was quoted from a letter written 14 August 1879 and published much later in a French newspaper dated 15 November 1880 that he was sure he had removed “every possible hostility” in the United States.

⁴ See *Report of the Isthmian Canal Commission* (1901) for a brief summary of the Universal Interoceanic Canal Company between 1880 and 1894.

In the same year 1880, Hayes presented his message to Congress announcing that the policy of the United States was a canal under American control. Congress affirmed President Hayes' message and adopted a preventive posture against the French company mainly due to the risk that the company's financial interests might fall into the hands of a European government.⁵ A joint Senate and House resolution, published in an accompanying House document dated 14 February 1881 entitled "Interoceanic Canal and the Monroe Doctrine," declared that the French private company's efforts were "hostile to the established policy of the United States, is in violation of the spirit and declarations of the Monroe doctrine, and cannot be sanctioned or assented to by this government":

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That the construction of an interoceanic canal connecting the waters of the Atlantic and Pacific by means of foreign capital, under the auspices of and through a charter from any European government, is hostile to the established policy of the United States, is in violation of the spirit and declarations of the Monroe doctrine, and cannot be sanctioned or assented to by this government. That the United States will assert and maintain such control and supervision over any interoceanic canal as may be necessary to protect its national interests, as a means of defense, unity, and safety, and to advance the prosperity and augment the commerce of the Atlantic and Pacific States of the Union.

Elaborating some of the details of the 1881 House hearings provides an opportunity to see some of the first thoughts about extending the preventive implications of the Monroe doctrine to non-state and sub-state actors, like the French corporation, and to areas far from the borders of the United States. The intent of the House was to examine the history of use of the Monroe doctrine to date and determine whether it was ever applied to a situation involving a European company and an interoceanic canal in Central America.

For example, the House reviewed published historical writings of James Monroe, John Quincy Adams, and Thomas Jefferson looking for cases where the preventive mandate of the Monroe Doctrine was

⁵ See also U.S. Congress, House, 50th Cong., 2nd Sess., House Report No. 4167, *The construction or control of interoceanic canals at the Isthmus of Darien and in Central America by European governments* (Washington D.C.: Government Printing Office, 1889).

invoked in Central America. President James K. Polk had invoked the Monroe doctrine in consideration of the independent Republic of Yucatán (1841–1848) in 1848. Polk's plan was to annex the struggling territory to the United States so that it would not fall into British hands. Former Secretary of State John C. Calhoun (1844–1845) criticized Polk's use of the Monroe doctrine in the case of the Republic of Yucatán for two reasons. One was that he considered British annexation hardly more than a remote possibility and not a credible threat requiring preventive action. Second, Polk's use of the Monroe doctrine violated the policy to avoid entangling alliances. Calhoun felt that if the United States responded to every threat of European interference in the foreign affairs of Latin American nations it would go "infinitely and dangerously" beyond the Monroe doctrine and "puts it in the power of other countries on the continent to make us a party to all their wars."⁶

A number of witnesses representing private corporations were called to testify to the House Committee on Foreign Affairs about application of the Monroe doctrine to the French private enterprise in Panama. It is sometimes difficult to separate their testimonies from their affiliations as either representatives of the French canal company or its competition. Representatives of the French company testified that the Monroe doctrine only applied to foreign governments. Representatives of competing concerns tried to conflate the private enterprise with the ambitions of the French government.

James B. Eads, an engineer, asked whether it was wise on the part of the United States to "side by quietly and see this transit line established" in Panama by the French company that would control access to agricultural production in the "Valley of the Mississippi," an interesting parallel to President Thomas Jefferson's apprehensions in 1802 about French control of New Orleans as the gateway to the Mississippi River. S. L. Phelps, representing the Nicaragua Ship Canal Company, even suggested there was a conflict of interest between the "foremost men involved in the Panama canal project" and the Bonaparte family.

The reference to the "Bonaparte family" by Phelps is intentional because of its insinuation that the goals and ambitions of the French company were not just financial profit but political power. French interest in the Suez Canal itself was a product of Napoleon Bonaparte's

⁶ U.S. Congress (1881, 7).

military expedition to conquer Egypt in 1798, and well known associates of the French canal company were friends and relatives of Louis Napoleon. Ferdinand De Lesseps' own father was made a count by Napoleon Bonaparte, and De Lesseps' later efforts to raise capital for the Suez Canal project had been endorsed by Charles-Louis-Napoléon Bonaparte (Emperor Louis Napoleon). Lucien Wyse, who had arranged the contract with Colombia was actually Lucien Bonaparte-Wyse and was related to Napoleon Bonaparte.

The hearsay about possible family-related conflicts of interest between Louis Napoleon and influential French company executives would have been of interest to the House because of its relevance to French intervention in Mexico to establish a European system of government on the borders of the United States. Between 1862 and 1867, a period when the United States was preoccupied with the Civil War, Emperor Louis Napoleon supported the recognition of and a military alliance with the Confederate States of America. Louis Napoleon also advocated the reintroduction of the monarchy to the former colonies of Spain in Latin America and intervened in Mexico by installing Austrian-born Maximilian I as its Emperor, supported by French troops. Maximilian I remained the Emperor of Mexico until he was executed in 1867 by Mexican forces under Benito Pablo Juárez García, militarily supported by the United States following the end of the Civil War. The implication was that surely a family connection between Louis Napoleon and the principals of the French company was cause for concern by American representatives that the company could be a vestige of a European government that had clearly demonstrated in the past it would use its own military forces to interfere in the affairs of independent Latin American governments if the United States were not vigilant to prevent it.

The testimony of "Mr. Thompson," an American representative of the French Panama Canal Company, advocated an avoidant posture and asked whether in the "unnecessary avowal of a great doctrine" against a foreign private corporation, not a foreign government, the United States was preparing to interpose itself in a way that would "involve us in difficulties and complications from which during our lifetime we may not escape." Thompson, referring to the fact that European capital had invested in American railroad corporations, asked rhetorically why the United States would not think that the transcontinental railroad "was a combined effort on the part of Europeans to get control of this country."

2.2 *Does the Preventive Posture of the Monroe Doctrine Apply to a Non-State Actor Like a Private Corporation?*

The House Committee on Foreign Affairs asked about whether the French government had officially declared any interest in controlling the French Panama Canal, whether the French company had a “charter” or a “concession” from the Republic of Colombia under the terms of the Wyse concession, and how that the company was organized under French law. According to Article XVIII of the original 1876 “Wyse Concession,” after the canal’s successful construction and opening the company would form an international joint-stock company under the protection of Colombia. The intent of the Committee was to ascertain whether the French private company was, nonetheless, vulnerable to financial takeover by the interests of a foreign government. It was determined that the French company was a concession, not a charter from Colombia, meaning that the French Panama Canal company was incorporated in France under the same French laws as those that had organized the French Suez Canal company.

The most interesting passage of the proceedings was a question and answer between Mr. Rice of the House Committee and Mr. Thompson, representing the French Panama Canal Company, asking whether the rights or assets of the French company could be transferred to another foreign government. Similar to the tenets of the later 1904 Roosevelt corollary to the Monroe doctrine, Rice must have had in mind whether the French company’s controlling interest were vulnerable to being purchased or transferred, given the example of the Khedive of Egypt being compelled by his nation’s debt to sell its interest in the Suez Canal to British Prime Minister Benjamin Disraeli in 1875.

Mr. Rice: . . . [D]oes not that principle which underlies the Monroe doctrine come into the consideration of this question? If a foreign company, or a corporation, under the control and protection of a foreign government comes here and takes possession of a strip of land across the Isthmus of Panama, and proceeds to build a canal there, does not that bring up again the principle that underlies the Monroe doctrine?

Mr. Thompson: I have been endeavoring to draw a distinction between a private corporation and a foreign government.

The minority report to the House Committee on 18 February 1881 said that the Monroe doctrine is one “*confining* itself to the interference of European *powers* with American states; and is silent as to enterprises by individuals of whatever nationality, for making improvements on

this continent.” The minority report proposed a resolution establishing that no foreign government other than the sovereign of the territory itself would be allowed to possess or control an interoceanic communication. The resolution would also establish a safety measure so a policy like that of the later 1904 Roosevelt corollary United States would not be necessary. The resolution stated that the United States would not interfere in Colombia’s affairs in order to prevent it from employing foreign capital so long as there were proper precautions for neutrality. Furthermore, the minority report stated that the intent of President Hayes’ 1880 message to Congress only referred to when private interests whether foreign or otherwise were “invaded or *actually threatened*.” The minority report concluded by stating that Congress should continue to move forward as if the San Juan River route in Nicaragua was the primary option for a canal under American control, since both the cooperation and consent of Colombia and the French company would be necessary if the canal in Panama was completed.

In December 1888, *La Compagnie Universelle du Canal Interoceanique* went into financial failure after spending vast sums of money. On 4 February 1889 the company was declared bankrupt and dissolved by *Tribunal Civil de la Seine*. A receiver appointed by the French civil tribunal was given the authority to transfer the company’s assets and property to the New French Panama Canal Company, the *Compagnie Nouvelle du Canal de Panama*, incorporated 20 October 1894. Wyse represented the receiver and negotiated a continuation of the old French company’s exclusive franchise from the Republic of Colombia in December 1890. The contract was extended twice more, once in April 1893 provided that a new company was organized by 31 October 1894, and again in April 1900 extending the time period of the contract to 31 October 1910. The New French Panama Canal Company extended the exclusive franchise originally conceded in May 1876 but was distinct from the original company not only in terms of its organization but also in terms of its role in influencing the United States to consider the Panama route.⁷ In 1898, the new company’s contract was due to expire either in 1904 or 1910, unless the company could provide \$1 million (unadjusted) dollars to Colombia. There was a provision in the New Panama Canal Company’s concession forbidding

⁷ See James M. Skinner, *France and Panama: The unknown years, 1894–1908* (New York: Peter Lang, 1989).

its transfer to a "foreign government." What this apparently meant was that the French company could not be transferred to the United States without Colombia's consent.⁸ A Senate subcommittee report, on the other hand, stated the company did have the right to transfer its properties to a foreign government without Colombia's consent.⁹

B. THE TWO PANAMAS UNDER THE REPUBLIC OF COLOMBIA (1886–1903)

1. *The Two Panamas and "States' Rights" Disputes with the Republic of Colombia*

Beginning with the period of non-elite inter-societal migrations and foreign immigration associated with the ascending phase of the Panama Railroad (1849–1903), the sources of political rivalry were not just *between* the elite of the two Panamas but *within and across* the non-elite of Panama's two societies as well. It was this continuing political rivalry, complicated by inter-societal migration and foreign immigration in the context of the ascending phase of the Panama Canal (1903–present) that entangled the United States for most of the 20th century.

The late 19th century urban maritime-commercial oligarchy in Panama had essentially two rivals and one opposition in the political arena.¹⁰ Two of the urban elite's political rivals were predictably territorial-administrative. One rival was the landowning elite of the Panamanian interior particularly around Santiago de Veraguas. The other rival was the central government in Bogota, Columbia. The opposition to the urban elite came from within urban maritime-commercial society itself, the maritime-commercial lower classes and ethnically marginal urban groups on the outskirts of Panama City.

Despite missing out on the return of prosperity to the maritime cities following the construction of the Panama Railroad, many elite interior family members remained in the interior (e.g., surnames such as De la Guardia, Arosemena, Miró, and more recently, Fábrega and

⁸ Charles D. Ameringer, "The Panama Canal lobby of Philippe Bunau-Varilla and William Nelson Cromwell," *American Historical Review* 68 no. 2 (1963): 346–363. See especially Ameringer (1963, 351).

⁹ Ameringer (1963, 355).

¹⁰ Figueroa Navarro (1978, 117).

Chiari). Unlike the cross-fertilization that occurred at the elite level, life in the rest of Panamanian society remained more or less distinct between the western interior and the maritime cities until the construction of the Panama Canal. For almost all of the pre-independence period before 1903, communication between middle and lower echelon groups in the western interior and the maritime cities was rare.¹¹ The majority of the population of the interior maintained a “self-sufficient rhythm” (*ritmo autónomo*) in their everyday life, orchestrated by a rural elite preoccupied with continuity and stability. However, a new telegraph service between Panama City and the principal towns of the interior in 1892 created an instant communications network for exchanging messages and building relationships over long distances. Population growth in the Panamanian interior had resulted in at least three regional population cores in Coclé, Veraguas and later Chiriquí, semi-distinct sources of internal migration to the maritime cities.

Panamanian maritime-commercial society’s dissatisfaction with Colombia’s lack of interest in advancing Panamanian expectations produced a number of revolts and rebellions on the Isthmus between 1821 until 1903. One author lists a total of six 19th century separatist movements on the Isthmus of Panama including independence from Spain in 1821 and essentially State’s rights disputes with the government at Bogota in 1830, 1831, 1840, 1841, and 1863.¹² A more complete list of 19th and early 20th century political disputes in Panama would include civil unrest in 1885, 1900 and 1902. One historian argues that Panamanian nationalism began in the 19th century as continuing revolt against Colombia.¹³ Nonetheless, political and military leaders from the central Azuero Peninsula challenged the political ambitions of the urban maritime elite during the 19th century.

The landowning elite of Santiago de Veraguas more successfully opposed the interests of the commercial bourgeois of Panama City when they could make political and social alliances with the small rural landowners (*las finqueros*) on the border regions, thereby presenting a more unified interior political front.¹⁴ The interior leader

¹¹ Jaén Suárez (1978, 490).

¹² Manuel María Alba Carranza, *Cronología de los gobernantes de Panama: 1510–1967* (Panama: Imprenta Nacional, 1967, 248).

¹³ Ricuarte Soler, *Panamá: nación y oligarquía, 1925–1975* (Panama: Imprenta Cervantes, 1976).

¹⁴ Figueroa Navarro (1978, 116).

who could ally with middle echelon landowners and also marginal groups in Panama City presented a particularly formidable threat to the maritime elite. Diagramming crossover political alliances might explain the impact of socio-geographic mobility on the relative successes and constituency differences between well-known 20th century interior political leaders like Arnulfo Arias, Jose Antonio Remón Cantera, and Omar Torrijos Herrera.¹⁵ Leaders from the interior seeking to create a political movement against powerful maritime-commercial elite factions need only look along social class and racial fault lines within cosmopolitan maritime-commercial society itself, including within the maritime elite.¹⁶

Historically speaking, it was not just the large numbers of Caribbean immigrants that posed a political threat to the maritime elite.¹⁷ During the middle of the 19th century, Caribbean immigration coincided with Colombian constitutional reforms during Liberal-dominated administrations (*Confederación Grenadina*, 1853–1863; *Estados Unidos de Colombia*, 1863–1886). Liberal constitutional reforms in 1853 abolished certain property and literacy requirements to vote, thereby giving the marginal urban masses of Panama City and Colón a new political influence in presidential and legislative elections in Panama, including a separate wing of the Liberal Party.¹⁸

One political option for the maritime-commercial elite to counter-balance the political influence of the urban port city's lower-class and maintain order was to bring in outside support.¹⁹ However, the Panamanian elite's racial and cultural affinities with Europeans and Americans were not sufficient causes to trigger American action against Caribbean blacks or other foreign immigrants in Panama. The only

¹⁵ Sharon Phillips Collazos, *Labor and politics in Panama: The Torrijos years* (Boulder: Westview Press, 1991), 32. See also Ropp (1982, 28).

¹⁶ Marco Gandásegui, "La concentración del poder económico en Panamá," in Ricaurte Soler, ed., *Panamá: Dependencia y liberación* (Panama: Ediciones Tareas, 1986), 99–184. Ropp (1982, 72) and Gandásegui (1986) divide the Panamanian elite by race.

¹⁷ Jaén Suárez (1978, 453) puts the total number of Jamaican immigrants of mixed African origin in Panama between 1881 and 1911 at about 43,000. It is sometimes unclear in other sources whether Jamaican immigrants should be considered synonymous with Panama Canal manual laborers, or whether they were artisans and other laborers in the port cities.

¹⁸ Charles W. Bergquist, *Coffee and conflict in Colombia, 1886–1910* (Durham: Duke University Press, 1978), 12.

¹⁹ Ropp (1982, 10).

instances when Panama's social issues became a direct and actionable American concern occurred when American representatives felt racial and class-based violence threatened the safety of American passengers or rights of transit on the Panama Railroad.²⁰

1.1 *The Aborted 1903 Hay-Herrán Treaty and the 1903 Hay-Bunau-Varilla Treaty*

One common understanding of the Hay-Herrán Treaty's failure is that Colombian rejection was intended as a stalling tactic until the French company's contract expired, meaning that the \$40 million (\$975 million adjusted to 2007 dollars) meant for the French company would go to the Republic of Colombia. The unfortunate timing of the Hay-Herrán Treaty ratification process in the Colombian Senate was that early 1903 was a politically unstable time, coming off of its civil war or Thousand Day's War. A canal treaty was a made to order situation for a political rival to manipulate critical public opinion against the treaty.²¹

With the exception of behind the scenes lobbying leading to Congress' passage of the Spooner Act of 29 June 1902 authorizing federal funds for an interoceanic canal across Panama there has been no sequence of events related to the Panama Canal that has excited such an inordinate amount of scrutiny as that associated with the Provisional Government of Panama's independence from Colombia on 3 November 1903 and the drafting and signing of the 1903 Hay-Bunau-Varilla Treaty. A sizable volume of detailed information and analysis has been expended on every step and misstep in the events leading to the passage of the 1902 Spooner Act and the 1903 Hay-Bunau-Varilla Treaty, and scholars have certainly availed themselves of the libraries, archives, and publications of the United States, the present author included. Elements of some of these issues have been explored elsewhere, including a guarantee of public order that a Panamanian foreign minister had asked Bunau-Varilla to seek, the false threat of a Colombian attack on the Isthmus of Panama following the Panamanian revolt in November 1903, and criticisms that Philippe

²⁰ See Robert Aguirre, *Territoriality and commerce: Political conflict over the Panama Canal in geographic perspective* (Unpublished Ph.D. dissertation, Louisiana State University, 1999) for reference. Interpretations offered earlier were completely revised for this book in light of comparison with other straits.

²¹ Richard H. Collin, *Theodore Roosevelt's Caribbean: The Panama Canal, the Monroe Doctrine, and the Latin American context* (Baton Rouge: Louisiana State University Press, 1990), 219–220. See also Bergquist (1978, 217–218).

Bunau-Varilla did not represent the interests of the Republic of Panama after 3 November 1903.²²

There has been great interest in exploring the differences between the terms of the Hay-Herrán Treaty signed 22 January 1903 but rejected by the Colombian Senate, and the Hay-Bunau-Varilla Treaty signed 18 November 1903 and ratified by the Committee of Provisional Government of the Republic of Panama (*Junta de Gobierno Provisional*) on 2 December 1903. Since the two agreements concerned exactly the same project in exactly the same location at practically the same time they should have been identical, but critical historians suggest that the Hay-Bunau-Varilla Treaty gave much more to the United States than the Hay-Herrán Treaty.²³ Secretary of State John Hay was to have arbitrarily penciled the first important modifications to the Hay-Herrán Treaty thereby deleting its pledges of sovereignty.²⁴ Hay was then to have presented his draft proposal to Bunau-Varilla, who penned modifications to Articles I through VII, including the all-important formulation of conditional sovereignty, "if it were sovereign," in Article III.²⁵

There are two reasons most often given for the discrepancy between the Hay-Herrán Treaty and the Hay-Bunau-Varilla Treaty. One reason was Secretary of State John Hay's alleged unwillingness to make pledges of Panamanian sovereignty unless compelled by necessity. Another reason was United States negotiating leverage with the Republic of Panama due to the fact that the United States was protecting Panama from Colombian military reprisal for its declaring independence on 3 November 1903. There are problems with such a line of thinking, the most important of which is considering that the Article III conditional sovereignty clause of Bunau-Varilla's counterproposal to donate "the

²² Aguirre (1999).

²³ Charles D. Ameringer, "Philippe Bunau-Varilla: New light on the Panama Canal treaty" *Hispanic American Historical Review* 46 no. 1 (1966): 28–52. Ameringer (1966, 52) said that Secretary of State Hay noted the Hay-Bunau-Varilla Treaty was "vastly more advantageous" to the United States.

²⁴ John Major, "Who wrote the Hay-Bunau-Varilla convention" *Diplomatic History* 8 no. 2 (1984): 115–123. See also David McCullough, *The path between the seas: The creation of the Panama Canal, 1870–1914* (New York: Simon and Schuster, 1977, 390).

²⁵ Philippe Bunau-Varilla, *Panama: The creation, destruction and resurrection* (New York: McBride, 1913), 368. Miles P. DuVal, *Cádiz to Cathay: The story of the long diplomatic struggle for the Panama Canal, 2nd ed.* (New York: Greenwood Press, 1968/1947), 384. See also Miles P. DuVal, *And the mountains will move: The story of the building of the Panama Canal* (Stanford: Stanford University Press, 1947).

equivalent of sovereignty to the United States” was arbitrarily crafted by Bunau-Varilla in order to make the treaty “irresistible to the administration and to the Senate when the time came for ratification.”²⁶

The Article III formulation was not new and similar terms such as “perpetual control of a strip of land” can be found in several treaties and Congressional acts, not to mention the Constitution itself in terms of powers excluded or reserved to the States. For instance, the Spooner Act of 1902 authorized both treaties but never clarified the connection between the use of federal funds and sovereign rights, power and authority. Firstly, the Spooner Act calls for perpetual control of a strip of land:

[T]he President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than six miles in width... and the right to use and dispose of the waters thereon, and to excavate, construct and to perpetually maintain, operate, and protect thereon a canal... [A]nd also jurisdiction over said strip and the ports at the ends thereof to make such police and sanitary rules and regulations as shall be necessary to preserve order and preserve the public health thereon, and to establish such judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations.²⁷

Nonetheless, the basic terms of Article III were designed to validate the constitutional powers of the federal government to regulate commerce and use the treasury to construct an interoceanic canal in foreign territory. Article III was not an arbitrary sovereignty pledge to guarantee the treaty’s passage in the Senate. President Roosevelt already had nearly a two-thirds majority or enough to pass a treaty in the Senate in 1904, which did not guarantee but at least increased the likelihood that the Hay-Bunau-Varilla Treaty would be ratified. The Hay-Herrán Treaty itself was approved by the Senate without amendment on 17 March 1903 by the majority of seventy-three to five. The same assemblage of Senators that supported the Hay-Herrán Treaty, the Fifty-Eighth Congress, would also be considering the Hay-Bunau-Varilla Treaty. The Hay-Bunau-Varilla Treaty eventually passed the U.S. Senate without amendment on 23 February 1904 by the vote of sixty-six to fourteen.

²⁶ Major (1984, 121).

²⁷ U.S. Congress (1977b, 178).

2. *American Military Intervention in the States' Rights Dispute in November 1903*

During his message to Congress on 4 January 1904, President Theodore Roosevelt said that he ordered American vessels to be in ready positions for a possible secession on the Isthmus of Panama. Roosevelt said that given foreknowledge of a possible secession, "I directed the Navy Department to issue instructions such as would insure our having ships within easy reach of the Isthmus in the event of need arising." As the story is related, Manuel Amador's apparent ability to solicit an American warship (USS *Nashville*) in the critical hours before the 3 November 1903 revolt simply by sending an urgent telegram to Bunau-Varilla emboldened the Panamanian secession movement, even though the USS *Nashville* had already been given orders to proceed to Panama and its timely arrival was just a coincidence.²⁸ Roosevelt denied any special knowledge of Panamanian secession saying that it was common knowledge and that he was just as fully aware as anyone who kept up on public affairs that a Panamanian secession was a likely possibility.²⁹ In the same speech, Roosevelt also said that he had specifically counted on Panamanian secession as a third alternative with respect to American interests in an interoceanic canal. The other alternatives were negotiation with the Republic of Nicaragua over the San Juan route or another round of negotiations with the Republic of Colombia over the Panama route. Given all three alternatives, Roosevelt said he supported the Panamanian independence option, but he denied a direct role in creating Panamanian civil unrest.

As for United States obligations with Colombia, Roosevelt said that Article 35 of the 1846 Bidlack-Mallarino Treaty bound the United States to guarantee the sovereignty of Colombia over the Isthmus of Panama against foreign nations. Roosevelt said that the United States would no longer consent to be entangled in Colombia's internal troubles

²⁸ McCullough (1977, 362–364).

²⁹ See U.S. Congress (1977b, 307). McCullough (1977) describes Philippe Bunau-Varilla's private audience with President Roosevelt prior to the November 1903 revolt and speculates that Bunau-Varilla interpreted 'silence as consent' when he asked whether the United States would support an independence movement on the Isthmus of Panama, an exchange that seems moot in light of Roosevelt's message to Congress in January 1904 stating he was counting on and prepared to take advantage of Panamanian independence.

on account of the inability of authorities in Bogota to maintain order on the Isthmus of Panama. Roosevelt said:

That our wise and patriotic ancestors, with all their dread of entangling alliances, would have entered into a treaty with New Granada solely... to continue from Bogota to rule over the Isthmus of Panama, is a conception that would in itself be incredible, even if the contrary did not clearly appear. It is true that since the treaty was made the United States has again and again been obliged forcibly to intervene for the preservation of order and the maintenance of an open transit, and that this intervention has usually operated to the advantage of the titular Government of Colombia, but it is equally true that the United States in intervening, with or without Colombia's consent, for the protection of the transit, has disclaimed any duty to defend the Colombian government against domestic insurrection or against the erection of an independent government on the Isthmus of Panama.... It was under these circumstances that the United States, instead of using its forces to destroy those who sought to make the engagements of the treaty a reality, recognized them as the proper custodians of the sovereignty of the Isthmus.³⁰

Roosevelt tried to point out that the purpose behind signing Article 35 was to find the best means to protect the neutrality of the Isthmus of Panama against hostilities among non-adjacent maritime powers. Guaranteeing the sovereignty of Colombia over Panama was just a means to general principles like those agreed upon between the United States and Britain in the 1901 Hay-Pauncefote Treaty.³¹ Roosevelt claimed that the interests of the United States and the interests of world commerce could be satisfied by a canal under American federal government control in an independent Republic of Panama "willing to do its share in this great work for civilization."

C. THE TWO PANAMAS UNDER THE REPUBLIC OF PANAMA

1. *The Two Panamas and the Beginning of a "States' Rights" Disputes with the United States*

Though many interpretations simply assume that members of Panama's Committee of Provisional Government like Manuel Amador and Federico Boyd would have been upset with Bunau-Varilla's handling

³⁰ U.S. Congress (1977b, 314–316).

³¹ It was not until the 20 April 1921 Thomson-Urrutia Treaty that Colombia formally recognized Panama's independence.

of treaty negotiations, this does not appear to have been the case. Bunau-Varilla was never recalled nor officially censured. One historian who cites a single interview source speculated that Boyd was so angry at Bunau-Varilla's negotiations that he slapped him.³² However, one of the experts on the Bunau-Varilla papers in the National Archives, which includes 59 letter boxes and 23 volumes of correspondence, notes, unpublished manuscripts, maps, press clippings, etc., says that after signing the exchange of ratifications, Panamanian representatives like Amador and Boyd "cooperated well" with Bunau-Varilla. It was in the United States that the "hurry up" treaty found its "earliest critics," including American newspapers reporting on the role of Bunau-Varilla and Roosevelt's opposition in the Senate.³³

Several sources suggest that initial dissatisfaction with the 1903 Hay-Bunau-Varilla Treaty in 1904 was with regard to the ability of Panamanian authorities to impose national taxes, duties, or other charges on vessels in transit.³⁴ More widespread criticism of the treaty in Panama developed as a political issue between the maritime-commercial elite of the Conservative and Liberal parties in Panama during the 1910s and 1920s, in which Liberals challenged the power of the Conservatives by appealing to elements of Panama's territorial-administrative society and its non-elite.

D. CONCLUSION

Territoriality over the environment of Panama and flows through it during period of the '2nd republic' (1870s–1930s) before November 1903 was an interaction between a predominantly American preventive posture against any European involvement either public or private in the canal enterprise, and a maritime-commercial elite in Panama engaged in a State's rights dispute with centralized forms of government in Bogota. The '2nd republic' disentangled the United States from

³² McCullough (1977).

³³ Ameringer (1966, 44).

³⁴ See Aguirre (1999) for a discussion of some of McCullough's (1977) historical characterizations that tend to overdramatize the relationship between Bunau-Varilla and members of the Committee of Provisional Government of Panama, in some cases based on anecdotal evidence. Ameringer (1966) says that the rivalry was between Bunau-Varilla and Amador, not between Bunau-Varilla and the junta as a whole, who cooperated well when Amador was not present. Ameringer (1966) says that Amador and Bunau-Varilla were "childish" rivals over their importance to Panamanian history.

whatever alliances had existed with Colombia via the 1846 Bidlack-Mallarino Treaty, supported Panamanian independence in November 1903, and then re-entangled the United States into an alliance with Panama's maritime-commercial society. The 1903 Hay-Bunau-Varilla Treaty implemented the policy of an American canal under American control at all levels, from day-to-day operation to neutrality. The United States sent its military forces, upon Panamanian request, to suppress social and political unrest in Panama on several occasions often related to elections. American intervention during political elections helped the maritime-commercial elite maintain order in the port cities against rivals and opposition until at least the 1930s.

CHAPTER NINE

THE EXTRATERRITORIAL EXPANSION OF THE POWERS OF THE FEDERAL GOVERNMENT OVER THE MARITIME ENVIRONMENT AFTER THE 1880S

A. INTRODUCTION

The policies of the ‘1st republic’ (1789–1832) and the ‘1st democracy’ (1833–1876) were to avoid conflicts and intrigues across the ocean in Europe but consolidate territory at home. Coastlines and harbors were linked to inland territory by natural rivers, artificially-enhanced rivers, canals, and then railroads that enabled a greater range of travel and transport into the interior of natural watersheds or across major continental divides.

Most settled territory in the United States at the beginning of the ‘1st republic’ was within the boundaries of Atlantic coastal watersheds. The territorial enlargement of the United States proceeded over the rest of North America’s major drainage basins. The Louisiana Purchase (1803) gave the United States the western reaches of the greater Mississippi River drainage basin including the Missouri River. Next, Oregon Country was shared with Britain from 1818 until 1846 after which the United States acquired Oregon Territory, representing the major portion of the greater Columbia River drainage basin. Texas, Upper California, and New Mexico were acquired as a result of the Mexican-American War and the 1848 Treaty of Guadalupe Hidalgo, which gave the United States the last of the Pacific coastal watersheds from Oregon Territory to the strategic harbor of San Diego, and the last remaining interior western reaches of the greater Mississippi River drainage basin, the Red River and Arkansas Rivers. In order to consolidate its territorial enlargement, the United States federal government greatly expanded its territorial jurisdiction over transportation improvements including rivers and harbors, canals, transcontinental railroads, and public highways – to the exclusion of the territorial jurisdiction of the States through which they passed.

The policies of the ‘2nd republic’ (1870s–1930s) and later policy regimes like the ‘2nd democracy’ (1930s–1970s) and ‘3rd republic

(1980–?) were to avoid conflicts and intrigues across the ocean in Europe and the rest of the world, but assert territorial control over vast maritime areas adjacent to the coastline of the United States. During the ‘2nd republic,’ the United States enlarged its maritime domain from its coastline and natural harbors out into the maritime environment of the western Atlantic and eastern Pacific. The coast of the United States was linked with foreign coastlines and harbors by islands, straits, and sea lanes that enabled a greater range of travel and transport within seas and gulfs or across major oceans. Where a natural strait did not exist in Panama one would be created.

The expanded preventive posture of the United States was to deter European powers from establishing coaling stations near the American coastline or flanking the entrances to the Panama Canal, which was considered “virtually” a part of the coastline of the United States. The preventive posture over the Caribbean and eastern Pacific focused on three key elements of the physical environment: islands, straits, and sea lanes used as maritime nodes and links. In some cases, the preventive posture over islands, straits, and sea lanes resulted in the acquisition of former territories of Spain like Puerto Rico, the Philippines, and Guam; or territories belonging to independent Pacific Islander peoples like American Samoa or the Hawaiian Islands. In other cases, the preventive posture over nodes and links in the maritime environment was implemented through extraterritoriality, exclusive arrangements in perpetuity in which the United States exercised its jurisdiction in another nation’s territory, e.g., Guantánamo Bay in Cuba.¹

It is impossible to offer any more than a very brief treatment of 20th century American territoriality over land, sea, and air environments. Only a few illustrative examples will be cited. However, there are at least two important comparisons to keep in mind. One comparison is between the territoriality over inland areas (watersheds) during the ‘1st republic’ and ‘1st democracy’ versus territoriality over maritime nodes and links (islands, straits, and sea lanes) during the ‘2nd republic’ and afterwards. American control over key elements in the environment

¹ U.S. Congress, Senate, Committee on Foreign Relations, *Panama Canal Treaties: Hearings before the Committee on Foreign Relations*, 95th Cong., 1st and 2nd sess., 26–30 September; 4–5, 10–14, 19 October 1977; and 19–20, 25–27, 30 January 1978 (Washington, D.C.: GPO, 1977/1978, part 1 250–254). See letter from Douglas J. Bennett Jr., Assistant Secretary for Congressional Relations, to John Sparkman, Chairman, Committee on Foreign Relations, U.S. Senate, 1 November 1977, describing mostly naval base leases.

changed from a focus on adjacent coasts, rivers, and drainage basins to non-adjacent islands, straits, and sea lanes.

Another comparison is between the territorial jurisdiction of the federal government over these key elements of the environment before and after the beginning of the '2nd republic.' By the beginning of the '2nd republic,' as a result of internal consolidation during the '1st democracy,' the federal government exercised exclusive territorial jurisdiction over transportation improvements spanning major continental drainage areas, i.e., the transcontinental railroads, to the exclusion of the States. The federal government used the same powers to exercise exclusive extraterritorial jurisdiction over islands, straits, and sea lanes in foreign territory to the exclusion of foreign sovereign states through mutual agreement in international treaties.

B. THE EXTRATERRITORIAL EXPANSION OF THE POWERS OF THE
FEDERAL GOVERNMENT OVER ISLANDS, STRAITS, AND SEA LANES
DURING THE '2ND REPUBLIC' (1870s–1930s)

Captain Alfred Thayer Mahan, an influential advocate of sea power and a maritime interpretation of the Monroe doctrine, said that as “an inviolable resolution” of American policy it should be the case that “no foreign state should acquire a coaling station within three thousand miles of San Francisco,” which included the Hawaiian and Galapagos Islands as well as the Pacific Coast of Central America (see Figure 16, which depicts the current territorial waters of the United States, buffer zones around San Francisco and Panama, and world ports displayed by the size of their harbors).² Mahan even calculated that based upon the range of endurance of warships from European ports into American waters, the Monroe doctrine need apply no further south in the western Atlantic than the Amazon River basin. It is telling that advocates of the Panama Canal like Mahan adhered to the general principle in the 1850 Clayton-Bulwer Treaty and the 1901 Hay-Pauncefote Treaty that no one nation should deny use of the Panama Canal itself to any other nation. But these advocates did not adhere to the same policy when it came to the free and neutral use of strategic harbors, coaling stations, straits, and sea lanes leading to the Panama Canal.

² Adams (1974, 136 n. 52). See also Alfred Thayer Mahan, *The interest of America in sea power, present and future* (Boston: Little, Brown and Company, 1903), 26.

In “The Panama Canal & sea power in the Pacific: An original study in naval strategy,” Mahan believed that advocates of the Panama Canal did not separate its use for commercial welfare from its use for common defense, like any highway built at public expense.³ So what was the Panama Canal really built to do? What was the purpose of involving the federal government in building and operating the Panama Canal? Was the canal built for commercial convenience or military necessity? Several authors emphasize the impact of American economic crises like the depression of the 1890s on a bundle of foreign and domestic policies to increase American exports, generally called the “solution of overseas expansion.”⁴ Yet in a message to Congress on 8 March 1880, President Rutherford B. Hayes said that it was not “merely” the United States’ commercial interests that justified the policy of the United States for a canal under American control. In his message to Congress on 4 January 1904 transmitting the 1903 Hay-Bunau-Varilla Treaty, President Theodore Roosevelt said that matters of commercial convenience had been replaced by necessity, given the territorial enlargement of the United States in the Caribbean and the Pacific as a result of the Spanish-American War of 1898.⁵

The answer is probably that the Panama Canal was built in expectation of both commercial and military uses. Historically speaking, both expectations were correct and the Panama Canal served both purposes. But the measurable high points in the Panama Canal’s military and commercial utility occurred at different times. The Panama Canal’s relative military advantages peaked during the period of the ‘2nd republic,’ then declined during the period of the ‘2nd democracy,’ especially after World War II. The Panama Canal’s commercial advantages would probably not have been immediate even had it been built during the 1880s. In fact, foreign waterborne transits through the

³ Alfred Thayer Mahan, *The Panama Canal and sea power in the Pacific* (Albuquerque: American Classical College Press, 1977), 16.

⁴ See Walter LaFeber, *The American search for opportunity, 1865–1913* (Cambridge: Cambridge University Press, 1993); Walter LaFeber, *The new empire: An interpretation of American expansion, 1860–1898* (Ithaca: Cornell University Press, 1963); William A. Williams, *The roots of the modern American empire: A study of the growth and shaping of social consciousness in a marketplace society* (New York: Random House, 1970); Richard F. Bense, *Sectionalism and American political development, 1880–1980* (Madison: University of Wisconsin Press, 1984); John A. Agnew, *Place and politics: The geographical mediation of state and society* (Boston: Allen and Unwin, 1987).

⁵ U.S. Congress (1977b, 315–316).

Panama Canal did not experience any significant increase until after World War II.

1. *Nodes and Links Built to Generate Commercial Wealth*

The solution of overseas expansion was designed to expand foreign export markets for American goods as a remedy for domestic overproduction or other factors contributing to cyclic economic depressions. An interoceanic canal would have been indispensable to the export of American finished or raw products from the Atlantic to markets in East Asia, or from the Pacific to markets in Europe. Government-sponsored reports about the commercial utility of the Panama Canal correlated distance saved between ports with increases in foreign trade, based on simplifying assumptions not unlike some of the assumptions about social saving.⁶ Decreasing the distance to be traveled to foreign markets was expected to increase the market share of American exports. Indirect advantages of the Panama Canal were also expected to include a reduction in transcontinental freight rates due to competition.

Had the Panama Canal been completed before 1914, can one speculate what the increase in foreign exports would have been as a result? Trade and foreign investment in East Asia were modest in comparison with Europe and the rest of North America. For example, between 1850 and 1905, less than five percent of all American exports by value were delivered to East Asia. American exports to Europe and the rest of North America including Canada, Mexico, the Caribbean, and Central America represented the major market for American products and consistently accounted for about ninety percent of all exports between 1850 and 1915. Mexico, Canada, Europe, Caribbean Island nations, and northern South America accounted for nearly ninety percent of all United States foreign direct and portfolio investments between 1897 and 1935.⁷ Likewise, East Asia accounted for about seven to ten percent of American private foreign investment, but did not experience any increase between 1897 and 1935. However, foreign investment overseas accounted for only about one percent of all American private

⁶ Emory R. Johnson, *Panama canal traffic and tolls* (Washington, D.C.: GPO, 1912) and Emory R. Johnson, *Measurement of vessels for the Panama Canal* (Washington, D.C.: GPO, 1913).

⁷ Cleona Lewis, *America's stake in international investments* (Washington, D.C.: The Brookings Institution, 1938) breaks American private foreign investments in 13 categories of direct and 5 categories of portfolio investment, by geographic division.

investment between 1869 and 1897, and did not affect the average rate of return.⁸ From 1900 to 1929, foreign investment increased to six percent of all American private investment, but by comparison American private investment in the rest of the world was still less than in the State of California alone.

All this does not necessarily suggest that there was not a conscious policy or “solution of overseas expansion” designed to increase American exports in order to solve economic depressions like that of the 1890s. Perhaps the policies were premature until after the end of the Great Depression and the peace following World War II? Perhaps other market forces or even non-market forces such as eliminating import duties, or the collapse of European production after World War II, were more important when it came to increasing American exports to foreign markets than marginally reducing shipping time and associated logistical costs? In any event, between the opening of the Panama Canal in 1914 and World War II, flows through the Panama Canal measured by tonnage remained completely flat and two-thirds of all flows were vessels transporting goods coastwise between the Atlantic and Pacific coasts of the United States.

2. *Nodes and Links Built to Gain Military Advantage*

By the beginning of the ‘2nd republic,’ the speed, range, and destructive power of European naval forces was increasing dramatically. Industrialized European nations were capable of building naval forces constructed of steel, powered by steam engines using coal as fuel, and carrying projectile weapons with a much longer range and greater destructive force. Plans for building and operating the Panama Canal coincided with this era of industrialized European naval power.

The preventive posture of the United States over the maritime environment during the ‘2nd republic’ focused on islands, straits, and sea lanes that could be built up as maritime nodes and links between European home ports and American waters. Firstly, by denying strategic coastal and island coaling stations to European maritime powers in the western Atlantic and the eastern Pacific, the United States could hamper European naval capabilities to sustain operations against attractive targets on the American coast. Secondly, by constructing a naval

⁸ Stanley Lebergott, “The returns to US imperialism, 1890–1929” *Journal of Economic History* 40 no. 2 (1980): 229–252. See especially Lebergott (1980, 231 n. 8).

force with a range and destructive power equal to European navies, the United States would be prepared to engage European battleships further out on the high seas and deny them use of straits and sea lanes to the coast of the United States. It is a universal principle of warfare that there is a culminating point of victory or attack far from one's home base.⁹ Preventing European navies easy access to nodes and links across the vast maritime environment of the western Atlantic-Caribbean or the eastern Pacific, and forcing them to resupply over longer and longer distances using colliers and foreign coaling stations, would increasingly give the advantage to United States naval forces as they operated closer and closer to American forward naval bases like Guantánamo in Cuba or Pearl Harbor in the Hawaiian Islands.

2.1 *Preventing European Territorial or Extraterritorial Control over Nodes and Links Near American Waters*

There are no concise statistical surveys on the range of endurance of coal-burning battleships.¹⁰ However, a few representative sources of information about the range of endurance of coal battleships during the last two decades of the 19th century and the first two decades of the 20th century lend insight about the logistical demands of sending a fleet of warships from Europe into Caribbean or eastern Pacific Ocean waters.

Many vessels during the era of the coal-burning warship combined the use of sails and coal because their steam-powered engines were not efficient enough for long distances. A German, French, British, or Spanish coal-burning battleship en route to the Western Hemisphere from its homeports in Europe had sufficient range to make Caribbean waters at a normal operating speed but that would be about it. The range of endurance of a ship depended on the capacity of the ship to store coal in its bunkers or on deck, the coal's burning quality, the number of boilers that were operating, and the ship's speed. The relationship between range and speed was such that as the average

⁹ Michael I. Handel, *Masters of war: Classical strategic thought* (London: Frank Cass, 1996).

¹⁰ Navy Department Library, e-mail to author, 2005. However, see Frank M. Bennett, *The steam navy of the United States: A history of the growth of the steam vessel of war in the U.S. Navy, and of the Naval Engineer Corps* (Westport, CT: Greenwood Press, 1972/1896–97). See also Donald L. Canney, *The old steam navy. 2 vols. Volume 1: Frigates, sloops, and gunboats, 1815–1885. Volume 2: Ironclads, 1842–1885* (Annapolis, MD: Naval Institute Press, 1990).

speed of a battleship increased, its range of endurance would exponentially decrease. For instance, the distance from Hamburg to Colón via the Anegada Passage through the Virgin Islands was 5,109 nautical miles. The German warship *Moltke* launched in April 1910 had an operational range of anywhere between 3,000 and 4,000 nautical miles depending on whether it averaged 14 or 15 knots.¹¹ At greater speeds, its range would decrease. By comparison, most major warships of the United States fleet had an operational range in the neighborhood of 4,000 nautical miles, which they could cover in two weeks of continuous steaming as long as they maintained a speed of ten knots.¹²

By the period of the Spanish American War in 1898, if onshore coaling stations were not available then collier vessels were necessary to accompany warships, as in the case of the voyage of the Great White Fleet between 1907 and 1909. Supplying coal for American fleet operations in the Caribbean alone required hundreds of thousands of tons of coal on a monthly basis.¹³ Not only were the logistics of supplying distant coaling stations to extend the range of battleships a challenge but re-fueling a single naval vessel, accomplished mostly by hand, was a task in-itself. Around 1904, coaling at sea under less than optimal conditions was challenging and fleet operations were circumscribed in radial patterns around secure coaling bases.¹⁴

Several government memos suggest the importance that the range of endurance of European coal-burning battleships played in American preventive policies. For instance, a 12 November 1901 memo by Admiral George Dewey said that “careful investigation” of the radius of coal endurance of foreign battleships showed that “virtually the utter most reach of German men-of-war from their own ports, on a single supply of coal, in the direction of the proposed isthmian canal,

¹¹ John H. Maurer, “Fuel and the battle fleet: Coal, oil, and American naval strategy, 1898–1925” *Naval War College Review* 34 (1981): 60–77. Maurer (1981, 67) suggests the *Moltke* had a range of 3,000 nm traveling at 15 knots, and Staff (2006) suggests 4,120 nm at 14 knots.

¹² See Mark Hayes, *War plans and preparations and their impact on U.S. naval operations in the Spanish-American War*, Paper presented at Congreso Internacional Ejército y Armada en El 98, 1999 (<http://www.history.navy.mil/wars/spanam.htm>), for a brief explanation in the context of the Spanish-American War 1898.

¹³ Maurer (1981, 61) cites a 1912 study of the United States Navy estimating that the mobilization and concentration of the American fleet in the Caribbean would require a total of 300,000 tons of coal initially and another 150,000 tons per month afterwards.

¹⁴ Maurer (1981, 61–62).

is in the neighborhood of Haiti or St. Thomas.”¹⁵ Dewey speculated that the fact Germany was “deeply interested” in Haiti was because of the German desire to establish a secure coaling station for its naval forces on a route through the Panama Canal.¹⁶ Another October 1902 memorandum from the Navy General Board to Secretary of State John Hay pointed out the aggressive situation that had developed around the Mediterranean entrance to the Suez Canal by Germany and Britain, both of whose strategic interests depended on Suez Canal transits. The Navy General Board speculated about British and German intentions to extend their control and influence in Egyptian territory and flanking territories like Cyprus and Syria, to protect their own transits or harass other nation’s transits through the Suez Canal. The Navy General Board letter declared that “with a view toward preventing like aggressive action against Colombia and the United States,” the Republic of Colombia should cooperate with the United States in preventing any European power from controlling territory near the flanks of the Panama Canal “as requested.”¹⁷

American preventive postures over strategic nodes in the maritime environment were not limited to the eastern or Caribbean flank of the Panama Canal. For instance, on 24 June 1910 a bill was published by the Ecuadorian Senate intending to lease the Galapagos Islands to a German-French syndicate, allegedly for three million dollars and a guarantee of Ecuador’s sovereignty. A week later on 1 July 1910, Assistant Secretary of State Beekman Winthrop wrote to Secretary of State Philander C. Knox that all possible steps should be taken to “prevent any foreign powers, either directly through their governments or indirectly through their citizens, from obtaining coaling stations and possibly military bases at either of these places or at any other place on the flanks of the trade routes to the Panama Canal.”¹⁸ Two weeks later on 16 July 1910, Assistant Secretary of State Wilson wrote to the American Ambassador in Berlin with instructions to state American opposition to German interests on the Galapagos Islands, saying that the government of the United States held it would be a “menace to this country if any European power were to obtain a base at the Galapagos

¹⁵ See Peter Overlack, “German War Plans in the Pacific, 1900–1914,” *The Historian* 60 no. 3 (1998): 579–594.

¹⁶ Cited in Adams (1974, 155–6).

¹⁷ Cited in Adams (1974, 220–1).

¹⁸ Cited in Adams (1974, 199).

Islands or at any other point affording special strategic advantages as regards the Panama Canal.”¹⁹

The Roosevelt corollary to the Monroe doctrine was delivered in Roosevelt’s 6 December 1904 message to Congress. Its ostensible purpose was to prevent the circumstances by which foreign powers might take advantage of political instability or national debt in Latin American nations in order to interfere with their governments. The corollary itself denied American interest in annexing territory but said that the United States would preemptively interfere in the affairs of Latin American governments “as a last resort” in order to prevent the conditions in which interference by powerful European governments became likely. In his 1904 message to Congress, Roosevelt said:

It is not true that the United States feels any land hunger or entertains any projects as regards the other nations of the Western Hemisphere save such as are for their welfare. All that this country desires is to see the neighboring countries stable, orderly, and prosperous. . . . If a nation shows that it knows how to act with reasonable efficiency and decency in social and political matters, if it keeps order and pays its obligations, it need fear no interference from the United States. Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power. . . . We would interfere with them only in the last resort, and then only if it became evident that their inability or unwillingness to do justice at home and abroad had violated the rights of the United States or had invited foreign aggression to the detriment of the entire body of American nations. . . . Ordinarily it is very much wiser and more useful for us to concern ourselves with striving for our own moral and material betterment here at home than to concern ourselves with trying to better the condition of things in other nations. . . . Nevertheless there are occasional crimes committed on so vast a scale and of such peculiar horror as to make us doubt whether it is not our manifest duty to endeavor at least to show our disapproval of the deed and our sympathy with those who have suffered by it.

Roosevelt offered moral grounds for political intervention, e.g., “manifest duty” in the event of a “peculiar horror” or crimes on a vast scale.

¹⁹ Cited in Adams (1974, 200–1). See (Adams 1974, 152–3) on the importance of Germany.

However, political intervention for the common defense of the United States would also be justified on strategic grounds in order to prevent European nations from executing maneuvers like trading a Latin American government's debt for an exclusive lease to a coaling station or a naval base in Caribbean waters.

For example, on 2 June 1908 Secretary of State Elihu Root wrote in a memo to Roosevelt that the construction of the Panama Canal gave special importance to Roosevelt's corollary to the Monroe Doctrine. Root stated that the building of the Panama Canal made it important that "there shall be no hostile control of the route between our great Atlantic and Pacific ports and the Isthmus," and stated that it was of "special importance" to the interests of the United States that the nations of the Caribbean Sea maintain "independent, peaceful and prosperous governments" such that they would not be vulnerable to European extraterritorial control.²⁰

2.2 Acquiring Exclusive Territorial and Extraterritorial Control over Nodes and Links in American Waters

To prevent island possessions of Spain or other islands in the North Atlantic and Caribbean from falling into the hands of more powerful European nations the United States would assert and exercise either territorial or extraterritorial control, through annexation as a result of war or exclusive leases of naval stations in foreign territory. Not including the Straits of Florida or the Yucatan Channel in the Gulf of Mexico, there are nine narrow natural deepwater passages for vessel traffic from the North Atlantic to enter the Caribbean Sea and transit the Panama Canal. The three most important of these straits for vessels en route to the Panama Canal from the Atlantic coast of the United States or from any ports in Europe include the Windward Passage (Cuba and Haiti), the Mona Passage (Dominican Republic and Puerto Rico), and the Anegada Passage (U.S. and British Virgin Islands).

As a result of the 1898 Treaty of Paris that ended the Spanish-American War, Spain renounced its territorial control over Cuba (adjacent to the Windward Passage), Puerto Rico (adjacent to the Mona Passage), and Guam to the United States. Spain also agreed to sell the Philippine Islands to the United States for \$20 million (\$500 million 2007 adjusted dollars). The 1898 Treaty of Paris that ended the

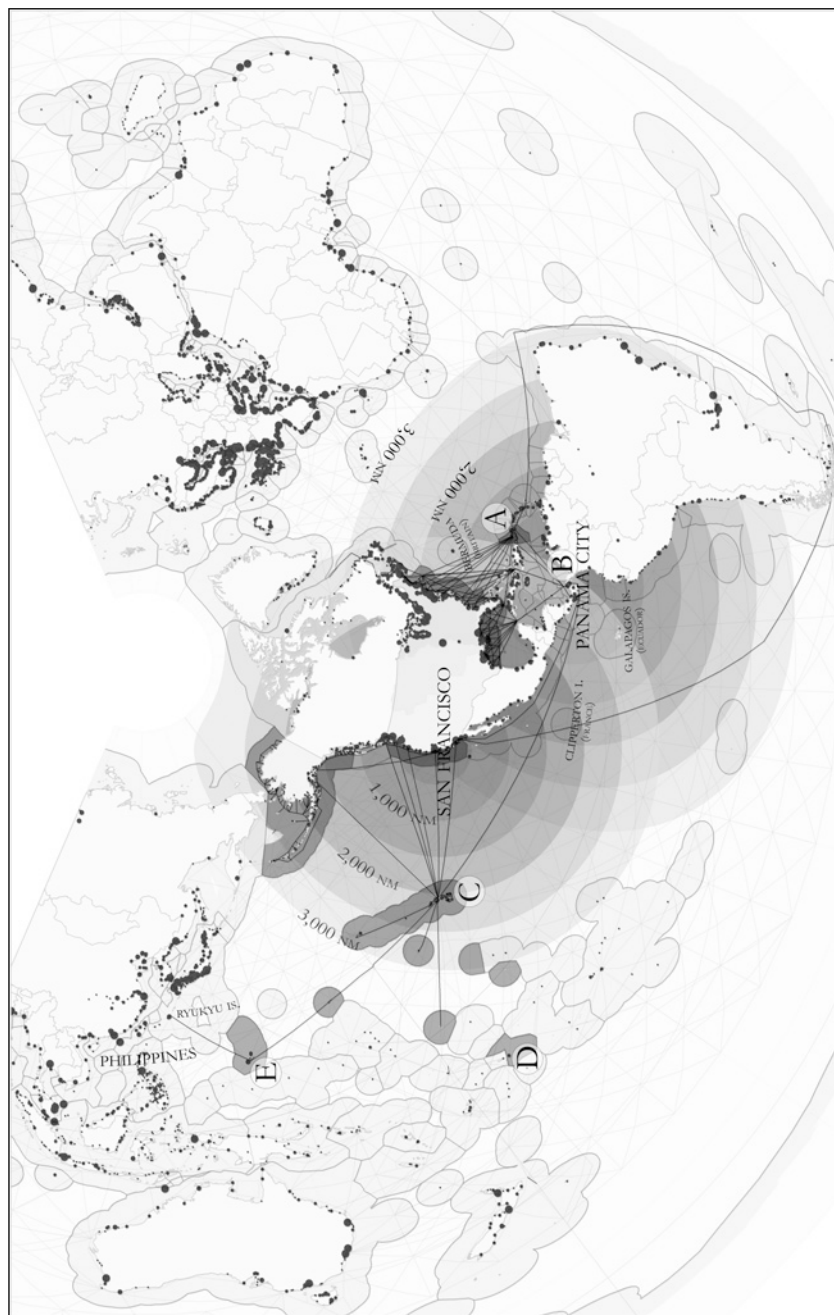
²⁰ Cited in Adams (1974, 175).

Spanish-American War was approved by a heavily-divided Senate on 6 February 1899 by a vote of 57 to 27, with only one vote more than the required two-thirds majority. Nonetheless, Cuba was required by the 1898 Teller Amendment to become an independent nation and American troops withdrawn, under certain conditions.

One of the conditions for withdrawal outlined in the 22 May 1903 Platt Amendment required that Cuba not permit “any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgement in or control over any portion of said island.” The Platt Amendment also stated that Cuba agreed to lease of lands “necessary for coaling or naval stations,” which was eventually sited at Guantánamo Bay adjacent to the Windward Passage. Besides the Windward Passage and the Mona Passage, the only remaining strategic Caribbean strait that was not adjacent to a United States territory or naval station at the time of the opening of the Panama Canal in 1914 was the Anegada Passage between the British Virgin Islands and the Danish islands of St. John, St. Thomas, and St. Croix. Fearing that Germany would take possession of Denmark’s claims and establish a submarine base during World War I, the United States purchased the islands from Denmark and took possession on 31 March 1917, renaming them the United States Virgin Islands (see Figure 16).

In its famous trek during the Spanish-American War, the U.S.S. *Oregon* departed from San Francisco on 19 March 1898 and arrived at Key West on 26 May 1898 after traveling 14,064 knots around South America. Many observers highlight the speed with which the *Oregon* would have made the journey had the Panama Canal link existed, without also considering the support structure of nodes and links. The *Oregon* had to make six foreign port calls in four different countries, none of which were naval stations under American control and defense.²¹ Consider the territorial gains of the Spanish-American War in the far western Pacific. The route for an American warship in 1920 leaving from New York City to the Philippines to Manila would have to travel a distance of 11,364 nautical miles. The route for the same

²¹ Stops included coaling stations at Callao (Peru), Port Tomar and Punta Arenas (Chile), Rio Janeiro (Brazil), Bahia (Brazil), and Barbados. The total cost of this single voyage, approximately half of which was for the coal consumed, amounted to \$98,253 in 1898 (\$2.5 million in adjusted 2007 dollars). See U.S. Congress, Senate, *Armed vessels, tenders, and war ships sent to the philippines, etc.*, 56th Cong., 2nd sess., Doc. No. 22 (Washington, D.C.: GPO, 1900).



16. Extraterritorial buffer zones and expansion during the '2nd republic' (1870s-1930s)

American warship in 1920 leaving from New York City to the Philippines along the shortest route via the Suez Canal would have to travel a distance of 11,521 nautical miles. In other words, the two routes were practically the same and there was little distance advantage to using the Panama Canal. However, the same American warship cruising to Manila through the Panama Canal could make three stops at American naval bases in Panama, Hawaiian Islands, and Guam on its way to the western Pacific Ocean and travel a distance of 11,540 nautical miles. The route east through the Suez Canal would require the American warship to resupply at foreign coaling stations the entire way.

The United States acquired several exclusive leases or annexed territory in the central Pacific Ocean, all within approximately five to six thousand nautical miles of the Panama Canal. Treaties between the United States and Hawaii in 1849 established a base of relations, emphasizing that neither the United States nor European powers would acquire exclusive privileges. A lease for a naval base on the Hawaiian Islands was signed in a treaty with the Hawaiian Kingdom in 1875, to which an amendment was added in 1887 granting exclusive rights to the United States. The treaty stated, "His Majesty the King of the Hawaiian Islands grants to the Government of the United States the exclusive right to enter the harbor of Pearl River in the Island of Oahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States."²² The Hawaiian Islands were annexed to the United States during the Spanish-American War.

For a naval base in the southern Pacific Ocean, Secretary of State John Hay signed the Tripartite Convention in 1899 with Baron Theodor von Holleben, German ambassador to the United States, and Sir Julian Pauncefote, British ambassador to the United States, which partitioned the Samoan islands among the three maritime powers. Finally, in the northern Pacific Ocean, a 26 May 1903 *New York Times* article reported that Admiral George Dewey had recommended immediate establishment of a coaling station at Dutch Harbor, Alaska forming "the fifth in the chain of coal depots along the Pacific Coast, which will begin at San Diego and include San Francisco, Puget Sound, and

²² See Department of the Navy, *History of the Fourteenth Naval District and the Hawaiian sea frontier, Vol. 1* (Honolulu: Historical Section, Fourteenth Naval District, 1945, (<http://www.history.navy.mil/docs/wwii/pearl/hawaii.htm>)).

Sitka," further noting that Honolulu was the sixth and possibly others like Guam to be added (see Figure 15).

At the same time that the United States was preventing European control over islands, straits, and sea lanes near American waters, the Navy was preparing to build a new fleet. The 30 June 1890 Navy Bill authorized construction of three battleships that along with a fourth became the center of a new fleet capable of challenging European naval forces for control of the high seas far off the coastline of the United States. The Navy also experimented with oil fuel vessels as early as 1897 and by 1911 it had developed its first fuel oil warships, the Nevada-class.²³ A 29 May 1920 letter from Secretary of the Navy Joseph Daniels to Senator Carroll S. Page of the Senate Naval Affairs Committee marked the year 1913 as the date for an important shift in American naval thinking away from a coal-driven battle fleet and towards a fuel oil-drive fleet.²⁴

With the development of more efficient engine propulsion systems using liquid oil fuel, the nodes and links for projecting naval force changed.²⁵ Oil fuel had twice the thermal capacity of coal. For any given weight an oil-driven warship could travel twice as far as a coal-driven warship. A warship using oil fuel could refuel at sea even in rough conditions and in less time using pumps to move fuel between ships and also move fuel around once on board. Finally, sources of oil fuel were just as abundant on the Pacific coast of the United States as they were on the Atlantic and Gulf coast, which had not been the case with coal.

One author feels that the declining military significance of the Panama Canal, a structure built to fulfill sea power, was due to the role that Canal Zone air bases eventually played for the protection of the continental United States.²⁶ During the period of the '2nd democracy,' nodes and links for aerospace environments such as air bases or forward radar stations became more of a military asset for the United States in and around the Panama Canal and Canal Zone than its use

²³ Maurer (1981, 70).

²⁴ U.S. Congress, House, Committee on Naval Affairs, *Fuel-oil investigation*, 66th Cong., 2nd sess., Committee Serial No. 189 (Washington, D.C.: GPO, 1920).

²⁵ See Maurer (1981, 70).

²⁶ John Major, "Wasting asset: The US re-assessment of the Panama Canal, 1945-1979" *Journal of Strategic Studies* 3 no. 2 (1980): 123-146.

for transits of warships. Even aircraft carriers eventually became much too large to transit the Panama Canal.

I would argue that advances in the technology of naval power using oil-fuel had begun to diminish the Panama Canal's military usefulness much earlier, in fact, before it even unofficially opened in August 1914. After the strategic decision was made to switch from coal to oil fuel by the United States Navy in 1913, the Panama Canal was effectively no longer a "supreme" military asset for the United States. In other words, in 1904 the canal would have represented the state-of-the-art for naval force projection. But because of significant improvements in propulsion systems based on oil fuel in the interim between 1904 and 1914, by the time the Panama Canal was actually completed its relative strategic importance was not what it had been.

C. CONCLUSION

The policy of the United States in the 1850 Clayton-Bulwer Treaty and preserved to some extent by the 1901 Hay-Pauncefote Treaty was that no government would through threat of force or any other means deny free use of the Panama Canal to another government. The same did not apply for the islands, straits, and sea lanes flanking the Panama Canal. The Panama Canal was the only neutral and free part of a network of strategic maritime nodes and links in the Caribbean and eastern Pacific Ocean under American control.

There are similarities between the preventive posture of the '2nd republic' over islands, straits, and sea lanes, and the preventive postures of later policy regimes over similar elements in near-shore maritime and aerospace environments. The scale and complexity of American territoriality was compelled to change depending on how territorial or extraterritorial control of nodes and links – through three-dimensional high seas and aerospace environments – could be used by the United States or its enemies to either attenuate or enhance the projection of deadly force given more advanced technology.

The policy regime of the '2nd democracy' (1930s–1970s) sought to prevent industrializing nations in Europe and Asia and particularly expansionist regimes in Germany, Japan, and Russia from interfering in the affairs of Latin American governments for the purpose of establishing covert bases or airstrips that could enhance the range of naval vessels, submarines, aircraft, or ballistic missiles for opera-

tions in American waters and airspace. The policy regime of the '3rd republic' (1980-?), the era of the Reagan Revolution and Conservative Centrism, sought to stem the influence of the Soviet Union in client states like Cuba over airstrips or covert bases that could enhance the range of warplanes or missiles in North American waters and airspace. After the collapse of the Soviet Union in 1989, the regime of the '3rd republic' shifted its focus to sub-state and non-state actors including state-supported terrorist organizations training insurgents in Central America; non-state terrorist organizations attempting to transport hidden weapons of mass destruction into American waters and airspace; or even foreign state-supported corporations maneuvering to own and operate key nodes and links in the United States maritime or aerospace infrastructure.

CHAPTER TEN

THE PANAMA CANAL AND THE TWO PANAMAS UNDER THE '2ND REPUBLIC' (1870S–1930S) AFTER PANAMANIAN INDEPENDENCE

A. AMERICAN EXTRATERRITORIALITY THROUGH THE 1903 HAY-BUNAU-VARILLA TREATY

There were 20 different bilateral agreements between the United States and the Republic of Panama during the '2nd republic' (1870s–1930s) after Panamanian independence in 1903, including the 1903 Hay-Bunau-Varilla Treaty.¹ Treaties covered topics such as Canal Zone boundaries, extradition, legal tender and silver coinage, transits of United States troops and neutrality during World War I, claims for damages during the 1915 riot, smuggling of alcohol during Prohibition, and other matters of jurisdiction and the sovereign authority. The only important modification to the 1903 Hay-Bunau-Varilla Treaty during the time of the '2nd republic' was the 3 December 1904 Canal Rights treaty, otherwise known as the "Taft Agreement."

Article III of the Hay-Bunau-Varilla Treaty allowed the United States to exercise all the rights, power, and authority of sovereignty to the entire exclusion of any such exercise by the Republic of Panama.² The ever-quoted Article III of the Hay-Bunau-Varilla Treaty reads:

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

¹ Treaties between the United States and Republic of Panama from November 1903 to the present are available through the online database HeinOnline (<http://heinonline.org>).

² U.S. Congress (1977–78).

The Fifth Circuit Court in New Orleans in 1940 explained that Article III of the 1903 Hay-Bunau-Varilla Treaty gave the United States the “greatest possible jurisdiction in the Panama Canal Zone, without actually ceding the area to this country.”³ There have been many interpretations of Article III but the last sentence “to the entire exclusion” sounds like a federal government’s assertion of power over a State.

B. THE PANAMA CANAL AND CANAL ZONE

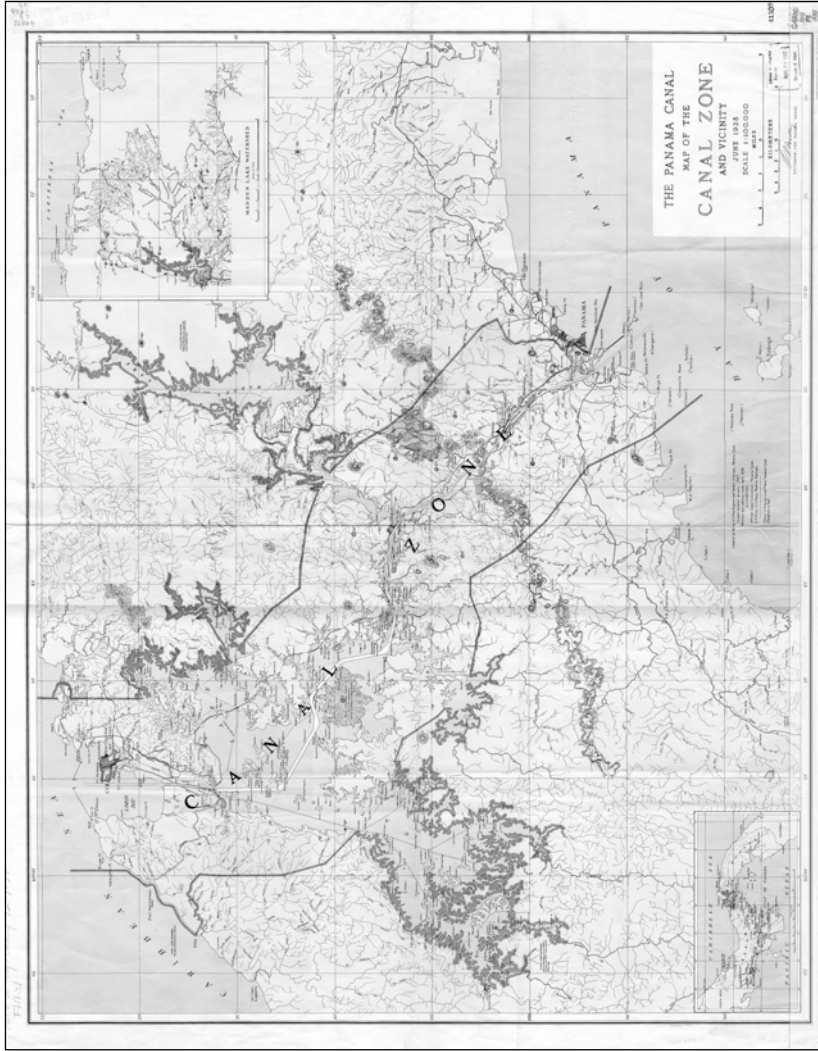
1. *The Canal Buffer Zone*

1.1 *An Extraterritorial Five-Mile Wide Buffer Zone around the Line of the Panama Canal*

The Canal Zone was established as a five-mile buffer zone around the center line of the Panama Canal within which the United States federal government could exercise its constitutional powers to the exclusion of sovereign rights exercised by the Republic of Panama (see Figure 17). The United States federal government exercised its constitutional powers within the Canal Zone not by virtue of the fact that the Canal Zone was a territory of the United States, but by virtue of the promises exchanged in the 1903 Hay-Bunau-Varilla Treaty.

As a physical transportation infrastructure, the Panama Canal and its five-mile-wide buffer zone are comparable to the territorial system used by the federal government over the transcontinental railroads, but with two important differences. One difference was that the territory through which the canal line passed was not that of a State or Territory of the United States but foreign territory. Another difference was that the Panama Canal was not a self-contained transportation infrastructure in the same way as a railroad. Goods, passengers, finances, and messages in transit on a railroad are conveyed in rail cars guided by a single track owned and operated by the railroad company and under the jurisdiction of a sovereign state all the way from their origin to the destination. Goods, passengers, finances, and messages in transit through the Panama Canal are conveyed in vessels that choose to pay a toll to transit through the Isthmus of Panama using the Panama Canal but the rest of the voyage follows sea lanes or high seas owned by no one.

³ U.S. Congress (1977–78, 1:622).



17. The Panama Canal and Canal Zone in 1938

It took a major momentum shift between the policy regimes of the '1st democracy' and the '2nd republic' to establish the policy that there would be an American canal under American control. However, it only took six documents between November 1901 and May 1904 to legally authorize and implement the policy of a canal under American control. First was the 1901 Hay-Pauncefote Treaty between the United States and Britain, signed 18 November 1901 and entered into force on 21 February 1902, abrogating the 1850 Clayton-Bulwer Treaty and agreeing that a canal could be constructed and operated by the United States federal government. Second was the Spooner Act or "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved by Congress on 28 June 1902. The third document was the Hay-Bunau-Varilla Treaty between the United States and the Republic of Panama, signed on 18 November 1903. The Hay-Bunau-Varilla Treaty was ratified by the Republic of Panama on 2 December 1903, ratified by United States Senate 23 February 1904, and finally entered into force on 26 February 1904.

The fourth set of documents certified the sale and transfer of canal properties to the United States from the New French Panama Canal Company, a purchase authorized by the 1902 Spooner Act. Sale of the company was authorized by its stockholders for \$40,000,000 on 23 April 1904, and on 4 May 1904 an officer of the U.S. Army Corps of Engineers in Panama was instructed by the Attorney General of the United States to take possession of all New French Canal Company properties. The fifth event or set of documents authorized receipt of payment of \$10,000,000 by the Republic of Panama as per the terms of the Hay-Bunau-Varilla Treaty, which was paid sometime before the United States took possession of the New French Canal Company's properties on 4 May 1904. The sixth and last document was an executive order from President Roosevelt placing the Isthmian Canal Commission in charge of establishing a government for the Canal Zone. On 9 May 1904, Roosevelt through Secretary of War William H. Taft and in accordance with the Spooner Act and the Hay-Bunau-Varilla Treaty issued the executive order for a Canal Zone government. Also as part of the establishment of the Canal Zone government, on 24 June 1904 Secretary of War Taft issued instructions for the Isthmian Canal Commission to establish ports, tariffs, custom houses, and post offices in the Canal Zone to the exclusion of similar offices of the government of the Republic of Panama.⁴

⁴ U.S. Congress (1977b, 411–415).

2. *Canal Zone Governance*

2.1 *A Bill of Rights*

The Canal Zone government was authorized by Congress in the Spooner Act and put under the executive authority of the President and one of his Cabinet, i.e., the Secretary of War. The act stipulated a bill of rights and a legislative, executive, and judicial branch. The three branches of Canal Zone government were staffed by a paid professional workforce of Americans recruited from the United States, and an immigrant manual labor force recruited from the Caribbean and the Mediterranean.

The 1904 Spooner Act also stated that all the military, civil, and judicial powers in the Canal Zone were to be exercised by a government directed by the President for the purpose of “maintaining and protecting the inhabitants thereof in the free enjoyment of their liberty, property, and religion.” Panamanians or other foreign nationals resident in the Canal Zone itself were not considered American citizens, since the territory of the Canal Zone was not the sovereign territory of the United States, but they were considered to be under special United States jurisdiction. Roosevelt sent instructions to Taft in a 9 May 1904 letter to implement the Spooner Act, stating that the law of the land already familiar to inhabitants of newly demarcated Canal Zone territory or other places under United States jurisdiction just after the time of the Hay-Bunau-Varilla Treaty entered into force on 26 February 1904 would remain in force. However, Roosevelt added that there were certain “great principles of government...essential to the rule of law and the maintenance of order,” which was the Canal Zone bill of rights. In other words, the Canal Zone government would comply with section one of the Fourteenth Amendment to the Constitution that no State shall make or enforce laws that abridge individual rights or the life, liberty, or property of United States citizens or those subject to its jurisdiction without due process, nor shall any State deny any person within its jurisdiction equal protection of the law.

However, in Roosevelt’s letter to Taft the emphasis was not on protecting its residents against the tyrannies of a Canal Zone government. The Canal Zone bill of rights was, according to Roosevelt, “essential to the rule of law and maintenance of order.” In other words, the bill of rights focused on matters of due process necessary in order to maintain order and reduce risks to public health and public safety. The Isthmian Canal Commission had the power to legislate and set rules, enforced through the executive and judicial arms of the Governor of the Canal Zone,

including the power to exclude from time to time anyone not resident in the Canal Zone at the time of 26 February 1904. The Commission could exclude anyone they believed would create public disorder, endanger public health, or in any way impede canal operations and its workforce. A number of examples are given, including peculiar turn of the century terms such as “idiots, the insane...persons afflicted with loathsome or dangerous contagious diseases; those who have been convicted of felony, anarchists, those whose purpose it is to incite insurrection.”

It is not a stretch of the imagination to infer that the priority in the Isthmian Canal Commission’s powers were to establish its authority to reject the unwelcome elements among its potential incoming Caribbean black and Mediterranean immigrant manual labor workforce. The examples given by the Isthmian Canal Commission for those who might create public disorder, endanger public health, or in any way impede canal operations and its workforce were specifically followed by the phrase, “and may cause any and all such *newly arrived* persons of those alien to the Zone to be expelled and deported from the territory controlled by the United States.”

Anyone with a passing familiarity of the first ten amendments to the United States Constitution might note several omissions in the Canal Zone’s version of the bill of rights. One might also note the addition of prohibitions against government bills of attainder and ex post facto laws from Article I of the Constitution. The Canal Zone’s enumeration of its bill of rights was not supposed to be a direct copy of the first ten amendments to the Constitution. In 1979, the United States Fifth Circuit Court of Appeals ruled that the Canal Zone government was statutory and not constitutional. Since the United States occupied the Canal Zone but did not own it the 1904 Canal Zone bill of rights, and not the 1791 Bill of Rights of the United States Constitution, was the only bill of rights that really mattered in the Canal Zone.

Discrepancies and omissions between the Constitution’s Bill of Rights and the Canal Zone bill of rights include the omission of the Second, Third, Seventh, Ninth, and Tenth Amendments, as well as portions of the Fourth, Fifth, and Sixth Amendments. The pattern in discrepancies and omissions seems to be that individual civil rights were not guaranteed if they posed a risk to public health or public safety. For example, there is no right of residents of the Canal Zone to keep and bear arms (Second Amendment). Perhaps the most interesting omission from the point of view of Panama’s long State’s rights dispute is the Tenth Amendment, that “the powers not delegated to

the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

2.2 *A Legislative Branch: The Isthmian Canal Commission (1904–1914)*

The seven-member Isthmian Canal Commission was established as the sole legislative arm of the Canal Zone from 1904 until 1914. As authorized by the President of the United States, the Commission could legislate on any matters with at least a quorum of four or more members. The Commission did not have the same powers of Congress when it came to major issues of the ‘national endeavor’ of the Panama Canal. The Isthmian Canal Commission was described in its annual report in 1904 as holding a relation to the canal construction work “similar to that of a board of directors to a great railway enterprise, except that the Commissioners are in closer touch with their work and the majority being civil engineers, stand in the relation of consulting and designing engineers to the canal work.” The parallel between the Isthmian Canal Commission and the board of directors of a transcontinental railroad granted by Congress as a public franchise was, of course, not a casual or accidental comparison.

The first legislative priorities for the Commission were sanitary conditions in the adjacent maritime cities of Colón and Panama, as per Article Seven of the 1903 Hay-Bunau-Varilla Treaty, as well as the Commission’s powers to “raise and appropriate revenues, not inconsistent with the laws and treaties of the United States and submitted for the approval of the Secretary of War.” The Canal Zone government was to be paid for from local revenues so far as possible but construction expenses incurred before the Panama Canal went into operation were to be paid directly by Congress per Section Five of the Spooner Act of 28 June 1902. The Commission was obligated to submit to Congress in detail all proposed expenditures and revenues at the beginning of each year, and present on or before the end of each year in its annual report a detailed account of all the money received or disbursed in the performance of their duties, as well as a report on the progress of construction of the canal itself.

After the first year of the Commission’s work, Roosevelt sent two letters in April 1905 noting that the practical result of the operations of the Commission’s work “has not been satisfactory,” requiring changes in the personnel of the Commission and its guidance. Roosevelt ordered that the general duties of the Commission be divided among three executive departments. First, the chairman of the Commission

did not have to reside in Panama but would be responsible for all fiscal affairs including purchase and delivery of all materials and supplies; accounts, bookkeeping, and audits; and the commercial operations of the Panama Railroad Company and the steamship lines. The second department would encompass the responsibilities of the Governor who would have to reside on the Isthmus and had duties as explained in Roosevelt's 9 May 1904 orders including administration and enforcement of law in Canal Zone; and sanitation in Panama City and Colón. Finally, the third executive department was the Chief Engineer who like the Governor had to reside in Panama and was responsible for all of the actual supplies and work of construction including practical operation of the railroad.

2.3 *A Judicial Branch: The Courts*

The first legislative act of the Isthmian Canal Commission in 1904 was an act to establish a three-judge Supreme Court, three circuit courts, and five municipal courts. The Canal Zone police force was part of the executive branch of government under the authority of the Governor but at least initially they also served as marshals of the courts. The three judges of the Canal Zone Supreme Court also sat on the three circuit courts and were to be paid from Canal Zone government funds. Municipal judges were to be paid from separate municipal tax funds, the power of taxation being given to the municipalities of the Canal Zone by yet another legislative act of the Commission.

One problem for the Commission in setting up the Canal Zone's judicial branch was whether a Canal Zone Supreme Court was necessary at all. The Commission recognized the need for a right to appeal the rulings of Canal Zone courts and suggested they be heard in federal court in the United States. However, the Commission's opinion that all appeals be heard in federal courts in the United States required the approval of Congress. The Commission stated that they would have no choice in the interim but to organize a Canal Zone Supreme Court. The Commission asked Congress to settle the matter and preferred that there not be a need for a Canal Zone Supreme Court, regardless of the inconvenience to litigants who would have to travel to the United States for their appeals.

2.4 *An Executive Branch: The Governor*

The eighth act of the Isthmian Canal Commission provided for the organization of the executive branch of government. The preliminary

plan for the executive branch was a Governor with paid staff filling four executive offices including the office of the Governor, executive secretary, treasurer, and auditor; as well as five executive departments including health, revenues, justice, police, and education.

As the chief executive officer acting in the name of the President and the Secretary of War, the Governor was responsible for seeing that all laws, rules, plans, and procedures set down by the Isthmian Canal Commission were faithfully executed. The Governor ran the executive branch of the Canal Zone government including most of the paid professional staff and manual laborers, and generally executed any acts established by the Commission. The Governor was responsible for preserving public health, public order, and the property of the United States per Article Seven of the 1903 Hay-Bunau-Varilla Treaty, and was empowered to notify the Secretary of War of any emergency requiring the military forces of the United States. Governors were appointed by the President and answered directly to the Secretary of War.

2.5 Direct, Indirect, Induced, and Parallel Business Operations to the Construction and Operation of the Panama Canal

The sale of all rights and properties belonging to the French Canal Company for \$40 million was authorized by its stockholders 23 April 1904. The United States took possession on 4 May 1904, with instructions to continue operations with the same work force used by the French Panama Canal Company. Separate from the operations of the French Canal Company, and at the time of Roosevelt's 9 May 1904 letter to Taft, the United States federal government had managed to purchase a 69/70th share of stock in the Panama Railroad, and was preparing to locate and purchase the last remaining stock.

The Panama Railroad Company was maintained as a distinct organization and was not included as an executive department of the Canal Zone government. Roosevelt asked that the members of the Isthmian Canal Commission be elected to its board of directors and the Panama Railroad Company managed as a separate and distinct business enterprise. The policy of the railroad was to be "completely harmonized with the policy of the Government of making it an adjunct to the construction of the canal, at the same time fulfilling the purpose for which it was constructed as a route of commercial movement across the Isthmus of Panama." Thus the model of harmonizing the role of business enterprises was like that of a "public franchise," i.e., the transcontinental railroads, constructed for public

welfare and the common defense but not inconsistent with a function to generate revenue.

3. *The Operations and Government of the Panama Canal (1914–1951)*

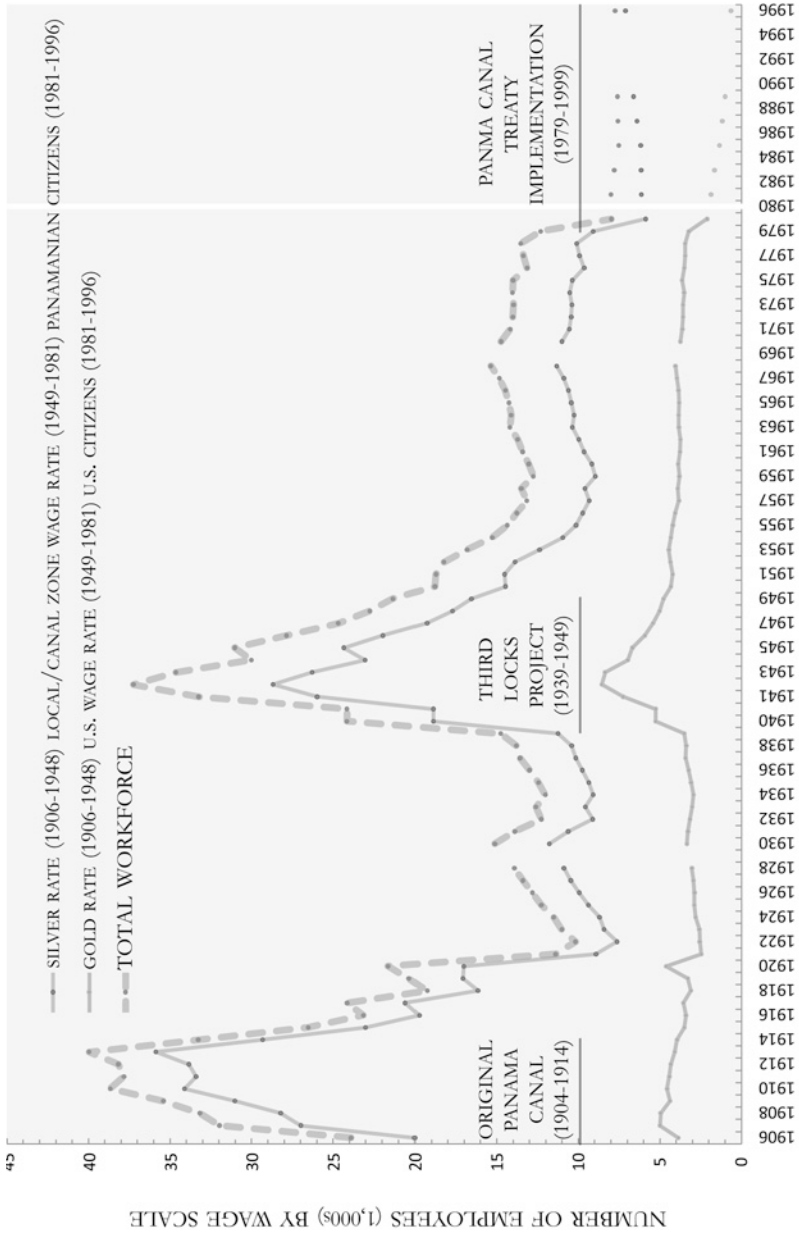
3.1 *An Operating Organization of Organizations*

The Isthmian Canal Commission was abolished effective April 1, 1914. After the disbanding of the Isthmian Canal Commission and reorganization as “The Panama Canal,” the Governor of the Panama Canal became the President of the Panama Railroad Company. American canal administrators reflecting on the organization of the Panama Canal in 1923 said that the Panama Canal was not a single organization devoted to matters of canal construction, operations, and maintenance; rather it was an organization of organizations with different functions and operations. The organization of organizations included 1) an organization for canal construction, operations, and maintenance; 2) an organization of business enterprises to supply products and services for everything from transiting vessels to the workforce; and finally, 3) an organization of civil government to provide basic services like roads, schools, sanitation, sewer, water, hospitals, housing, police, a court system, and just about everything else an organized government does to support its citizens.

In describing the responsibilities of the Governor of the Panama Canal Zone, who was also president of the Panama Railroad Company, the Annual Reports of the Governor of the Panama Canal (1914–1952) break labor into three categories. One general category of work was canal operations, which included all the work of transiting vessels and administering the canal itself. Another general category was business enterprises, described as the work of “providing fuel, provisions, chandlery, and repairs to vessels; food and clothing to the working force; handling of cargo, and like business operations; and the operation of the steamship line and the Panama Railroad; in fact, all work that in the United States is commonly carried on by private enterprise.” Finally, the last general category of canal work was civil government and the functions that correspond to federal, state, and local governments including diplomatic relations, posts, customs, police, education, health, water, and other public services. Many of the divisions and departments were maintained with slightly different names even during periods of major reorganization, for example, the dredging division, locks division, and marine (later navigation) divisions are mentioned as early as 1921.

Employment in the various divisions and departments of the Panama Canal was much diversified in terms of the different functions needed and their job descriptions, from engineering to accounting and from general grounds keeping to piloting vessels. A number of secondary authors have discussed the existence of a dual wage system based upon paying employees in currency on a gold or silver standard. Earlier Panama Canal Annual Reports suggest this was common practice. However, the distinction between gold and silver employees also extended to quarters, commissaries, clubhouses, and other public facilities. Though the distinction was effectively one between United States citizens and citizens of other nations, including Panama, the actual distinction was between people employed in executive, supervisory, professional, or other technical positions that as part of the job description required educational credentials or special training. Thus there were at least two potential distinctions among the Panama Canal labor force including nationality, and rate of pay based on position.

Between the original phase and World War II, nationality and rate of pay based on position were synonymous. However, the 1948 and 1949 Annual Reports of the Panama Canal signal the first change in terminology from "silver" versus "gold" rates of pay to the terms "local" versus "United States" rates of pay (see Figure 18). The 1948 Annual Report says that for many years only United States citizens were eligible for executive and technical positions, but it suggests that "for several years past" properly qualified citizens of Panama have been eligible for appointment to executive, supervisory, or professional positions if they meet the educational and training requirements of the job. Panamanians employed in higher category executive or professional positions were paid at "equivalent or closely similar" rates of pay as those prevailing in the United States. However, until 1979 the Panama Canal annual reports only list employment statistics by rate of pay and division without also listing nationality. In other words, though one might assume many higher category professional positions were held by United States citizens, technically speaking employees paid at "United States" rates were not synonymous with citizens of the United States. It is unfortunate because it is impossible using the annual reports as a source to accurately gauge the trend in how many Panamanian nationals began to be paid at United States rates, being qualified for higher category positions, and in which divisions or department that trend occurred first.



18. Employees of the Panama Canal by rate of pay 1906–1996

C. THE TWO PANAMAS DURING AN ERA OF POLITICAL OPPOSITION AMONG THE ELITE 1900s TO 1930s

There were four political bases of support in Panamanian politics after independence in 1903. One consisted of elite immigrants moving to Panama to take advantage of business opportunities associated with the Panama Railroad Company and the construction of the Panama Canal, who married into and associated themselves with older Panamanian families. Another political base of support consisted of urban working class from the Caribbean of African or mixed African and Hispanic origin who lived outside of the walls of the colonial city (the *arrabal*). The third based of political support included Hispanic cattle ranchers and other rural landholders who though proud of their colonial Hispanic heritage did not have wealth. Other political contingents included American and European immigrants who tended to associate with the maritime elite families, and finally, immigrant Mediterranean or Caribbean workers of African descent who were either naturalized or were not Panamanian citizens but lived and worked within the jurisdiction of the Canal Zone itself.

After the construction of the Panama Railroad was complete, Liberals developed political ties with remaining Caribbean urban workers of African origin, whose numbers posed a political threat to urban maritime-commercial elite after they were given the right to vote. Belisario Porras (from Las Tablas in the interior) was the first Panamanian politician after independence to develop ties with urban skilled and unskilled workers of mixed Caribbean black origin by working through key social intermediaries like local intellectuals, labor leaders, and sports figures who then advocated support for Porras' presidency in return for government positions. Porras was able to combine the urban worker base with other non-elite commercial business owners in the maritime cities as well as landowners in the interior, and as an elite Liberal was able to win the first election against the Conservatives.

1. "States' Rights" Disputes Against the United States from the 1900s to the mid-1910s

1.1 *Liberal Party Maritime-Commercial Elite Political Opposition to the Rule of the Conservative Party Maritime-Commercial Elite*

Most of the representatives of the Republic of Panama's Provisional Government were members of the Conservative Party. Many of the

Republic of Panama's Conservative Party leaders, like Dr. Manuel Amador, had worked for the Panama Railroad Company and though part of the "revolutionary" party represented a minority. Prior to its independence, the Liberal Party dominated Panama and the War of One Thousand Days was nearly lost to a Liberal army under the command of Benjamín Herrera.

Conservative leaders controlled the Presidency and the National Assembly for a decade after Panamanian independence despite challenges from the Liberal Party, with whom there was at least initially a coalition government. Just after independence, Panamanian Secretary of Foreign Affairs Francisco V. de la Espriella had petitioned the United States through envoy Bunau-Varilla to seek a guarantee of constitutional order.⁵ Article 136 of the 15 February 1904 Constitution of the Republic of Panama states:

The Government of the United States may intervene in any part of the Republic of Panama to reestablish public peace and constitutional order in the event of their being disturbed, provided that that Nation shall, by public treaty, assume or have assumed the obligation of guaranteeing the independence and sovereignty of this Republic.⁶

Members of the Conservative Party supported Article 136 while members of the Liberal party were against it.⁷ In 1906, when the Liberal Party obtained only 3 of 28 seats in the National Assembly and its members and faithful took to the streets, Canal Zone authorities demanded that the Liberal Party supporters disperse or face American troops. Political division and blame over the approval of the Hay-Bunau-Varilla Treaty began to surface in the Republic of Panama as early as the summer of 1904. Ideally, the political party that could claim they delivered the canal treaty to the citizens of Panama would be in a very strong position. Probably, it was Liberal elite opposition leaders that first tried to transform perception of the Hay-Bunau-Varilla Treaty of 1903 as a fraud foisted upon Panama by self-interested Conservative elite.

⁵ Major (1984).

⁶ Edwin C. Hoyt, *National policy and international law: Case studies from American canal policy* (Denver: University of Denver, 1966–67). Hoyt (1966–7, 39) says that Article 136 of the 1903 treaty was put in at the proposal of Secretary of State Elihu Root, who had proposed a similar article for a treaty with Cuba.

⁷ Michael L. Conniff, *Panama and the United States: The forced alliance* (Athens: University of Georgia Press, 1992), 72.

2. *The 1904 Letter from Secretary of State John Hay's Letter to Panamanian Ambassador Jose De Obaldía*

2.1 *The Federal Government's Constitutional Jurisdiction in Panamanian Territory*

The transcontinental railroads and the Panama Canal were established as public franchises under the same constitutional powers given to Congress and to the President. The transcontinental railroads and the Panama Canal were both the result of a process whereby public land was granted through the territory of an original sovereign State or Territory within a five-mile buffer of land on either side of a proposed line of transit, representing the primary limits or minimum area of public lands granted. It is interesting to think about what portion of the formal disagreements between the United States and the Republic of Panama was just a kind of State's rights dispute, and what portion was due to political or cultural peculiarities unique to either the United States or Panama.

The summer of 1904 marked the first federal State's rights dispute between the United States and the new Republic of Panama over the United States federal government's exercise of sovereignty over a public franchise in the Canal Zone. The diplomatic exchange that occurred helps clarify the nature of the State's rights dispute. The 1904 disagreement focused on which sovereign rights the Republic of Panama had expressly transferred to the United States federal government through the various articles of the Hay-Bunau-Varilla Treaty, and which it had reserved for itself. Both sides seemed to see their relationship in terms of a federalist division and transfer of sovereignty in the Canal Zone, although there were attempts by Panamanian representatives to reframe the understanding of the 1903 Hay-Bunau-Varilla Treaty as a contract for a lease.

Panamanian representatives claimed that the United States should not exercise jurisdiction in the Canal Zone to the detriment of the Republic of Panama's ability to support itself fiscally and commercially, in other words, Panama's right to tax a public franchise. Panamanians made specific in their disputes with the United States exactly what action or what privilege the United States was illegally exercising in the Canal Zone. Panamanians tried to explain how American jurisdiction was detrimental to their ability to raise revenues or take advantage of what they considered their geographic natural resource. Panamanian representatives also claimed that American authority could not apply

in the Canal Zone if it was not strictly for the protection, construction, operation and maintenance of the Panama Canal.

The diplomatic exchange began after the formal establishment of the Canal Zone. On 9 May 1904, President Theodore Roosevelt, through Secretary of War William H. Taft and in accordance with the Spooner Act of 28 June 1902, and the Hay-Bunau-Varilla Treaty, issued detailed instructions for a Canal Zone government. On 24 June 1904, Secretary of War Taft by direction of the President issued instructions for the Chairman of the Isthmian Canal Commission to establish ports, tariffs, custom houses, and post offices in the Canal Zone. On 15 July 1904, a local Panamanian chamber of commerce issued a letter to the President of Panama, Manuel Amador Guerrero. The letter complained that the grant of sovereignty in the Canal Zone to the United States as stipulated in the Hay-Bunau-Varilla Treaty did not mean the United States could establish ports, custom houses and tariffs. The letter said in colorful terms that unless Panamanians were allowed a monopoly on finished merchandise and produce sold in the Canal Zone, "Commerce, agriculture, and the cattle business would be strangled...the Government of Panama, which should derive its revenues from these sources, would suffer the same fate... Disaster would be general and all would be forced to emigrate".⁸ It may be noted that the local chamber of commerce made this initial protest, not officials of the Republic of Panama. On 26 July 1904, Panamanian officials attempted to enforce tonnage duties on the Chilean steamer *Limari*. The *Limari* was unloading at the port of La Boca at the proposed entrance to the Panama Canal on the Pacific Ocean, a port that the Governor of the Canal Zone declared was within Canal Zone territory and therefore under United States jurisdiction and free from any Panamanian tonnage or port duties.

Official Panamanian protests about the exercise of sovereignty in the Canal Zone by the United States were lodged in two letters, which were replied to by a letter from the Secretary of State to the Panamanian ambassador. One letter was by Panamanian Secretary of Government and Foreign Affairs Tomás Arias to Envoy John Barrett on 27 July 1904. Another letter was from Panamanian Ambassador to the United States Jose de Obaldía to Secretary of State John Hay on 11 August 1904. The American reply to the Panamanian correspondence

⁸ U.S. Congress (1977b, 423).

is Secretary of State John Hay's lengthy letter of 24 October 1904 to Ambassador De Obaldía, the letter that framed the conventional American interpretation of rights acquired in Canal Zone territory via the Hay-Bunau-Varilla Treaty of 1903.

In the letter dated 27 July 1904, Arias said that the United States could not expect to exercise sovereign rights, power, and authority to the detriment of the Republic of Panama's "fiscal and economical sovereignty." Arias claimed that the Republic of Panama reserved what it did not expressly transfer. To support this claim, Arias says that nowhere in the treaty was the Republic of Panama specifically excluded from the right to charge postage, maritime taxes, and other aspects of its economic and fiscal sovereignty in Canal Zone territory. Arias reiterated, "The fact stands, therefore, that Panama, being the original owner of the canal zone, clearly reserved what it did not expressly surrender."

In his 24 October 1904 reply, Hay pointed out that the State's rights argument is correct in principle if, in fact, the Republic of Panama had not expressly surrendered the exercise of sovereign rights, power and authority in the Canal Zone. In Article III, the Republic of Panama not only granted all powers, rights and authority to the United States but also prevented itself from exercising any such powers, right or authority. Recall Arias' point that Panama reserved what it did not expressly surrender. Among the Federalist Papers, No. 23 stated that via the terms of the United States Constitution, "the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, exclusively delegated to the United States." However, Federalist Paper No. 23 lists three exceptions whereby a State confers sovereignty upon the federal government and is unable to exercise that right itself, such that "exclusive delegation, or rather this alienation, of State sovereignty, would only exist in three cases: [1] where the Constitution in express terms granted an exclusive authority to the Union; [2] where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and [3] where it granted an authority to the Union, to which a similar authority in the states would be absolutely and totally *contradictory* and *repugnant*."⁹ Article III of the Hay-Bunau-Varilla

⁹ Mortimer J. Adler, *Great Books of the Western World*, Vol. 43, *The Federalist* (Chicago: Encyclopædia Britannica Inc., 1952), 105–106.

Treaty seemed to fit Federalist Paper No. 23's second exception by, firstly, granting full exercise of sovereign rights, power and authority to the United States, and secondly, entirely excluding the Republic of Panama from the exercise of any such sovereign rights, power, and authority.

In Secretary of State Hay's reply to De Obaldía, dated 24 October 1904, Hay uses the controversy over whether the United States had exceeded its authority for a general defense of United States exercise of sovereignty in Canal Zone territory. The Hay letter claims at least five principal grounds for United States exercise of sovereignty.

First, Hay does not accept De Obaldía's conflating the Hay-Herrán Treaty and the Hay-Bunau-Varilla Treaty. Hay says, "Whatever could or would have been the effect of the stipulations of the proposed treaty with Colombia, known as the Hay-Herran Treaty, is rendered unimportant by the fact that said treaty was not concluded but was rejected by Colombia." In reference to sovereignty pledges given to the Republic of Colombia in Article IV of the Hay-Herrán Treaty, Hay says that it has been the long-established policy of the United States to defend the sovereignty of the independent nations of the Western Hemisphere. However, Hay said that it "does not include the denial of the right of transfer of territory and sovereignty from one republic to another of the western hemisphere upon terms amicably arranged and mutually satisfactory, when such transfer promotes the peace of nations and the welfare of the world."

Second, Hay rebutted the argument that the phrase "for the construction, maintenance, and operation..." in Article III constitutes a limitation on the grant of sovereign rights, power and authority to the United States. Hay says that the phrase is merely "a declaration of the inducement prompting the Republic of Panama to make the grant."

Third, Hay "tests" the treaty to prove the point that the United States acquired the right to exercise sovereign privileges, including establishing custom houses and post offices, etc., in Canal Zone territory. If the United States were the sovereign of the territory, Hay asks rhetorically, would it be able to establish custom houses, regulate commerce, establish post-offices, etc.? Yes, Hay says, it would. Hay then applies a similar rhetorical query to the Republic of Panama and says, "If it were conceded that the abstract, nominal, 'rights, powers and authority of sovereignty in and over the zone' are vested in the Republic of Panama, there would still remain the fact that by said Article III the United States is authorized to exercise the rights, power and authority

of sovereignty 'to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.'" He follows with the formulation that though the Republic of Panama did not confer absolute sovereignty to the United States, it retained only a titular sovereignty amounting to, in a famous turn of phrase, little more than a "barren scepter."¹⁰

Fourth, Hay says that the wording seems to make a distinction between the Canal Zone territory and the rest of the Republic of Panama. The implication is that Panamanian representatives distinguished between Panama's rights in the Canal Zone and in the rest of the Republic of Panama. Hay feels that such would not be necessary if the Panamanian claim were true that their exercise of sovereignty covered the entire Isthmus. Hay includes parts of Panama's Constitution stating that the "territory of the Republic remains subject to the jurisdictional limitations stipulated or which may be stipulated in public treaties concluded with the United States of North America for the construction, maintenance, or sanitation of any means of interoceanic transit."¹¹ In addition, Hay mentions articles of Panama's Constitution directing the executive to establish duties where a clear difference is made between those by the Republic of Panama and those by the United States in Canal Zone territory. Finally, Hay notes several Panamanian court cases clearly implying that criminal jurisdiction was transferred to the United States because the Panamanian courts felt that they lacked jurisdiction. Hay calls attention to every instance he can muster where the Republic of Panama either does not assert full sovereignty, or recognizes some kind of United States jurisdiction. Therefore, having 'proven' that Panama does not exercise full sovereignty in the Canal Zone, as De Obaldía was supposed to have been arguing, Hay concludes that the Republic of Panama must only have some kind of partial sovereignty which Hay saw to be no more than a "barren scepter." In one instance, De Obaldía said that he was concerned only about Panama's "fiscal and economic sovereignty." Hay then said, in a very curious turn, that the United States never claimed to be sovereign. Rather Hay claimed the United States merely claimed the right to exercise all sovereign rights, power and authority to the entire exclusion of any such exercise by the Republic of Panama.

¹⁰ U.S. Congress (1977b, 442).

¹¹ U.S. Congress (1977b, 451).

Fifth and lastly, Hay explains that the devotion of federal funds for projects like an interoceanic canal are spent predicated on the fact that the territory is subject to United States sovereignty. The Hay-Bunau-Varilla Treaty does not explain why the United States has to exercise sovereignty in the Canal Zone so that federal funds can be used. Hay says:

For many years after the adoption of our Constitution the belief prevailed that the funds of the National Government could not be expended in the construction of public improvements, excepting those required for the use of the National Government, such as the Capitol, executive department buildings, arsenals, forts, custom-houses, post-offices, etc. The construction of highways, railroads, etc., the improvement of rivers and harbors, etc., the protection and improvement of water powers, construction of canals, and similar undertakings for the use and convenience of the general public and private enterprises, was considered to be outside the competency of the National Government, although said works were to be constructed in territory subject to the national sovereignty. Finally, it was established that the National Government had the authority to enter upon the construction of public works of the character referred to, and to devote the public funds of the nation thereto; and the reasons inducing such determination are all predicated on the fact that such public works are to be situated in territory subject to the national sovereignty. It is quite probable that this phase of the situation is not considered by the Panamanian authorities, and that they do not distinguish the difference between the Government of the United States and the French Canal Company. The French Company was a private enterprise and derived its funds from individuals who voluntarily devoted their private means to promoting the endeavor; such funds could be expended anywhere and for any purpose sanctioned by the contributors. But the Government of the United States in building the canal does not expend private funds, but public moneys derived by public taxation for public purposes. Moneys so realized may be used for national purposes outside the territory subject to the national sovereignty, such, for instance, as the promotion of a war in foreign territory, for in time of war the war powers of the nations are called into activity, and those powers are coextensive with the nation's necessities, and the conduct of the war is especially enjoined upon the National Government by our Constitution; so also these funds may be expended for the purchase of ground for the erection of embassies, coaling stations, etc., for those are instrumentalities of the National Government; but the Isthmian Canal is an instrumentality of commerce, a measure for the promotion of the purposes of peace. Commerce is the life of the nation, but it is conducted by individual citizens in a private capacity and not as a governmental institution.

Hay said that the Constitution stipulates federal funds can only be expended in territory under United States sovereignty. For Congress to fund the construction of the Panama Canal there had to be a Canal Zone buffer around the line of the canal where the federal government had jurisdiction. The Spooner Act, 1903 Hay-Bunau-Varilla Treaty, 1903 Hay-Herran Treaty, and any interoceanic canal treaty would be unconstitutional if they called for anything less than perpetual control of Canal Zone territory as if it were a territory or possession of the United States.

3. *The 1907 Supreme Court Decision in Wilson v. Shaw,
Secretary of the Treasury*

3.1 *The Federal Government's Jurisdiction in the Canal Zone is
Constitutional*

The United States Supreme Court in the case of *Wilson v. Shaw*, Secretary of the Treasury on 7 January 1907 supposed that if the federal government had had the power to construct interstate highways within the States, as it did through the public land grant system for roads, canals, and the transcontinental railroads then it should certainly have the power to do so "within the Territories and outside of state lines," where it would not conflict with the reserved power of the States. In the case of *Wilson v. Shaw*, the plaintiff was a private citizen who sought to stop payment of the \$40 million (\$930 million adjusted from 1904 to 2007 dollars) to the French company and \$10 million (\$230 million adjusted from 1904 to 2007 dollars) to the Republic of Panama, as well as any money to build the Panama Canal on the grounds that it was "an unlawful disbursement of public funds or issue of public obligations.... [for] an unauthorized business venture."¹²

The plaintiff in the case based his argument on the very thing that Secretary of State Hay had argued in the State's rights dispute with representatives of Panama in 1904. The Constitution authorized federal funds be used only within a United States territory or possession, which the Canal Zone was not. The plaintiff said that the Canal Zone was not acquired as a territory or possession in the 1903 Hay-Bunau-Varilla Treaty. The Supreme Court affirmed the judgment of a Court

¹² U.S. Congress (1977b, 1634–1635).

of Appeals ruling that the plaintiff was not entitled to bring such a suit unless he showed direct and special injury, i.e., the mere fact he is a taxpayer is not enough.¹³ In the opinion of the Court, the petition to stop the construction of the canal was a startling request. Although the decision was against the plaintiff on the basis of no grounds for complaint, the Supreme Court examined each one of the plaintiff's arguments against the constitutionality of the Panama Canal project.

Firstly, the plaintiff argued that the Spooner Act required a treaty with the Republic of Colombia, not the Republic of Panama, and that it is "not a compliance with the terms used, that these rights and privileges shall have been obtained by force from the Republic of Colombia, or by treaty or otherwise from anyone else; nor does this act in terms authorize under any conditions the payment of any money to the Republic of Panama."¹⁴ Therefore, the plaintiff contended, "whatever title the Government has was not acquired as provided in the act of 28 June 1902, by treaty with the Republic of Colombia."¹⁵ The Court replied that the territory of Panama had passed by an act of secession to the Republic of Panama and that a treaty "ceding the Canal Zone [to the United States], was duly ratified."

Secondly, the plaintiff claimed that Congress under the Constitution has no authority to employ public funds in making, buying or operating commercial enterprises including railroads or canals in foreign countries. What was required by the Constitution, a cession of territory, had not been acquired since the boundaries of the Canal Zone were not defined in the treaty and because the Canal Zone was not declared a territory or possession of the United States. The Court answered:

It is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to this Nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate...disputes not infrequently attend conveyances of real estate or cessions of territory. Alaska was ceded to us forty years ago, but the boundary between it and the English possessions east was not settled until within the last two or three years.... The title of the United States to the Canal Zone in Panama is not imperfect either because the treaty with Panama does not contain technical terms used

¹³ U.S. Congress (1977b, 1640).

¹⁴ U.S. Congress (1977b, 1636).

¹⁵ U.S. Congress (1977b, 1641).

in ordinary conveyances of real estate or because the boundaries are not sufficient for identification, the ceded territory having been practically identified by the concurrent action of the two interested nations.

Lastly, the plaintiff contended that the power given to Congress in Article I, Section Eight of the Constitution was the power to regulate, not to carry on, commerce. Navigation and transportation is carrying on commerce. Therefore, an interoceanic canal project in any territory foreign or domestic falls outside the provenance of the United States federal government. To answer this third objection, the Court cited several cases demonstrating that the federal government had the power to construct interstate highways, based on the territorial expansion of the United States and the need to construct transcontinental railroads. In other words, the need for transportation through unconsolidated western territories of the United States had required special powers of the federal government to have direct authority over public lands necessary for the construction and operation of railroads.

Citing the 1888 *California v. Pacific Railroad Company* decision, the Court said that the powers of the federal government to regulate commerce came from Article I, Section Eight of the Constitution. The federal government did not exercise its powers to any extent until required by the commercial expansion of the country and the growth of land transportation, particularly railroads, into public lands not organized into States. Without the authority of the federal government, no one authority would have been able to regulate the consistent use, operation and maintenance of the vast road system in its entirety.

In *California v. Pacific Railroad Company*, 127 U.S. 1, 39, it was said... These authorities recognize the power of Congress to construct interstate highways. A fortiori, Congress would have like power within the Territories and outside of state lines, for there the legislative power of Congress is limited only by the provisions of the Constitution, and cannot conflict with the reserved power of the States.¹⁶

The Supreme Court therefore supposed that if the federal government had the power to construct interstate highways within the States, it should certainly have the power to do so "within the Territories and outside of state lines" where it "cannot conflict with the reserved power of the States."

¹⁶ U.S. Congress (1977b, 1642-4).

6.2 *The 1904 Taft Agreement*

Due to the dispute that arose over the existence of Canal Zone ports, tariffs, custom houses, and post offices outside the jurisdiction of the Republic of Panama as well as the rights of Panamanian businesses to Canal Zone markets, in his 18 October 1904 letter President Roosevelt requested Secretary of War Taft to travel to Panama.

Secretary of War William H. Taft arranged the non-exercise of United States control after a conference with Panamanian representatives in Panama City on 28 November 1904. The meeting in Panama City was arranged to settle differences between the two countries as a result of the Hay-Bunau-Varilla Treaty. Taft was to advise Conservative President Manuel Amador (1904–1908) what the policy of the United States was and that the purpose was not to create “a competing and independent community which shall injuriously affect their business, reduce their revenues, and diminish their prestige as a nation,” and particularly to dissuade speculation about American intentions in the future. Roosevelt went on to say that Taft was to communicate to Panama that the United States had “not the slightest intention of establishing an independent colony in the middle of the State of Panama . . . Least of all do we desire to interfere with the business and prosperity of the people of Panama.” As a result of Taft’s ten days of meetings in Panama with the Conservative-led government, Taft issued Executive orders in Roosevelt’s name dated 3 December 1904 and 6 December 1904 discussing a number of limitations on the exercise of the federal government’s jurisdiction in the Canal Zone.

The “Taft Agreement” was not a treaty but a series of executive orders.¹⁷ The first of these executive orders entered into force on 12 December 1904. Taft summarized the basic conclusions of Secretary of State Hay’s letter to Ambassador De Obaldía of 24 October 1904, suggesting that the Hay-Bunau-Varilla Treaty did not confer total sovereignty on the United States but rather left to the Republic of Panama at least a titular sovereignty.¹⁸ Taft argued a peculiar formulation, agreeing what he called a “nonexercise” of United States sovereign rights as a solution to stem the controversy.¹⁹

¹⁷ U.S. Congress (1977b, 512).

¹⁸ U.S. Congress (1977b, 515).

¹⁹ U.S. Congress (1977b, 516).

Secretary of War Taft's statement before the Senate Committee on Interoceanic Canals on 18 April 1906 explained how the terms of the Hay-Bunau-Varilla Treaty were being drawn into domestic politics. Taft said:

Doctor Amador was President of the Republic. He was the head of the Conservative party. Pablo Arosemena was vice-president and the head of the Liberal party. In the era of good feeling between all parties succeeding the revolution they were elected on the same ticket. The parties soon divided again when the patronage came to be distributed. The moment the people understood the effect of the introduction of the Dingley tariff between the Zone and the Republic, they resented the act as an indication of a desire on the part of the United States to grab the land of the Zone for its commercial purposes, and to exclude all Panamanian[s] from the profitable business which they had expected to do with the people of the Zone, gathered there by the United States for the great work. The opposition party – the Liberal party – was quick to seize upon this as a ground for attacking the [C]onservative administration on the theory that the Government had yielded to the United States and had sacrificed the interests of the Republic. The attitude of the Liberal party, of course, reacted upon the course of the [C]onservative administration, and both parties were at once driven into hostility to any proposition of the United States looking to the operation of its governmental control over the Zone at those many points where it came in close contact with the jurisdiction of the Republic [emphasis added].²⁰

Taft noted that the Liberal opposition was quick to publicly attack the Conservative administration as taking a conciliatory attitude towards the United States, in order to create popular resentment. Members of the Liberal Party attempted to mar Secretary of War Taft's 1904 visit to Panama with some sort of demonstration, "for they feared that an amicable adjustment of the Panamanian grievances would strengthen the administration for the approaching municipal elections."²¹ Taft said that popular misconceptions about the United States federal government using its jurisdiction over the Panama Canal and Canal Zone for "commercial purposes," combined with a rivalry between the elite of the Liberal and Conservative Parties as having "sacrificed the interests of the Republic," had driven both parties "into hostility to any

²⁰ U.S. Congress (1977b, 510).

²¹ William D. McCain, *The United States and the Republic of Panama* (New York: Russell & Russell, 1965/1937), 42.

proposition of the United States looking to the operation of its governmental control over the Zone.”

4. *The Two Panamas and the Beginning of “Civil Rights” Protests from the mid-1910s to the 1920s*

4.1 *Non-Elite Territorial-Administrative Social Rivals to the Maritime-Commercial Elite*

After independence, Belisario Porras and other Liberal Party elite opposition turned to non-elite military leaders like General Esteban Huertas to try to win the electoral majority against the incumbent Conservatives. Neither a native Panamanian nor a member of the elite, Huertas showed potential to attract a mass following among the non-elite of both the port cities and the interior. Conservative wariness about Huertas’ political agenda combined with United States recommendations that the Republic of Panama limit itself to a police force led to the disbanding of the Panamanian Army on 18 November 1904. The National Police was founded in December 1904 as a force of roughly 1,000 for the entire country, and at least in the year 1918, its superintendent was a United States citizen.

The maritime-commercial elite of the Conservative Party continued to control politics until the first victory of Liberal President Belisario Porras. Porras won the 1912 election and two others as well by appealing to the three different political groups. One political group was Caribbean immigrants and people of mixed African origin living in the *arrabal*. A second group was lower and middle echelon merchants in the port cities. The third group was interior landowners, ranchers, and rural smallholders of Hispanic descent who were relatively poor but proud of Hispanic traditions they sometimes traced to colonial period. One historian of Panama describes the landowners and ranchers of the territorial-administrative society of the interior in the following way:

They had little use for the urban commercial elite; whom they considered to be newly rich interlopers with few roots in Panama; nor did they think highly of urban society as a whole, whose masses were increasingly of African origin.... To capitalize on this base, a “Creole” leader from the interior was nominated for the presidency, one who could challenge the governing credentials of the urban commercial elite – portrayed as consisting of pretentious mestizos and mullatos.... Many of these new urban dwellers [cattlemen and subsistence farmers who moved to terminal cities] settled together in pockets around

Panama City and Colon, where they managed to preserve their rural identity and allegiances.²²

During the 1912 elections that ultimately resulted in the first victory for Porras and the Liberal Party, American Army officers and two hundred troops were asked to supervise registration and polls by temporarily acting Panamanian President Pablo Arosemena. Several authors note that it was a tendency for politicians during the first few decades after Panamanian independence to “call on the United States to guarantee elections when out of power and to oppose such measures when in control of the electoral apparatus.”²³

The mid-1910s to the 1920s marked the beginning of a non-elite territorial-administrative rivalry with the maritime-commercial elite. After the end of the initial construction phase of the Panama Canal in 1914, in order to soften the loss of demand from the collapsing labor market in Canal Zone, a rule was put in place that half of all Canal Zone employees must be Panamanian “native workers,” paid in silver-based currency.²⁴ In 1917, a law was implemented to strengthen the Spanish language and, by 1918, Panama City contained a growing class of professionals and bureaucrats many of whom migrated from the interior and were tied economically to the Panamanian government rather than the Canal Zone, a group that became increasingly frustrated by a lack of access to administrative positions in the Panama Canal and Canal Zone.

United States federal government advisors participated directly in the day-to-day running of the Republic of Panama in the first few decades of its existence. The trend accelerated after 1918 when United States financial advisors were given broad authority to reform aspects of the country's fiscal operation. It was at this high water mark of United States involvement in Panamanian national affairs that middle-echelon rural interior political rivals to the maritime-commercial elite began to emerge. Political rivalries coincided with the migration of middle-echelon rural job seekers to Panama City. Though a rural middle-echelon may have come to Panama City they were still tied to the culture of the western interior and were employed in the Panamanian bureaucracy rather than by Canal Zone-related businesses.

²² Ropp (1982, 19).

²³ Alba Carranza (1976, 262).

²⁴ Ropp (1982).

Middle-class urban professionals resented United States involvement and the urban elite leadership. By the early 1920s, a broad coalition in the port cities and the interior emerged as opposed not only to the jurisdiction of the United States federal government in Panama, i.e., a “State’s rights dispute,” but also to the civic and societal goals of the maritime-commercial elite, i.e., a “civil rights” movement.²⁵

D. CONCLUSION

Territoriality over the environment of Panama and flows through it during the period of the ‘2nd republic’ (1870s–1930s) after Panamanian independence was an interaction between a predominantly American preventive posture, and a maritime-commercial elite in Panama engaged in a State’s rights dispute with the United States federal government over the Canal Zone.

The social rivalry between and among the two Panamas, compounded by wealth and status differences, meant that politics in Panama was not the exclusive domain of the elite. The period of the ‘2nd republic’ paired American preventive postures over its territorial and extraterritorial network of nodes and links in the maritime environment, with the societal goals of a maritime-commercial elite. A consensus of authors suggest that the preventive policies of ‘2nd republic’ and the 1903 Hay-Bunau-Varilla Treaty directly or indirectly supported what they considered an historically fragile and economically detached regime of urban commercial elite in Panama.²⁶ These authors suggest that – like other societies dominated by a services-oriented commercial class – the maritime-commercial elite did not command genuine political power because they did not control the country’s agricultural and industrial production in the interior.²⁷ The maritime elite allegedly

²⁵ Ropp (1982, 21).

²⁶ For instance, Ropp (1971, 1982), Phillips Collazos (1991), LaFeber (1989). See also Andrew Zimbalist and John Weeks, *Panama at the crossroads: Economic development and political change in the Twentieth Century* (Berkeley: University of California Press, 1991).

²⁷ Zimbalist and Weeks (1991) are more strident than other authors. Zimbalist and Weeks (1991, 137) say that “political instability in Panama resulted from both the absence of a ruling class in the usual sense at the time of independence and the overwhelming hegemony of the U.S. presence that made a mockery of the term ‘domestic Panamanian politics.’”

made up for their political weaknesses over their rivals and opposition by relying on the intervention of the United States.

United States intervention to prevent civil unrest in the port cities, especially during elections, sustained the maritime-commercial elite in the two decades after Panamanian independence. However, it was the lack of United States intervention in the third decade after Panamanian independence that had even more lasting effects on Panamanian politics. By the 1930s, American politics was once again in a period of alteration from 'republic' to 'democracy.' The policy of the '2nd democracy' (1930s–1970s) was to avoid political intervention in Latin American governments and, in Panama, to reduce the territorial jurisdiction of the United States federal government over the day-to-day administration of the Panama Canal and governance of the Canal Zone. As a result of a relative vacuum in political order and stability with the new policy of the United States after the 1930s, two main groups of non-elite rivals and opposition emerged to challenge the maritime-commercial elite for control over the Republic of Panama. One rival was a militarized, and eventually politicized, police force composed of territorial-administrative non-elite from the interior who would be called upon to arbitrate elections or restore order during civil unrest by lower echelons of maritime-commercial society in the port cities. Another rival and opposition group was student activists mainly from the territorial-administrative interior of Panama who organized themselves into federations and would challenge United States jurisdiction in the Canal Zone and the monopoly of the maritime-commercial elite over wealth and status in the port cities.

CHAPTER ELEVEN

THE PANAMA CANAL AND THE TWO PANAMAS UNDER THE '2ND DEMOCRACY' (1930S–1970S)

A. AMERICAN TERRITORIALITY OVER INTEROCEANIC TRANSPORTATION UNDER THE '2ND DEMOCRACY' (1930S–1970S)

The 1903 Hay-Bunau-Varilla Treaty was the result of the preventive posture of the '2nd republic' (1870s–1930s) to ensure that a canal enterprise would never fall into the hands of a European government. During the '2nd democracy' (1930s–1970s), the era of New Deal Liberalism, the policy of the United States shifted from a preventive to a predominantly avoidant posture with respect to involvement in the affairs of Latin American governments. A shift in foreign policy had begun to occur by the time of the 17 December 1928 Clark Memorandum, written by Republican President Calvin Coolidge's Under Secretary of State Joshua Rueben Clark. The Clark Memorandum restated that the purpose of the Monroe doctrine was to prevent European governments from threatening United States national security and self-preservation. The memo rejected Roosevelt's 1904 corollary that it was the policy of the United States to directly and preemptively intervene in the Western Hemisphere, if necessary, to restore civil order or eliminate debt as a means of preventing Latin American nations from becoming susceptible to intervention by European governments.

The Great Depression (1929–1939) focused American policy on redistributing federal revenues to domestic welfare programs rather than projects with foreign governments. Likewise, World War II, the Korean Conflict, and the Vietnam War focused American military attention on high magnitude events and the capability to project military force against foreign threats far from the near-shore maritime and aerospace environment of the United States itself.¹ It is reasonably well-established that during the policy regime of the '2nd democracy' there was both covert and overt financial support and military training

¹ See Earle (2003).

given to Latin American paramilitary police forces by the United States so as to prepare them to prevent fascist or communist insurgencies by force. This does not alter the fact that an avoidant face was put on the overt policy of the United States.

For instance, in his inaugural address in 4 March 1933 Democratic President Franklin D. Roosevelt announced the Good Neighbor Policy, saying that the United States would no longer hold it as a matter of policy to directly intervene in the internal affairs of Latin American governments but instead would institute other measures aimed at stability through economic development. A similar approach was advocated by Democratic President John F. Kennedy in March 1961 as part of his ten year plan for economic development in Latin America called the Alliance for Progress. Also, in April 1961 Kennedy disavowed the legality of organizing military forces in United States territory for the ultimately unsuccessful invasion of Cuba at the Bay of Pigs by Cubans and Cuban-American citizens. Attorney General Robert F. Kennedy on 20 April 1961 cited United States neutrality laws, some of which were passed by Congress during the earliest years of the '1st republic' under George Washington's tenure, stating that "[T]he neutrality laws were never designed to prevent individuals from leaving the United States to fight for a cause in which they believed... What the law does prohibit is a group organized as a military expedition from departing from the United States to take action as a military force against a nation with whom the United States is at peace."²

In 30 years under the '2nd republic' there were 20 bilateral agreements between the United States and the Republic of Panama. In the 47 years under the '2nd democracy' there were 133 bilateral agreements ratified between the United States and the Republic of Panama, which does not include many that were aborted.³ Treaties signed in 1936 and 1955 abrogated significant terms of the 1903 Hay-Bunau-Varilla Treaty, opened Panama Canal and Canal Zone markets to Panamanian businesses, and gave equal opportunity to Panamanian citizens for employment. The 1977 Panama Canal treaties abrogated all remaining provisions of the 1903 Hay-Bunau-Varilla Treaty.

² Letter from Attorney General Kennedy (<http://en.wikipedia.org/wiki/File:JFK.jpg>)

³ HeinOnline (<http://heinonline.org>).

1. *Reorganization as the Panama Canal Company and Canal Zone Government (1951–1979)*

Effective 1 July 1951 by the terms of an executive order from Democratic President Harry S Truman, the Panama Canal was succeeded by a new organization that separated remaining business operations and transit services from civil government. All transit services and associated business operations of the Panama Canal were transferred to the Panama Railroad Company, which was then renamed the “Panama Canal Company.” Functions associated with civil government were reorganized as the “Canal Zone Government.” The Panama Canal Company was delegated the authority subject to Presidential approval to set tolls. Prior to reorganization of the Panama Canal Company, exclusive authority to set tolls rested with the President. Although the Panama Canal Company and the Canal Zone Government were independent agencies of the United States federal government, their functions were still considered an integrated enterprise.

B. THE TWO PANAMAS DURING AN ERA OF SOCIAL RIVALRY
BETWEEN NON-ELITE AND ELITE FROM THE 1930S TO THE 1960S

In August 1923, a political group called *Acción Comunal* (Community Action) was officially formed in Panama by an urban professional class of engineers, lawyers, doctors, and government bureaucrats. Arnulfo Arias joined Community Action in 1930 and led it by advocating a brand of cultural and societal nationalism called *Panameñismo* (“Panamanianism”). *Acción Comunal* under *Panameñismo* supported a political platform upholding the interior values of non-elite Panamanians of Spanish origin against Panamanians of mostly African or Asian origin working in the port cities, the maritime-commercial elite who owned real estate and major commercial businesses, and finally, Americans working in administrative and skilled positions in the Canal Zone.

Arias and *Acción Comunal* illustrates the complexity of the territorial-administrative rivals and maritime-commercial opposition within Panamanian politics and the effect that their conflicts had on foreign relations. Arias’ family came from Costa Rica in late 19th century and Arias’ father settled in Penonomé just west of the port cities where he ran a small cattle ranch. The Arias family fit within the social and economic traditions of the territorial-administrative interior. Arias himself was born in 1901 and attended preparatory school in New York. Like

his brother Harmodio, Arnulfo was well educated in the United States and studied medicine at Harvard University. Despite their educations, neither Arnulfo nor Harmodio were elite by maritime-commercial standards and came from a middle echelon interior family.

Arnulfo Arias became president in 1940, 1949, and 1968, though for various reasons in every case he was denied completion of his term of office by Panama's National Police and National Guard. A major source of Arias' support included the day-laborers and skilled workmen in Panama City and Colón of mostly Hispanic origin, who had come from the interior and competed for jobs and housing in the port cities with people of mostly African or Asian origin. Another major base of Arias' political support in the interior of Panama included the rural smallholders and cattlemen of Chiriquí, Coclé, and Veraguas. In fact, Arias' political rivalry with the Liberal factions of the maritime-commercial elite rested on both his positive and his negative political relationships. Arias' was supported by Panamanian laborers living in the maritime cities with connections to the interior, non-elite interior ranchers and farmers, and interior students – against the presence of American administrators and foreign immigrants in the maritime cities and the Canal Zone.

In January 1931, allegedly after repeated United States refusals to intervene in Liberal President Florencio Arosemena's plans to suspend the Panamanian constitution, Arnulfo Arias and other members of Community Action felt they had to remove Arosemena themselves. Arnulfo Arias' colorful 1931 New Year's Eve coup d'état, in which according to one story he supposedly entered the Presidential Palace late at night through a bathroom window that he himself had unlocked while a guest at the party, was a watershed event in Panamanian history because the United States refused to politically interpose itself. One author suggests the following about the significance of the event:

While the use of force in Panamanian politics has been common since the early days of the Republic, the coup of 1931 represented a watershed in this respect in terms of the military restraint of the United States. The resulting conclusion for Panamanian politicians was that the internal sources of military power were going to play an increasingly important role in politics.⁴

⁴ See Ropp (1982, 25) for his characterization of the significance of Arnulfo Arias' 1931 coup.

Harmodio Arias was elected president in 1932 and for the first time in Panama's history neither political party requested American intervention to guarantee civil order.⁵

Political parties followed the example of January 1931 and organized their own informal squads of armed civilians (*pie de guerra*) for electoral intimidation. The use of armed civilians in the political arena became common and the National Police were called upon to perform the same role. A relatively modest force of no more than 1,000 men, the National Police represented a part of the territorial-administrative society of the interior. The National Police eventually emerged as the arbiter of Panamanian elections under the leadership of Jose Antonio Remón during the 1930s and 1940s.⁶

1. "Civil Rights" Protests and Arbitration by Threat of Police Force after the 1930s

Civil rights are intended to protect individuals from unwarranted government action and ensure participation in the civil and political life of the state without discrimination or repression. Civil rights also touch on matters of discrimination in terms of opportunities for equal employment and general financial welfare. One of the dilemmas with respect to civil rights is to what extent a centralized government can and ought to intervene in governance, private enterprise, or other aspects of society in the name of protecting or advancing the civil rights of a particular group of people who may have been discriminated against in some way. The period from the 1930s through the 1960s in Panama could easily be characterized as a "civil rights" movement against fractious coalitions of maritime-commercial elite by both cross-society rivals and intra-society opposition.

1.1 *Rivals and Opposition to the Maritime-Commercial Elite*

The maritime-commercial elite faced four growing political liabilities during the "civil rights" movement in Panama between the 1930s and the 1960s. One political liability was the opposition, but occasionally

⁵ John Major, *Prize possession: The United States and the Panama Canal, 1903-1979* (Cambridge: Cambridge University Press, 1993).

⁶ Phillips Collazos (1991, 33) said that "By the 1940s, the power of the national police was so strong that it had assumed the role of chief arbiter in the political arena."

alliance, with the lower echelons of maritime-commercial society, Caribbean immigrants of mostly African origin who may have worked for the Panama Canal as laborers but rented housing and purchased goods from the maritime-commercial elite's businesses in the port cities. Another liability was the opposition of the middle echelons of maritime-commercial society, immigrant foreign merchants representing ethnicities spanning the globe but particularly China and the Middle East. A third liability was a cross-society rivalry with a growing working class of Panamanians of Spanish origin, some of whom migrated from the interior but still maintained ties back to their home provinces even though they lived in and around Panama City. Finally, there was the continuing presence of American troops and an American civilian workforce under the jurisdiction of the United States in the Canal Zone itself. Americans in the Canal Zone represented the most visible symbol of the foreign exclusiveness and economic segregation of maritime-commercial society as a whole.

Within society opposition and cross-society rivals to the maritime-commercial elite were united in a general criticism that the outside commercial world benefitted from the relative geographic location of Panama much more than Panamanians did.⁷ Panama's elite benefitted from the direct, indirect, induced, and parallel commercial activities associated with use of the Panama Canal and Canal Zone, and "national" treaties with the United States seemed conspicuously oriented towards expanding the elite's wealth through control over competing flows of imported goods into the Canal Zone and more exclusive access to Panama Canal and Canal Zone markets. Foreign jurisdiction over the Panama Canal and Canal Zone was symbolic of pervasive domestic issues about Panamanian civil rights, labor rights, and a more equitable redistribution of commercial wealth derived from canal-related economic activities. Nonetheless, political factions representing rivals and opposition to the maritime-commercial elite came from different societies. They were not always agreed on whether

⁷ John Biesanz and Mavis Biesanz, *The people of Panama* (New York: Columbia University Press, 1955), 121. In a speech to the National Assembly in 1951, Panamanian First Vice President Arosemena said, "Geography has deceived us, making us believe that our destiny was rooted in total surrender to our function as a land of transit, without allowing us to consider that this function responds above all to the needs of international commerce, nor that its undisturbed predominance put our nationality in fief to exclusive foreign interests and left our economy unarmed against the blows of changes in world traffic."

the issue was between the elite and non-elite, or between people in the port cities and people from the interior. As a result, rivals and opposition from different societies asserted different and often conflicting "territoriality" over civil and political life in Panama.

For instance, Liberal President Rodolfo E. Chiari (1924–1928) was an Italian immigrant who built commercial enterprises based on sugar and cattle production. Chiari used his political authority to control competing imports through the Canal Zone and increase access to Panama Canal and Canal Zone markets for goods and services. Not surprisingly, Chiari's political support came from commercial merchants in the port cities. However, Chiari also gained the electoral support of small-scale rural merchants from the interior. Arnulfo Arias, on the other hand, dramatized a concentration of commercial wealth in the port cities and the presence of a foreign jurisdiction in the Canal Zone. Arias also criticized as a side effect of foreign intrusion the racially distinct Caribbean black influence that the Canal Zone introduced. Ratification of Arias' plebiscite for a new Panamanian constitution in January 1941 aimed at disenfranchising the Caribbean black working class and limiting the influence of immigrant South Asian and Chinese shopkeepers in the port cities. The new constitution was also intended to strengthen Panamanian culture of Spanish origin and establish an "interventionist" Panamanian national government that would control sources of maritime-commercial wealth and contribute more to the national treasury in order to fund economic development, public health, and public education in the interior.

Another example of conflicting or overlapping territoriality by rivals and opposition to the maritime-commercial elite were National University and student federations. Students chose to assert a more symbolic territoriality over the socially and economically segregated environment of the port cities through protests and demonstrations involving entering the Canal Zone and planting the Panamanian flag, essentially "nationalizing" it. But did student federations even agree amongst themselves about whether this symbolic gesture meant that they intended to become a future class of powerful Panama Canal administrators? Did the students want to become a new generation of wealthy elite by eliminating the United States federal government from providing goods and services so they could do so themselves through family-owned businesses? Or did students think that all of the wealth from the Panama Canal and associated activities had to be taken out of the hands of private enterprise and nationalized by a

strong central government that would re-direct it for the welfare of the Hispanic cultural core of Panama in the interior?

1.2 *The Aborted Kellog-Alfaro 1926 Treaty Between the United States and Panama*

The 1926 Kellog-Alfaro Treaty, which was signed 28 July 1926 but never ratified, was the first major attempted modification of the 1903 Hay-Bunau-Varilla Treaty since the 1904 Taft Agreement. The treaty dealt with two major issues. One issue was the neutrality and security of the aerospace and maritime environment around the canal, consistent with the United States preventive posture against foreign threats. Another issue was access to Panama Canal and Canal Zone markets for Panamanian businesses, as well as controls over imports of goods into the Republic of Panama through Canal Zone ports, consistent with maritime-commercial elite interests.

The terms of the treaty stated that the Panamanian port cities were to be free ports for vessels in transit or vessels in the service of the United States in connection with the canal. Goods imported into the Canal Zone for sale in the commissaries, to vessels in transit, or for redistribution or re-exportation could not enter the Republic of Panama without paying import duties. The only exceptions were goods purchased in Canal Zone commissaries by employees, contractors, diplomatic agents, and their families who resided in Panama. All sales of goods and services in the Canal Zone would be limited to officers, employees, laborers, and contractors employed by the United States federal government or by the Panama Railroad Company. The United States agreed not to permit the establishment of any additional business enterprises, with a few exceptions. No one was permitted to rent or lease property in the Canal Zone except officers, employees, laborers, or contractors employed by the United States federal government or by the Panama Railroad Company. The United States also agreed to continue to extend to private merchants in Panama certain facilities in order to make sales to vessels in transit. The United States would also provide space for Panamanian customs houses to collect duties and inspect merchandise, baggage, and passengers bound for Panama or Colón.

As for its neutrality provisions, the 1926 treaty stated that all air stations other than those of the Republic of Panama were subject to inspection by the governments of the United States and Panama. Any

aircraft other than those of the United States or Panama had to follow special rules and regulations. A controversial item was Article 11, which stated that in case of war where the United States was a belligerent, Panama would automatically consider itself in a state of war. Other terms of the treaty stated that Panama agreed to turn over wireless and radio communications and halt all aerial navigation in situations of threatened or actual hostility. Finally, United States armed forces would have free transit throughout Panama in emergency situations given due notice. It is probable that the appearance of trading commercial privileges for neutrality terms like Article 11 was the reason why the treaty was rejected by the Panamanian legislature. Independent of its rejection by the Panamanian legislature, in 1927 the League of Nations determined that Article 11 violated League doctrine by stating that in case of war where the United States is a belligerent Panama will also consider itself in a state of war.

1.3 *The 1936 Treaty of Friendship and Cooperation*

The 2 March 1936 Treaty of Friendship and Cooperation, or Hull-Alfaro Treaty, was signed under the administration of President Harmodio Arias (1932–1936). Interestingly, the treaty was delayed in Congress and would not be ratified by the United States until three years later. Like the 1926 Kellog-Alfaro Treaty, the 1936 treaty concerned two important issues: neutrality and security of the aerospace and maritime environment around the canal, and markets for Panamanian businesses including controls over imports of goods into the Republic of Panama through Canal Zone ports.

The 1936 treaty abrogated key parts of the 1903 treaty. For instance, the United States renounced the grant made to it in perpetuity for the use, occupation, and control of lands or waters any more than those already under its jurisdiction. However, both sides recognized there was a joint obligation to insure the continuous operation of the canal and to undertake agreements for additional land if necessary. In addition, Article 1 of the 1903 treaty guaranteeing the independence of Panama was superseded. Goods destined for the Republic of Panama were permitted to use the docking facilities of the Canal Zone ports of Balboa and Cristobal, and likewise, goods destined for the Canal Zone were permitted use of the Panamanian ports of Colón and Panama City under the same conditions. The 1936 treaty contained provisions restricting the commercial activities of the United States in the Canal

Zone so that Panama could take advantage of commercial opportunities “inherent in its geographical situation.” Like the 1926 treaty, the 1936 treaty specified those who could reside in Canal Zone housing and those who were entitled to make purchases in the Canal Zone commissaries.⁸ Everyone else was required to rent housing and purchase goods and services in Panama.

The treaty agreed that any measures to safeguard the neutrality and defense of the canal that appeared essential for one government to take, but affected the jurisdiction of the other, would be the subject of “consultation.” However, in case of emergency both governments could take any measures of prevention and defense they considered necessary for the protection of their common interests. The three year delay in Senate ratification of the 1936 Hull-Alfaro Treaty was finally broken by an exchange of notes clarifying this last provision regarding measures of prevention and defense. An exchange of notes dated 1 February 1939 stated the following:

[In] the event of an emergency so sudden as to make action of a preventive character imperative to safeguard the neutrality or security of the Panama Canal, and if by reason of such emergency it would be impossible to consult with the Government of Panama as provided in Article X of said Treaty, the Government of the United States of America need not delay action to meet this emergency pending consultation.

After Senate advice and consent to ratification, the treaty finally entered into force on 27 July 1939. The 1936 Treaty of Friendship and Cooperation was eventually amended by the convention of 24 May 1950 and the treaty of 25 January 1955.

2. Political Arbitration by the National Police from the 1930s to the 1950s

After the 1931 coup, President Harmodio Arias (1932–1936) appointed Jose Antonio Remón Cantera, the only Panamanian who had formal military training, to lead the National Police. During the 1940s and 1950s, Remón either used or was asked to use threat of force by the National Police to become the ultimate arbiter in any serious executive or legislative dispute between Panamanian political factions. When

⁸ See especially Thomas M. Leonard, “The commissary issue in American Panamanian relations, 1900–1936” *Americas* 30 (1973): 83–109.

Liberal factions among the maritime-commercial elite faced off against Arnulfo Arias but became divided in their efforts to build a coalition with other minor parties, Remón took advantage of the opportunity and won the election himself in October 1952. Remón could trace his family origins back to interior colonial Panamanian elite marginalized by the cyclic nature of the maritime transport economy.⁹ Remón created the Institute of Economic Development and planned to build roads into western Panama to support ranching and agriculture. One author described Remón's policies as oriented away from the society of the port cities and towards the society of the interior:

[Remón believed in] 'produce what we consume; consume what we produce,' a poetic postulate bordering on romanticism that would not have impact until an interior person managed the destinies of the country, and an interior person with an agricultural mindset and sufficient spiritual independence to abandon the conviction that the capital city of the republic 'is' the nation... [Remón] created the Institute of Economic Development... to force development and livestock raising in the country; two traditional activities of the Panamanian people... development of this plan was based on the opening of a series of roads penetrating the Cordillera Central (Central Mountain Range)... hoping to resolve the problem of a scarcity of cultivable land in the region of the savannas where the majority of the Panamanian population is to be found.¹⁰

One of Remón's first acts in 1953 was to transform the National Police into a larger, more highly-trained, and better-funded paramilitary police force. It is generally known that the National Guard received significant funding and training in Panama by United States military forces so they would be prepared to prevent possible fascist or communist insurgencies in the Republic of Panama. For instance, the National Police under Remón removed President Arnulfo Arias on two occasions, once in October 1941 for his open support of fascist governments, and another time in May 1951 when Arias suspended the Panamanian constitution. In any event, the institution of the National Guard continued to arbitrate allegations of election fraud or unconstitutional maneuvers by the president throughout the 1940s, 1950s, and 1960s.

⁹ Ropp (1982, 27).

¹⁰ Alba (1967, 352).

2.1 *The Aborted 1947 Defense Sites Agreement*

The 1947 Defense Sites Agreement was signed on 10 December 1947. The treaty granted to the United States certain rights and authority within defense sites and the air space above them. The treaty also gave the United States the right to build or maintain telegraph, telephone, radio, and other communication infrastructure that it would share with the Republic of Panama.

The treaty agreed that the United States and Panama would appoint a joint commission to consult on all matters concerning use of the defense sites provided that matters of a purely military nature remained under the jurisdiction of the United States. The treaty set the conditions for the return of defense sites in which buildings and other construction could be removed but if left behind would become the property of Panama. Article 5 of the treaty confirmed that Panama maintained its sovereignty over the areas and air space as well as over all civil and criminal matters, with the exception of United States civilian or military personnel connected with the operation of the defense sites. Other terms of the treaty established annual compensation to Panama, and reiterated the temporary nature of occupation of the defense sites and principles for their timely evacuation. The treaty was rejected by the Panamanian legislature in a unanimous vote.

2.2 *The 1955 Treaty of Mutual Understanding and Cooperation*

The next major modification of the 1903 treaty after the 1936 Treaty of Friendship and Cooperation was the Treaty of Mutual Understanding and Cooperation. Negotiations for the treaty proceeded under Remón's (1952–1955) administration but the final treaty was not signed until 25 January 1955, less than a month after Remón's assassination. In connection with final treaty negotiations under Remón's tenure, between 1953 and 1954 the United States and Panama agreed to a "Memorandum of Understandings Reached." The memo spelled out not only continued opportunities for Panamanian businesses in Panama Canal and Canal Zone markets, but for the first time also included new equal employment opportunities for Panamanians in United States federal government positions related to the administration and operations of the Panama Canal and Canal Zone.

For example, the memo provided that there would be a single wage scale for a given category of position regardless of whether the position was held by citizens of the United States or Panamanian citizens. However, only United States citizens would receive an overseas differential

and other allowances designed to offset some of the disadvantages for non-residents. Congress would seek a uniform application of the Civil Service Retirement Act to all employees of the United States federal government, whether they were citizens of the United States or the Republic of Panama. Finally, equal opportunity for employment was to be given to Panamanian citizens in positions for which they were qualified, with opportunities for government-sponsored training programs.

In terms of business operations and access to markets, the United States agreed to put into practice a number of steps to enable Panamanian enterprises to take an increased share in supplying Canal Zone markets, subject to competitive safeguards. The United States also agreed to withdraw from the sale of supplies to ships with certain exceptions. In addition, the United States agreed to withdraw providing any non-essential services to anyone who, even if employed by the United States federal government, was either not a United States citizen or not a resident of the Canal Zone. The United States further declared it would terminate manufacturing and processing activities if goods and services were available in the Republic of Panama at a satisfactory price and in satisfactory quality and quantity. Finally, the United States agreed to seek legislative authorization for construction of a bridge across the canal at its Pacific entrance near the port of Balboa adjacent to Panama City.

3. *“Civil Rights” Protests Against the United States during the 1950s and 1960s*

The National University was established in 1935 during the presidency of Harmodio Arias (1932–1936). The National University was yet another legacy of the January 1931 coup by Arnulfo Arias, an institution designed to sponsor non-elite political activism against the maritime-commercial elite.¹¹ One historian of Panama suggests that “the university, and especially the Federation [of Panamanian Students], became ladders for middle-and lower-class students who determined to succeed economically, were willing to challenge the government in the streets, and advocated a political program that was to the left.”¹²

¹¹ See Meditz and Hanratty (1987).

¹² LaFeber (1989, 80).

Students and members of the National Police and later National Guard often clashed in the streets. In some cases where students massed near the Canal Zone or American Embassy, i.e., at the intersection of the jurisdiction of Panamanian and United States security personnel, the National Guard and United States troops communicated and worked together to disperse crowds. Though speculation, one of the reasons why organizations like the Federation of Panamanian Students (*Federación de Estudiantes Panameños*) and the National Guard clashed was that they were probably very different sorts of opposition and rivals to the maritime-commercial elite. The National Guard was an institution rooted in the conservative Hispanic traditions of the territorial-administrative interior but many of its members were not necessarily ambitious and highly-educated. Student organizations may have recruited people from lower and middle levels of maritime-commercial society, some with cosmopolitan philosophies including fascist or communist leanings antithetical to the United States training given to Panama's paramilitary police.

3.1 *Panamanian Flag Raising Demonstrations in May 1958 and October and November 1959*

Student activists sometimes planned their demonstrations to coincide with symbolic dates of independence, such as the anniversary of Panamanian independence from Spain or from Colombia, and planted Panamanian flags in the Canal Zone as a form of territoriality. For instance, on 2 May 1958 several students planted Panamanian flags in the Canal Zone in a demonstration called "Operation Sovereignty." In many cases, both American and Panamanian authorities had advance warnings of student demonstrations and took preventive action.

On 21 October 1959, with advance knowledge that a demonstration would take place in the coming weeks, the United States Ambassador made a formal request to the Government of the Republic of Panama to take whatever steps were necessary in order to ensure public order. Nonetheless, on 3 November 1959, which was the anniversary of Panamanian independence from Colombia, approximately 150 people tore down the American flag and destroyed property at the United States Embassy and the offices of the United States Information Service. Groups that gathered to raise the Panamanian flag in the Canal Zone became violent. In the absence of any Panamanian National Guard support, the Governor of the Canal Zone called on United

States troops to prevent the crowd from entering the Canal Zone. The next day, the Panamanian Minister of Foreign Relations responded to an American Ambassador's protest by lodging a counter protest. The minister alleged that the desecration of a Panamanian flag in the Canal Zone and the use of American armed forces against unarmed Panamanians were what had sparked the riots. Three weeks later on 28 November 1959, the anniversary of Panama's independence from Spain, National Guard and United States troops cooperated together to disperse a crowd attempting to enter the Canal Zone. Afterwards the crowd focused its efforts away from the Canal Zone and a few blocks of downtown Panama City were vandalized.

Shortly after the November 1959 incidents, on 2 December 1959 Republican President Dwight D. Eisenhower remarked, "I do, in some form or other, believe we should have visual evidence that Panama does have titular sovereignty over the region."¹³ On 19 April 1960, Eisenhower approved a nine-point program for improving relations with Panama over the Canal Zone. Several points focused on improving the status of Panamanian labor in the Canal Zone with pay increases, training, and placement of Panamanians in more skilled and supervisory positions.

3.2 *Panamanian Flag Raising Demonstrations in January 1964*

On 17 September 1960, United States representatives agreed to allow the Panamanian flag to fly beside the American flag in the area known as "Shalers Triangle" in the Canal Zone. In 1962, President John F. Kennedy agreed to add more locations flying both flags and in September 1963 the Governor of the Canal Zone selected seventeen sites in the Canal Zone where both the United States and Panamanian flags would be flown together. All other sites in the Canal Zone, including high schools, were to have no flag at all.

Between 9 and 12 January 1964 large-scale demonstrations and riots erupted in Panama City and Colón on the edge of the Canal Zone after an attempted flag-raising incident at a Canal Zone high school by Panamanian students, in which a Panamanian flag was torn. Within the first days of the violence on 9 January 1964, representatives of the Republic of Panama began drafting letters urging the intervention of

¹³ U.S. Congress (1977b).

the Organization of American States and the United Nations. On 10 January 1964, the Panamanian representative to the United Nations sent a letter to the President of the United Nations Security Council asking for consideration of urgent matters between Panama and the United States. Citing articles of the Universal Declaration of Human Rights, the National Bar Association of Panama on 21 January 1964 petitioned the International Commission of Jurists Investigating Committee to examine allegations that United States troops violated the human rights of citizens of the Republic of Panama during the riots.¹⁴

An official investigation of the 1964 riots was conducted by the International Commission of Jurists and a synthesis of testimony and facts about the 1964 Canal Zone riots is provided in the “International Commission of Jurists Report on Events January 9–12, 1964.” According to the synthesis of testimony in the report, during the very early hours of the rioting several calls were made by American authorities to the Panamanian National Guard to control the violent crowd on the border of the Canal Zone. The fact that most of the rioters in January 1964 were on the border of the Canal Zone, but not inside, meant they were within the jurisdiction of the National Guard.

The report alleges the National Guard was deliberately kept away from troubled areas in Panama City until after the riots had run their course, somewhat similar to the situation on 3 November 1959 when National Guard troops were absent and United States troops had to be called. Panamanian National Guard troops were also completely disarmed during the riots, which allegedly was not standard procedure. On the other hand, in Colón the situation was handled differently and was more like the joint response to restoring public order during demonstrations on 28 November 1959. On the Colón side, members of the Panamanian National Guard communicated and worked in tandem with United States Army troops to disperse crowds from the edge of the Canal Zone.

The International Commission of Jurists report suggested that for whatever reason Panamanian officials did not direct National Guard troops to control the crowd, and remarked that there was “considerable evidence to indicate that broadcasts over radio, television and

¹⁴ The judgment of the ICJ was that there was no evidence the United States violated the human rights of Panamanian citizens during the 1964 Canal Zone riots. See U.S. Congress (1977b, 1133–1134).

loud-speakers, newspapers, and other means were adopted to incite and misinform the Panamanian public without any action by the Panamanian authorities to curtail or moderate such activities.”¹⁵ The report concluded vaguely that there was evidence of “some degree of premeditation and planning” by someone, since a large crowd was building on the edge of the Canal Zone before the students had even departed. Within half an hour after the high school altercation, the crowd had grown to several thousand and had become more violent.¹⁶

The events leading to the January 1964 riots have received an inordinate amount of interest by contemporaries and later researchers. Unfortunately, there has been little interest in comparing the January 1964 riots to earlier flag-planting incidents in 1959, describing the differences in how the National Guard responded in Panama City versus in Colón on the Caribbean side of the Canal Zone, and most importantly, putting the riots into the context of the internal political crises that were occurring in Panama between 1964 and 1968. For instance, one author who examined the January 1964 riots in detail but not in comparison to similar riots in 1959 said that although there was a sometimes “bewildering contempt” for so-called standards of legal principle, Panamanian activists “cleverly exploited more informal, atomized, and emotional forces within its own borders and in the rest of the world.”¹⁷ What were the emotional forces within Panama? What explains the unwillingness of Panamanian authorities to control the crowd in Panama City using the National Guard?

The most curious aspect of the entire incident has to be the fact that the President of the Republic of Panama himself, Roberto Francisco Chiari Remón (1960–1964) of the National Opposition Union, received the student delegation immediately upon their return from

¹⁵ The report stated, “We regret deeply that the Panamanian authorities made no attempt during the critical early hours, as well as for almost three days thereafter, to curb and control the violent activities of the milling crowds. On the contrary, there is considerable evidence to indicate that broadcasts over radio, television and loud-speakers, newspapers, and other means were adopted to incite and misinform the Panamanian public without any action by the Panamanian authorities to curtail or moderate such activities.” See U.S. Congress (1977b).

¹⁶ U.S. Congress (1977b).

¹⁷ Alan MacPherson, “Courts of world opinion: Trying the Panama Flag Riots of 1964” *Diplomatic History* Vol. 28 No. 1 (2004): 83–112. See MacPherson (2004, 112).

the incident at the high school.¹⁸ The International Commission of Jurists report said that either the Panamanian President's office or Panamanian authorities in the Ministry of External Affairs had been informed in advance of the student's plans for a demonstration in the Canal Zone. Why would a President of Panama choose to travel to receive a group of student demonstrators holding a torn Panamanian flag, rather than first doing whatever was necessary to restore public safety and public order outside of the Canal Zone, which was under his direct authority?

A reasonable speculation is that the reason why Chiari did not order the National Guard to disperse the violent crowd during the January 1964 riots, and instead embraced the student demonstrators, was because of the political movement that Arnulfo Arias was in the process of creating in anticipation of the May 1964 elections. In other words, in an election year the political costs were too high for a challenged Chiari administration and National Opposition Union to do anything other than receive the student delegation and call off the National Guard, and then try to absorb and deflect the mass but certainly mixed political movement. Did the National Guard in Panama City make a unilateral decision not to engage the protestors? Were the people making inflammatory remarks over the radio and mass communications political supporters of Arnulfo Arias?

Less than a week before the outbreak of the riots, on 4 January 1964, Arnulfo Arias organized a mass political demonstration in support of his candidacy. If historical accounts are to be believed the demonstrations included as many as 50,000 participants who witnessed Arias accept his *Panameñista* Party's nomination as candidate for President of Panama, i.e., rivals to the party of the incumbent Roberto F. Chiari.¹⁹ Election year civil unrest seems to have been very common in Panama and usually required, in emergency situations, the threat of military or police force to disperse crowds supporting political rivals and opposition. In any event, it is not likely the Chiari administration would have been able to disperse a crowd of tens of thousands through threat of intimidation, especially not if they were the ones appearing to support the symbolic segregation of Panamanians from the territory and the

¹⁸ Roberto F. Chiari Remón was the son of former President Rodolfo Chiari and an executive in the family sugar business.

¹⁹ Jorge Conte Porras, *Arnulfo Arias Madrid* (Panamá: J. Conte-Porras, 1980, 182).

commercial wealth of the Canal Zone – whereas Arias only a few days earlier probably said he would do the opposite and nationalize the Canal Zone immediately. Arnulfo Arias lost in the 1964 election but claimed that the results were fraudulent and demanded a recount. Arias also criticized newly elected President Marco Aurelio Robles Méndez (1964–1968), chosen to succeed Chiari as the nominee of the National Opposition Union, saying that he did not represent the true interests of Panamanians in treaty negotiations with the United States.

3.3 *The Aborted 1967 Treaties*

In 1967, negotiators for the Republic of Panama and the United States had reached an agreement on three treaties to replace the 1903 Hay-Bunau-Varilla Treaty. The complicated 1967 arrangement is not elaborated here but its major focus was to change the Panama Canal regime so that it would be run by a special corporation independent of either government, but represented by an American majority on its board of directors. The Republic of Panama never submitted the treaties for ratification, thus they were never submitted to the United States Senate for its advice and consent. In a climate of civil unrest motivated by political rivalry and opposition, especially by Arnulfo Arias, submitting any important canal treaty to the Panamanian legislature for ratification would have been impossible.

4. *Political Interventions by the National Guard during the 1950s and 1960s*

4.1 *The October 1968 Military Coup*

The precise turning of events leading to the 11 October 1968 military coup d'état by several officers of the National Guard and subsequent reshuffling among National Guard officers and other Panamanian political figures is complicated and has been explored by other authors. The simple version is that Arnulfo Arias was confirmed as winning the election for President in the May 1968 elections and assumed office on 1 October. On his first day of office, Arias allegedly announced his intentions to use his executive powers to remove his major rival and major opposition all at the same time. Arias urgently called for the end of United States jurisdiction over the Canal Zone, so as to nationalize the Panama Canal and its associated commercial activities and control the source of his maritime-commercial elite rivals' wealth. Arias also ordered the reorganization and transfer of senior leadership of

the National Guard, so as to eliminate the only credible threat of force that might challenge his executive authority. Arias was removed from office for a third time by the National Guard on 11 October 1968.

The National Guard leader who eventually emerged from the 11 October 1968 coup d'état, Omar Torrijos Herrera, is an example like Remón of a paramilitary rival of the maritime-commercial elite from the territorial-administrative interior. Torrijos came from the territorial-administrative core city of Santiago in the province of Veraguas and was the son of a public school teacher. The territorial-administrative consciousness of the interior was cultivated in the National Guard through a deliberate effort by Torrijos, "to ensure the loyalty of the infantry through cultural or regional ties."²⁰ Torrijos and other officers of the National Guard through the mid-1970s did not cultivate political relationships with maritime-commercial business interests in Panama City and Colón. In fact, National Guard officers may have practically meant to replace the maritime-commercial elite, as several of his lieutenants were accused of profiting by illegally taxing goods in transport.²¹

However, one of the reasons Torrijos emerged as the exclusive leader of the National Guard was because although his labor code reforms were directed against the wealth and economic leverage of the maritime-commercial elite, he did not advocate radical redistributive measures. Torrijos did not support nationalization of private businesses or foreign economic activities associated with the Panama Canal Company in order to redistribute commercial wealth from the port cities to claimants in the interior for agricultural development.²² Rather, Torrijos advocated measures that seemed to cut across societal lines at its middle and lower echelon levels. For instance, the 1972 Labor Code intended to merge lower and middle echelon laborers and merchants in the port cities with those in the interior through labor unions.²³ Finally, in terms of the continuance of United States jurisdiction over the Canal Zone government, Torrijos' policy was to 'alarm but not antagonize' the United States, especially with respect to American priorities to prevent threats to the neutrality of the Panama

²⁰ Ropp (1982, 48).

²¹ See Phillips Collazos (1991, 42) and Ropp (1982, 46).

²² Ropp (1982, 64) said that the period of the 1970s "exacerbated the social gap separating the National Guard from the business community."

²³ Phillips Collazos (1991).

Canal and to the safety of American citizens working in the Canal Zone.²⁴

A closer examination of the period of military government by the National Guard (1968–1981) under Torrijos and later manifestations as the Panama Defense Forces under Manuel Noriega (1983–1989) is well outside of the scope of this book. Suffice it to say that protests by rivals and opposition to the maritime-commercial elite between the 1930s and the 1960s were motivated by civil and labor rights in terms of economic welfare and equal opportunity. During the military government, the same sorts of civil rights protests would turn to civil liberties. It is very well established that the paramilitary forces under Torrijos and later officers like Manuel Noriega used deadly force and threat of deadly force to intimidate their own rivals and opposition, including individual Panamanians seeking civil liberties. Senior or publicly visible rivals and opposition leaders were lucky if they were allowed exile. Public protest against a non-democratically elected form of government in print or in the streets in the name of civil liberties and freedom of participation in government seems to have been dealt with relentlessly and in some cases violently by the National Guard under Torrijos.

C. THE TWO PANAMAS UNDER THE NATIONAL GUARD UNTIL 1981

1. *An Internationalized "Civil Rights" Protest Against the United States by the De Facto Military Government of the Republic of Panama*

1.1 *The Tabling of Further Treaty Negotiations and the 1973 United Nations Security Council Meeting*

Special Representative of the United States for Inter-oceanic Canal Negotiations David H. Ward testified before the House Committee on Merchant Marine and Fisheries that negotiations looking towards "substantial changes" in United States involvement with the operation of the Panama Canal were in progress after the January 1964 riots. Negotiations between the United States and Panama over the Panama Canal and Canal Zone resumed in June 1971 after the military

²⁴ Carlos Guevara Mann, *The Panama Canal: A historical background*, 2003 (<http://collaborations.denison.edu/istmo/n07/articulos/canal.html>).

government had been established but took a different route by proposing to retain United States federal government operation and defense of the Panama Canal for a fixed period and granting the United States exclusive rights to construct a third set of locks or a sea-level canal. At the same time, the Republic of Panama would begin to re-exercise its civil jurisdiction in the Canal Zone. Private enterprise would replace United States government services in the Canal Zone provided that government employees were assured of necessary services. Particular Canal Zone territories would be immediately returned to the jurisdiction of the Republic of Panama, including a substantial financial package. Ward said that there were serious differences on virtually every major point.²⁵ However, Ward believed that by 1971 the Torrijos government had decided not to continue to pursue bilateral negotiations with the United States but instead work towards a Security Council meeting in Panama City.

There was a long historical precedent for Panamanian representatives to ask for international arbitration with the United States. For example, when Article 11 of the 1926 Kellog-Alfaro Treaty between the United States and Panama was judged to have violated the League of Nations charter, representatives of Panama requested that the issue of sovereignty over the Canal Zone undergo international arbitration by the League. The United States opinion at the time was that the Canal Zone was a bilateral issue and would not submit to international arbitration.²⁶ Thus it was not necessarily surprising when officials in the Republic of Panama arranged for the United Nations Security Council to assemble in Panama City in a special meeting to address United States jurisdiction over the Canal Zone. Panamanian officials claimed that the Canal Zone issue was a danger to peace and international security and a proper subject for consideration by the Security Council. On 21 March 1973, during a special session in Panama City, the United Nations Security Council voted on a draft resolution concerning future negotiations between the United States and the Republic of Panama to replace the Hay-Bunau-Varilla Treaty. The Panamanian representative said that passing the draft resolution, in the form in which it was being presented on 21 March 1973, would help the

²⁵ U.S. Congress (1977b, 1473).

²⁶ S. W. Meditz and D. M. Hanratty, eds., *Panama: A Country Study* (Washington, D.C.: GPO, 1987).

Republic of Panama achieve its goal of incorporating the Canal Zone politically, economically, and culturally with the rest of the country.²⁷

Panamanian representatives referred to the Canal Zone as an "enclave that was foreign to the national jurisdiction, dividing Panama's territory into two parts, preventing the political, economic and social integration of the country." The resolution received 13 affirmative votes (Australia, Austria, China, France, Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan, USSR, and Yugoslavia), 1 opposed (United States), and 1 abstention (United Kingdom). The resolution was not adopted because of the negative vote of a permanent member of the Security Council, the United States. At the time it was only the third time ever that a representative of the United States had cast a negative vote in the United Nations Security Council. Despite the outcome of the vote, the Security Council's consensus remained that the Canal Zone ultimately represented a bilateral issue and should be settled between the United States and the Republic of Panama without foreign intervention.

United States Ambassador to the United Nations John Scali, reflecting on the meeting, said that he had reservations about going to a special meeting of the Security Council in Panama City outside of its normal meeting place in New York City.²⁸ Scali said that the group of fifteen countries voting to have the meeting in Panama City instead of New York was the result of "persistent and skillful" persuasion by Panamanian representatives. Scali also said that as a result of "many, many discussions behind the scenes with the Panamanian Foreign Minister and twice with General Torrijos," he and the Panamanian representatives had come within five words of a resolution he felt he could accept, meeting what he called the legitimate interests of the United States and the just aspirations of the Republic of Panama. Scali then said that after consulting with the Department of State as to what the five remaining words could say and returning to see Foreign Minister Juan Antonio Tack, he found that Tack had returned to the earlier hard line resolution. At least in the opinion of Scali, the only explanation for Panamanian Foreign Minister Juan Antonio Tack's reversal was that a decision had been made to, in his words, "solicit" a veto from the United States.

²⁷ U.S. Congress (1977b, 1453).

²⁸ U.S. Congress (1977b, 1461).

Explaining Foreign Minister Tack's actions during the 1973 Security Council meetings, Foreign Minister Nicolas Gonzalez Revilla confirmed to the Panamanian Assembly of *Corregimiento* Representatives at Justo Arosemena Palace on 19 August 1977 that the foreign policy objective of the Torrijos administration was to turn bilateral relations with the United States into an international issue. Representatives of the Republic of Panama had claimed that negotiations with the United States were inherently unbalanced because of the power differential between the two countries. Unless the United States was compelled to abrogate the remaining articles of the 1903 Hay-Bunau-Varilla Treaty due to outside political leverage the United States would never consent to negotiate fairly.²⁹

1.2 *The 1974 Kissinger-Tack "Statement of Principles"*

In the context of the end of the war in Vietnam and the Paris Peace Accords of 1973, United States federal government ownership and control of the Panama Canal and Canal Zone were perceived as an embarrassing and anachronistic privilege reflecting poorly on the American preventive posture of the '2nd republic.' Between late November and early December of 1973 and again in early January 1974, Ambassador at Large Ellsworth Bunker visited with Panamanian Foreign Minister Juan Antonio Tack in Panama to agree on general principles upon which a new treaty might be based. A "Statement of Principles" was signed between Republican President Richard M. Nixon's Secretary of State Henry Kissinger and Foreign Minister Juan Antonio Tack on 7 February 1974.³⁰

The February 1974 "Statement of Principles" paved the way for the 1977 Panama Canal treaties. What was left unfinished after the Statement of Principles was filling in the details, including the exact time period over which United States federal government's jurisdiction in the Canal Zone would be terminated, the amount in dollars and other benefits that the Republic of Panama would expect as part of a larger share of the derived benefits of the Panama Canal, and what privileges and obligations the United States might retain with respect to canal neutrality after the termination date. The terms for future improvements to the capacity of the Panama Canal, and perhaps a

²⁹ U.S. Congress (1977b, 1451).

³⁰ U.S. Congress (1977b, 1478-1479).

new sea-level canal although the wording is not specific, was also to be incorporated into the new treaties. Perhaps the most interesting part of the statement was the principle that the physiographic circumstances of the Isthmus of Panama were recognized as being a natural resource belonging to the Republic of Panama.

D. AMERICAN TERRITORIALITY AND THE 1977 PANAMA CANAL TREATIES

Both the House and the Senate immediately began take action as a result of the "Statement of Principles" in anticipation of a new round of treaty negotiations. Between February and April 1974, several Congressional resolutions were submitted in the House and the Senate, some in support of continued United States sovereign privileges in the Canal Zone and others endorsing the February 1974 "Statement of Principles." The Watergate scandal and Nixon's resignation on 9 August 1974 undoubtedly diverted attention from a new round of treaty negotiations with Panama. However, on 21 October 1975, a bill was passed by both the House and the Senate after several revisions seeking to protect 'vital interests' in the Canal Zone.

Democratic President Jimmy Carter was sworn in on 20 January 1977. On 7 September 1977, Carter and General Omar Torrijos signed 'The Panama Canal Treaty' and 'Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal' ("Neutrality Treaty") at the Organization of American States headquarters in Washington, D.C. About a month later, on 23 October 1977, a Panamanian plebiscite on the Panama Canal treaties was held and – if the results are valid – the vote was 66.1 percent in favor of the treaties, 32 percent opposed, and 1.9 void balloting.³¹

Treaty debate in Congress lasted continuously for 38 days and was one of the longer debates in United States history, though it could be pointed out that the 1936 Hull-Alfaro Treaty took three years for the Senate to ratify. On 16 March 1978 the Senate gave its advice and consent to ratification of the first of the two treaties, the Neutrality Treaty, by a vote of 68 in favor and 32 opposed. Then on 18 April 1978, the Senate ratified the second of the two treaties, the Panama

³¹ U.S. Congress (1977–78, 3:687).

Canal Treaty, also by a vote of 68 in favor and 32 opposed. Both treaties passed but with only one vote to spare. Because the Panama Canal treaties implemented predominantly avoidant principles in place of preventive ones, Senate debate became an occasion for reflection on the balance of principles in American foreign policy.

From a strictly mathematical point of view, admittedly comparing apples with oranges, the Panama Canal treaties received slightly more support in the United States Senate (68 percent) than they did among the general voting population of the Republic of Panama (66 percent). Had the rules of the Panamanian plebiscite required a clear two-thirds majority for ratification of a treaty, as was required by the United States Constitution for the Senate, then the treaties would not have been ratified in Panama.

1. *Criticism of Avoidant and Preventive Ideals*

Criticism either for or against ratification of the Panama Canal treaties in the United States Congress focused on the pitfalls of idealism – on both sides – and to a lesser extent a conflict over the constitutional powers of the President with respect to transferring a United States territory or possession, if the Canal Zone could be considered as such.

General tendencies of policy regimes are not the only factors to consider when it comes to American policy in Panama. Among other factors might be a particular historical moment or the inclinations of a particular President, such as whether he was prone to “realism” or “idealism,” i.e., making policy decisions based upon things on the ground or in his head. Excessive “idealism” in foreign policy regardless of which posture was being advocated has usually been doomed to disapproval by the American public. A President excessively motivated by the ideals of avoidance and the perils of entangling alliances in foreign lands and its resulting moral depredation is vulnerable to the label of “acquiescent.” On the other hand, a President excessively motivated by the ideals of prevention against a particular “system” of government and its encroachment into the Western Hemisphere is vulnerable to the label of “paranoid.”

During the signing of the Panama Canal Treaty and the Neutrality Treaty on 7 September 1977, Torrijos praised the general principles of the treaty. In idealist terms, Torrijos equated a preventive posture

with the pursuit of imperial strength, and an avoidant posture with the pursuit of moral strength:

Basically what sustained the hopes of the Panamanian people and strengthened their patience during all these years was the firm conviction that the people of the United States were not colonialists at heart, because you yourselves had been a colony and had fought heroically for your freedom. We feel that you, Mr. President, in raising the banner of morality over our relations, are representing the true spirit of your people... You have changed imperial strength into moral strength.³²

Senator Clifford Hansen (R-WY) criticized the idealism of these sorts of arguments as a play to the American conscience about the moral high ground of an avoidant posture and the policies it inspired, versus the moral low ground of a preventive posture and the policies it drove in the past. Hansen said:

The new treaties have been held up to us as a chance to set an example for the world in demonstrating our sincerity with regard to the sovereign rights of individual governments. Our presence in Panama has been pictured as the last example of colonialism in the Western Hemisphere. We are expected time after time to feel guilty for our presence there. We have been told it is time to make amends for our past errors. I do not buy that. It is dishonest to play on the conscience of the American people and to thus ignore the fundamental questions involved... The Panama Canal Zone is far too important an issue to be held up as a testing ground; a kind of acid test.³³

Idealism when it came to a preventive posture was also criticized. A Washington Post article on 9 October 1977 called "Canal treaties: The maturing of America," stated that the United States could not let the outcome of the war in Vietnam affect its negotiations with Panama due to the ideal that American honor would be "blemished by ostensibly giving up territory." The article said:

Without the treaties there would be no good reason for the Panamanian government to act, and that nasty chore would fall to U.S. forces. With both foreign and domestic news media branding U.S. actions as immoral at best, and atrocities at worst, how effective could U.S. forces be? How long would it be before the anti-Panama War critics would be marching on the Pentagon, the White House and the Capitol? Conflict in Panama, resulting from rejection of the treaties, would guarantee conditions that

³² U.S. Congress (1977b, 1512).

³³ U.S. Congress (1977-78, 2:64).

would shatter what little domestic tranquility has emerged in the aftermath of Vietnam and Watergate. In this respect, rejection of the treaties is not in the national interest... A great nation cannot let the ghosts of Vietnam go on delaying actions that are in the national interest because some people fear our honor will be blemished by ostensibly giving up territory.

On 14 October 1977, former Secretary of State Henry Kissinger testified before the Senate Foreign Relations Committee that the Panama Canal and Canal Zone was not the issue to select in order to demonstrate the ideals of the American preventive posture given the outcome of the war in Vietnam. Kissinger said:

I recognize the deep feeling of many Americans who wish, after the Vietnam tragedy, to see an end to yielding and retreat by the United States. No one can appreciate such concerns better than one who strove for an honorable outcome during the Vietnam period. But the canal is not the issue to select to demonstrate that we remain strong and resolute. Panama is the smallest and weakest of nations. We are not 'giving' the canal to Panama; we are, rather, ensuring our ability to protect it.

Senator Joe Biden (D-DE), a member of the Senate Foreign Relations Committee, recognized the need for a preventive though less ideal point of view about maritime nodes and links reminiscent of Alfred Thayer Mahan during the '2nd republic.' Biden questioned the impact that the Panama Canal treaties could have on United States capabilities to ensure maritime security over its use of ports and sea lanes in the Caribbean and the Pacific. Biden said:

It seems to me that the really critical issue is whether we can control not the actual passage in the canal as much as we can control entrance to and exit from that canal. That is why the area is a crucial one. The issue is one that goes beyond this hearing and the floor debate...[if] the neutrality treaty is ratified, does that mean we will weaken our position in the Caribbean. Are we weakening our position with regard to control of the Caribbean and the immediate Pacific Ocean to the west of the canal. That is what worries and concerns me.

Somewhat of a side issue, concern about the treaties also turned on whether the President's actions were constitutional without the consent of the House. The decision of the Supreme Court in *Wilson v. Shaw* in 1907 was invoked during the Panama Canal treaties debate by Republicans in the House of Representatives who felt that they, not just the Senate, had a constitutional role to play. Republican California Governor Ronald Reagan was of those who advocated against ratifica-

tion of the Panama Canal treaties on constitutional grounds, asserting that the Canal Zone was a territory or possession of the United States. According to constitutional procedure, the president did not have the power to cede territories without House approval. Reagan said that he had spent time reading and studying legal cases and opinions about the powers of the United States federal government in the Canal Zone and felt that because the Canal Zone was practically a territory of the United States it could be equated with the Louisiana Purchase and Alaska, undoubtedly relying on the Supreme Court's 1907 decision in *Wilson v. Shaw*. Reagan testified before the Subcommittee on Separation of Powers of the Senate Judiciary Committee saying "only one nation can exert sovereign rights over a given piece of land at one time, and the 1903 treaty made it clear that we would do so in the Canal Zone and that the Republic of Panama would not."³⁴ Reagan continued by explaining why rejection of the treaty was, at least in his mind, necessary as a means to a larger preventive end: "It is no secret that the Soviet Union believes control over some 16 vital sea lane 'choke points' means dominance of the world's oceans. Our presence at one of the busiest and most important of those 'choke points' is a definite deterrent."

E. CONCLUSION

Territoriality over the environment of Panama during the '2nd democracy' (1930s–1970s) was an interaction between 1) a predominantly avoidant American posture when it came to use of the constitutional powers of the United States federal government in foreign territory to administer and operate the Panama Canal, and 2) lower and middle echelon rivals and opposition to the maritime-commercial elite in Panama who engaged in a civil and labor rights dispute against the elite and the United States federal government simultaneously over equal opportunity and redistribution of wealth from economic activities associated with the Panama Canal and Canal Zone. The most important treaties during this period of political rivalry and opposition were signed by Panamanian administrations that came to power

³⁴ U.S. Congress (1977–78, 3:632–633)

through a coup d'état and maintained control and order over their political rivals and opposition by threat of paramilitary force.

For instance, Harmodio Arias was the beneficiary of Arnulfo Arias' coup d'état in January 1931. After winning the 1932 elections he appointed Jose Antonio Remón Cantera as his chief of the National Police, an institution that through intimidation and threat of deadly force arbitrated Panamanian political elections. Under Arias the 1936 Hull-Alfaro Treaty was signed. Remón himself then was elected President in 1952 when Panama's conventional political parties were in disarray, almost like a coup d'état. After winning the 1952 presidential elections, Remón created the National Guard as a more professional institution of intimidation and then paved the way for the signing of the 1955 Treaty of Mutual Understanding and Cooperation. One of the officers of the new National Guard was a man named Omar Torrijos. Torrijos assumed sole leadership of the National Guard after the October 1968 military coup d'état and then signed the 1977 Panama Canal treaties. Of course, the story does not end there as one of the senior officers of the National Guard under Torrijos was a man named Manuel Noriega. The disintegrating political situation between Panama's maritime-commercial and territorial-administrative societies eventually led to a malevolent Panamanian military dictatorship by Manuel Noriega.

The avoidant-minded regime of the '2nd democracy' (1930s–1970s) disentangled the United States from whatever tacit alliances had existed with Panama's elite maritime-commercial society via the 1903 Hay-Bunau-Varilla Treaty. By signing the 1977 Panama Canal Treaty and the 1977 Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, the '2nd democracy' ended exclusive American jurisdiction over the Panama Canal and Canal Zone while reserving exclusive American control over its neutrality. In effect, the Presidents and Congresses of the '2nd democracy' split their '2nd republic' predecessor's preventive posture for an American canal under American control into two parts. An "American canal" had meant that the day-to-day ownership, administration, and operations of the Panama Canal were based in areas under United States jurisdiction. The first of the two 1977 Panama Canal treaties relinquished this role. A canal "under American control" had meant that the United States federal government exercised exclusive powers over neutrality, which was retained by the second of the two 1977 Panama Canal treaties. Thus a hybrid

avoidant-preventive posture unfolded as a Panamanian canal under Panamanian control under normal situations, and under American control in emergency situations. The principles of a "situational" canal under American control were part of the 1936 Hull-Alfaro Treaty and even the rejected 1947 Defense Sites Agreement. More importantly, the same principles might even be found in the 1901 Hay-Pauncefote Treaty giving the United States exclusive control as the only non-adjacent maritime power with the right to enforce the Panama Canal's neutral and free use.

CHAPTER TWELVE

THE PANAMA CANAL AND THE TWO PANAMAS UNDER THE '3RD REPUBLIC' (1980-?)

A. AMERICAN TERRITORIALITY OVER INTEROCEANIC TRANSPORTATION DURING THE '3RD REPUBLIC' (1980-?)

1. *Reorganization and Reservations After the Panama Canal Treaties*

Following ratification in April 1978, the avoidant terms of the Panama Canal treaty started a process of reorganization and withdrawal of the jurisdiction of the United States federal government over the Panama Canal Company and Canal Zone Government. The Panama Canal Company and Canal Zone Government were reorganized as a transitional Panama Canal Commission (1979–1999) until 31 December 1999 when all ownership and operations would be transferred to Panama.¹

The Panama Canal Commission was a wholly owned government corporation in the Executive Branch of the United States under the Secretary of Defense and the Secretary of the Army. The Commission was composed of a board of directors with nine members, five of whom were United States citizens appointed by the President and four were Panamanian citizens proposed for appointment by the President of Panama. Authority over routine operations of the Panama Canal was given to a Panamanian Administrator, assisted by an American Deputy Administrator. Canal operations were reviewed by Congress annually and were expected to continue to be self-financing. Revenues from tolls and other activities were deposited in an account in the United States Treasury called the Panama Canal Revolving Fund, which was available to the Panama Canal Commission for its operations and programs.

The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal was a longer term proposition. The treaty gave

¹ The Panama Canal Commission was created by the Panama Canal Treaty of 1977 and constituted by the Panama Canal Act of 1979 and Public Law 96-70 of 27 September 1979, as amended by other public laws.

the United States unilateral rights of interposition against threats of aggression against the free and neutral use of the Panama Canal in emergency situations. The amendment to the treaty, the “DeConcini reservation” named after Senator Dennis DeConcini (D-AZ), attached the following statement with respect to Article IV:

Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.... Notwithstanding the provisions of Article V or any other provisions of the treaty, if the canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as each deems necessary, in accordance with its constitutional processes, including the use of military force in the Republic of Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.²

The DeConcini reservation was an understanding to the treaty clarifying that when it says the United States and Panama have the responsibility to assure the Panama Canal will remain open and secure to ships of all nations, it meant that both nations each “independently” had that responsibility, including the use of military force in the Republic of Panama in situations such as acts of aggression or threats directed against the canal.

The same general principle appears in the 1936 Treaty of Friendship and Cooperation as an exchange of notes. In fact, like the DeConcini reservation, the 1939 exchange of notes to the 1936 treaty was what had finally broken a three-year deadlock in Senate consideration of the treaty. One could even suggest the same general principle can be found in the 1850 Clayton-Bulwer Treaty and the 1901 Hay-Pauncefote Treaty. Both were agreements designed to clarify whether two non-adjacent maritime powers would each guarantee the free and equal use of a Central American canal over the jurisdiction of the adjacent state, or whether it would be just one, the United States alone.

² 33 UST Panama-Canal Neutrality – Sept. 7, 1977.

The legality of the DeConcini reservation might have been debatable had it not been attached to a mutual agreement between the non-adjacent power and the adjacent state. There is evidence that President Jimmy Carter lamented the inclusion of the DeConcini reservation in terms of the foreign policy ideals he wanted to present, but it did spell out for both parties what had clearly been a longstanding intention by the United States as a non-adjacent maritime power to prevent threats to the neutrality of the canal over the sovereign jurisdiction of the adjacent state. In October 1977, prior to the Panamanian plebiscite on the Panama Canal treaties in a Panamanian television interview Torrijos himself would say, "And this is the peace which I am going to take to my grave – that I do not leave a canal which is greatly coveted by the whole world without knowing that a great power is obligated to come to its defense."³

B. THE TWO PANAMAS UNDER THE PANAMANIAN DEFENSE FORCES UNTIL 1989

1. *Political Dissent Against the De Facto Military Government and American Military Intervention in December 1989*

During the signing of the Panama Canal treaties on 7 September 1977 in Washington, D.C., Omar Torrijos added:

We have agreed upon a neutrality treaty that places us under the protective umbrella of the Pentagon. This pact could, if not administered judiciously by future generations, become an instrument of permanent intervention.⁴

Torrijos would probably never have imagined that it would be practically his own generation of Panamanians and the successor to his command over the National Guard, Manuel Noriega, who would activate use of the neutrality treaty to justify American intervention in December 1989.

Explanation of any event in history usually includes elements of background causes, facilitating causes, and precipitating causes. Discovery of new facts puts one in a position to pose challenging alternate possibilities to official investigations. What is interesting is when

³ U.S. Congress (1977–78, 5:48).

⁴ U.S. Congress (1977b, 1512).

a researcher can convincingly handle new information and suggest conclusions that put the actions of those who precipitated an event into the context of what facilitated those actions. What is rare and particularly exciting is when a researcher can explore not only what precipitated or facilitated an event but how things unfolded against a background that hardly anyone had considered.

A number of journalists and researchers of contemporary affairs have been motivated to find new facts about why the administration of Republican President George H. W. Bush decided to opt for the use of military force against General Manuel Noriega and the Panamanian Defense Forces (*Fuerzas de Defensa de Panamá*). Why was Panama unable to transition to a democratically-elected government undeterred by the intimidation of the National Guard and Panama Defense Forces after Torrijos' death in a plane crash in 1981? What sorts of relationships existed between Noriega and Presidents Ronald Reagan and George H. W. Bush with respect to other covert operations in Central America? What event or series of events ultimately soured that relationship in favor of the decision for military intervention in December 1989? In any event, in his justification for military invasion in December 1989, Bush referred to – but did not highlight – threats to the free and neutral use of the Panama Canal by vessels in transit. Instead, Bush highlighted his concern for the safety of American citizens living in the former Canal Zone.

Many researchers look beyond American military intervention to the origins of Panama's military government. Generally speaking, American military intervention in December 1989 is considered a reversal of the coup d'état in October 1968. Some experts on Panama contend that the post-1968 period of reformist military government had been more representative of Panama's population and put it back in step with "independent" Latin American governments untainted by a history of American intervention.⁵ In other words, few if any other Latin American governments were dominated by a maritime-commercial elite leadership. This remains a question for debate. An analysis matching the base of Panama's political parties in the past with the social and geographic characteristics typical of those oriented to the activities of the maritime-commercial or territorial-administrative society is not within the scope of this book but awaits any scholar familiar with

⁵ Ropp (1982).

the geographic histories of Omar Jaén Suárez and Alfredo Figueroa Navarro, and armed with the theoretical implications of Edward Fox's history of French politics.

A few authors writing about contemporary Panama have taken Jaén Suárez's original analysis of Panamanian history as the basis for their argument.⁶ They suggest Jaén Suárez's historical analysis of Panama's urban elite demonstrates that they were socially, economically, and geographically alienated from the population of the interior of Panama. After United States military forces reinstated democratically-elected President Guillermo Endara on 20 December 1989, Panamanian politics supposedly fell back to the political rivalries among mostly maritime-commercial elite. In fact, the December 1989 invasion was alleged to have reset Panamanian politics to a situation all the way back to what had existed before the 1931 coup d'état by Arnulfo Arias. Many authors take the viewpoint that growing political opposition and rivalry in Panama between the 1930s and the 1960s stemmed from the fact that the maritime-commercial elite were never a legitimate ruling class because of their social and economic alienation from the interior.⁷ In support of their observations, these researchers note that the maritime elite relied on wealth acquired from foreign transport services, failed to diversify their economic control over the interior country with a broader economic development strategy aimed at agricultural production or cattle ranching, and preferred to cultivate close relationships with foreign merchants and administrators. The nature of the alliance between the United States and the maritime-commercial elite was that the United States gave the elite economic jurisdiction over the Canal Zone including a monopoly on the supply of goods and services, plus support against internal rivals and opposition, in return for which the Panamanian maritime-commercial elite allowed the United States federal government to continue to exercise jurisdiction in Canal Zone territory over matters of public health, public safety, and security.

In short, the Panamanian political elite were supposedly an "enclave" society that maintained political power because of United States' support until the 1968 election of Arnulfo Arias and the military coup by the National Guard finally replaced the elite with a more representative

⁶ Peter Szok, "Beyond the Canal: Recent scholarship on Panama" *Latin American Research Review* 37 no. 3 (2002): 247–259.

⁷ Zimbalist and Weeks (1991, 137).

and more genuinely “Panamanian” government – even despite the fact that the military government was not democratically elected. Several experts would suggest that this enclave understanding of Panamanian elite politics explains its peculiarities such as the personalistic factions and the lack of nationalist coalitions in the interior, and also explains how the “bureaucratic/merchant” elite dominated Panamanian elections for the presidency and the legislature by controlling powerful social networks like the National Council of Private Enterprise (CONEP), and the most exclusive social network, the Union Club in Panama City.⁸

Did American intervention support the political dominance of the maritime-commercial elite? For that matter, did the lack of American intervention after 1931 erode the political dominance of the maritime-commercial elite, who were then beholden to internal paramilitary police forces? Are cosmopolitan political elite oriented to maritime commerce in the port cities and who shun conventional nationalist sentiments unless pressed to do so publicly an aberration of foreign dependency on the United States, i.e., an enclave-dependent society? Critical arguments suggest that Panama’s maritime-commercial elite regimes have always been disconnected from most of the rest of the country, geographically from the interior and socially from the lower echelons of society in the maritime cities, resulting in Panama’s political history of dependence on the United States until 1968, and after 1989. What many authors do not consider is that the maritime-commercial elite of the Republic of Panama may be considerably more geographically and historically adapted from the environment of the Isthmus of Panama and from a long history of political dealing with adjacent centralizing or territorial-administrative governments and with non-adjacent maritime powers.

C. THE TWO PANAMAS AFTER THE ABOLISHMENT OF THE PANAMANIAN DEFENSE FORCES

1. *The Abolishment of the Panamanian Defense Forces*

Constitutional reforms in February 1990 by President Guillermo Endara, affirmed by the Panamanian legislature in October 1994, abolished the Panamanian Defense Forces and replaced it with the

⁸ See Ropp (1982).

Panamanian Public Forces. A standing army was prohibited as had been the case after Panama's independence in 1904. The Panamanian Public Forces to date represent a combination of police, investigative, border control, and maritime security personnel under the control of the executive branch of government.

2. *The Panama Canal Authority (2000–date)*

The legal framework of the Panama Canal Authority derives from Title XIV of the Panamanian Constitution, Act No. 19 of 11 June 1997 (a.k.a., the Organic Law), and various regulations adopted by the Board of Directors of the Panama Canal Authority. The Panama Canal Authority is headed by an Administrator and a Deputy Administrator under the supervision of an eleven-member Board of Directors. The Administrator, as the chief executive officer, is appointed for a period of seven years but can be reelected. The Panama Canal Authority exercises an exclusive legal right to use its assets for the administration, operation, maintenance, and modernization of the Panama Canal and associated canal services within the Canal Operation Compatibility Area. The Canal Operation Compatibility Area is a specific geographic area in which only activities compatible with the operation of the Panama Canal are permitted. The area includes the immediate area of the line of the Panama Canal, its Atlantic and Pacific entrances and anchorages, the ports of Cristobal and Balboa, the three locks, the Gatun Dam, portions of Gatun Lake, the Culebra Cut area, Miraflores Lake, and other surrounding areas.

The annual reports of the Isthmian Canal Commission (1900–1914) and the Governor of the Panama Canal (1914–1951) are painfully detailed including statistical facts about Panama Canal operations and a description of just about every event in the Canal Zone. The report's descriptions include things like how much money to the penny was collected selling ice cream to exactly how many million feet of movie film had been shown during the fiscal year. An early summary from a 1920s annual report even catalogs for us the reactions on the faces of people from the Palo Seco Leper Asylum, the Corozal Hospital for the Insane, and the Gamboa Stockade who had never seen a movie before.

The annual reports of the Panama Canal Company and Canal Zone Government (1951–1979) and the Panama Canal Commission (1979–1999) present a terse and nonchalant narrative that sticks to the most neutral descriptions about transit statistics and routine canal

operations, maintaining a steady tone even during the crisis in 1989. In late 1989, as invasion seemed more and more imminent, Panama Canal Commission employees were under intense and varied political intimidation and had to be transported to work by boat, paid for by the Commission, because they were prevented from renewing their vehicle license plates.

By contrast, the Panama Canal Authority's (2000-date) annual reports and website present an exuberant self-report of its own performance and its menu of canal services. The Panama Canal Authority stresses its dedication to its international customers but balances that with narrative and imagery conspicuously illustrating Panamanian nationalism. For instance, the cover of the English language version contains the ever-reproduced black and white photo of two young people during the January 1964 Canal Zone riots climbing over a chain-link fence with Panamanian flag in hand.

The sharpest difference between the organization of the Panama Canal under the Panama Canal Authority, and under various entities of the United States federal government, is that the Panama Canal Authority's operations are all mixed together as a set of integrated business "services." Under American jurisdiction, the philosophy was to regard the work as a public franchise with three separate functions including canal operations, business enterprises, and civil government. Canal operations were associated with the dredging, locks, and navigation divisions. Services and commercial businesses were associated with the Panama Railroad Company. Civil society was associated with the office of the Governor of the Canal Zone and its various offices and departments.

Evoking the repertoire of Panama's maritime commercial society, under the Panama Canal Authority canal operations, business services, and even to some extent civil society are mixed together as a spatially adjacent cluster of economic "services" in order to provide the highest possible quality of canal services at a negligible per unit cost to its global shipping customers. However, evoking the repertoire of Panama's territorial-administrative society, the goal of the Panama Canal Authority is also maximizing the Panama Canal's revenues and contributions to the National Treasury.

2.1 *The Panama Canal Authority and Foreign Enterprises*

Some of the preventive principles of the '2nd republic' about private enterprises falling into the hands of foreign governments continued to surface during the '3rd republic.' For example, a United States House of Representatives hearing in 1995 focused on potential Chinese government involvement in Panama Canal operations after the official turnover by the United States on 31 December 1999.⁹ Published in the House hearing documents were statements by former Commander-in-Chief of the Pacific Fleet Admiral Thomas H. Moorer, who pointed out that the lessons learned from Alfred Thayer Mahan about the interaction between commercial and strategic considerations in the Pacific Ocean were being lost. Moorer said strategic nodes "underlying and necessary to the operation of our two ocean and forward deployed strategy in times of conflict" were being encroached upon by China.¹⁰

Other evidence of American preventive postures with respect to foreign companies controlling Panama Canal port and harbor operations come from two 1997 articles in the *Washington Times* reporting that former Republican Senator Majority Leader Trent Lott of Mississippi was concerned about possible connections between Hutchison Whampoa Ltd., a Hong Kong ports company that won the contract to maintain and operate portions of Panama Canal operations over an American company, and the Chinese People's Liberation Army.¹¹

Like similar non-transfer clauses that date back to the Panama Railroad Company's contract with New Granada, Title XIV of the Panamanian Constitution states that the Panama Canal and its operations cannot be sold, transferred, mortgaged, or in any way either encumbered or alienated from the Republic of Panama to a foreign interest. Thus the Panama Canal Authority is the sole legal entity with jurisdiction over the Panama Canal. The Panama Canal Authority even maintains financial autonomy from the Republic of Panama and manages its own financial assets.

⁹ U.S. Congress, House, Subcommittee on the Western Hemisphere, *U.S. strategic interests in Panama: Hearings before the Subcommittee on International Relations*, 104th Cong., 1st sess., 9 March 1995 (Washington, D.C.: GPO, 1995).

¹⁰ U.S. Congress (1995, 58).

¹¹ "China company grabs power over Panama Canal," *Washington Times*, August 12, 1997: A1; and "U.S. won't allow China to close Panama Canal," *Washington Times*, August 13, 1997: A1.

2.2 *The Panama Canal Authority and Tolls*

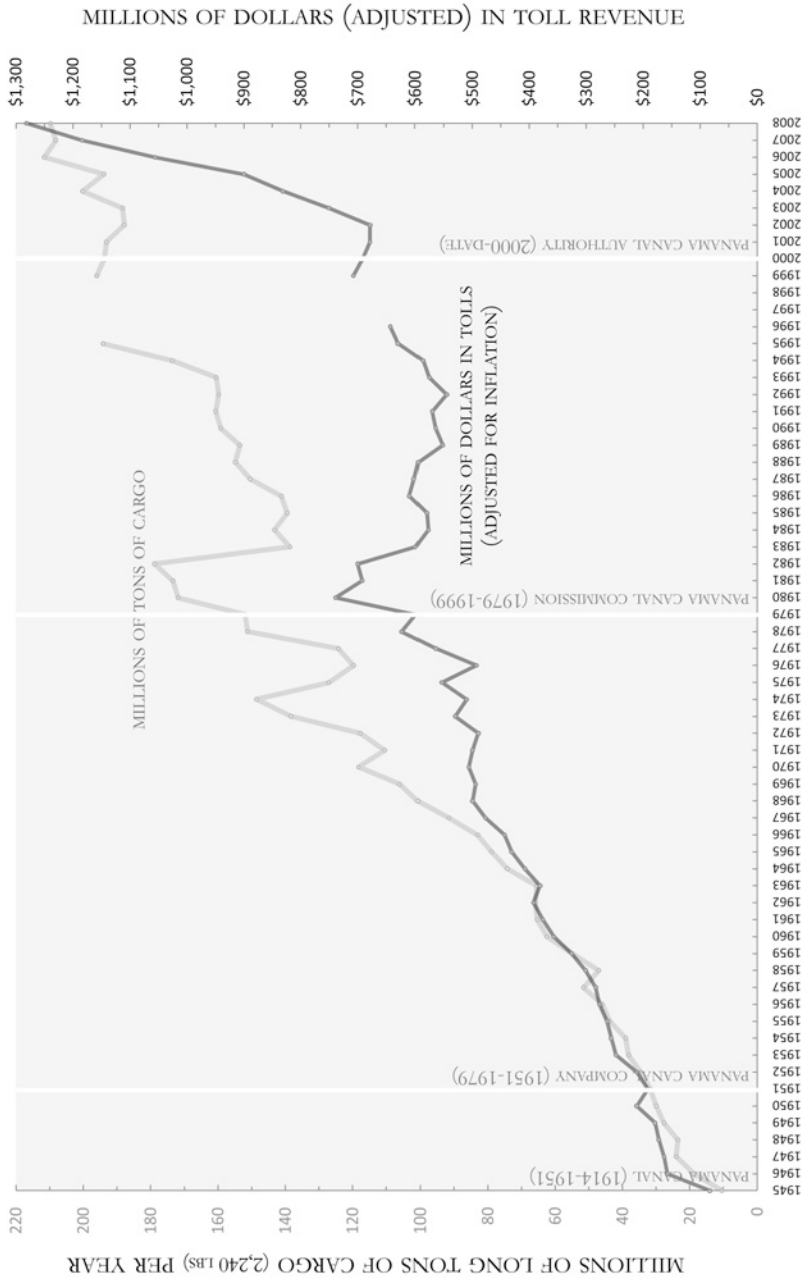
As of 2 September 2009, the Panama Canal Authority had adopted nearly 200 agreements and regulations on everything from tolls and maritime services to watershed regulations and the proposed third set of locks project. In addition to its exclusive role within the Panama Canal Compatibility Area, the Panama Canal Authority is responsible for water resources of the greater Panama Canal drainage area.

The original system for Panama Canal tolls dates to 1912. Toll-able tonnage was calculated without regard to the type of vessel or the value of its cargo, considering only whether the vessel was laden with commercial cargo or passengers; laden with ballast only, i.e., heavy non-commercial material positioned to ensure the vessel's stability at sea; or in the case of "other floating craft" such as warships, charged on the basis of displacement tonnage, i.e., the actual weight of the sea water that a floating vessel displaces. Figure 19 shows Panama Canal toll revenues plotted against total cargo transited in long tons since 1945.

The tonnage measurement system used in the Panama Canal today is known as the Panama Canal/Universal Measurement System (PC/UMS), based on the rules of the International Maritime Organization's International Convention on Tonnage Measurement of Ships adopted 23 June 1969 and entered into force 18 July 1982. In order to determine what toll a ship has to pay to transit the Panama Canal, vessels have to present a certificate identifying the gross tonnage (overall size of the ship) and net tonnage (useful capacity of the ship) that conform to definitions in the International Convention on Tonnage Measurement of Ships. In October 2002, the Panama Canal Authority adopted a new toll structure for the Canal. The October 2002 regulations created different rules for measuring toll-able tonnage by vessel type and vessel size. In May 2005, the Panama Canal Authority differentiated rules for container ships and vessels carrying containers on their decks, using the TEU "twenty-foot equivalent unit" measure.

3. *The Third Set of Locks Project and Panamanian Political Values*

Article 325 of the Constitution of the Republic of Panama, amended by Legislative Act No. 1 of 27 July 2004, gives the Panama Canal Authority the right to propose to the Panamanian Executive branch the building of either a sea-level canal or third set of locks. The Panama Canal



19. Tonnage and toll revenues from Panama Canal operations 1945-2008

Authority proposed a third set of locks in Agreement No. 112 dated 24 April 2006. Any proposal either for a sea-level canal or a third set of locks executed by the Panama Canal Authority, or through contracts with private companies, has to be approved by the Executive branch of Panama's government, after which it has to be submitted to the Legislative branch, and then finally, submitted to the Panamanian people for a vote of approval or rejection through a public referendum. A public referendum was held on 22 October 2006 and was voted on by 924,029 Panamanian citizens representing just over 43 percent of the total electorate. The referendum passed by the vote of 705,284 (76.3 percent) in favor to 201,105 against (21.8 percent).¹²

3.1 *Maximize Payments to the National Treasury*

The Panama Canal Authority has four main objectives for the Third Set of Locks Project. The first objective of the Third Set of Locks Project is to be able to sustain and increase the Panama Canal's contribution to Panamanian society through its payments to the National Treasury. The second objective is to maintain the canal's direct, indirect, induced, and parallel contributions to Panama's maritime "services cluster." The third objective of the Third Set of Locks Project is to be able to capture more tonnage away from competing routes across several market segments of maritime traffic. Finally, the fourth and last objective of the Third Set of Locks Project is to make the operations of the Panama Canal itself safer, more productive, and more efficient.

The four objectives of the Third Set of Locks Project invert the objectives of similar Panama Canal improvement projects under the jurisdiction of the United States such as in 1939, 1967, and 1981. The objectives of the Panama Canal under United States jurisdiction were to make the operations of the Panama Canal safer, more productive, and more efficient. No objectives articulated any entrepreneurial motives to capture a greater share of different market segments using the Panama Canal. Finally, no objectives were ever stated to increase Panama's national economy or payments to Panama's National Treasury.

It does not escape notice that the Panama Canal Authority's Agreement No. 112 dated 24 April 2006 lists the same four goals but in a

¹² Referendum data, 2006 (<http://www.tribunal-electoral.gob.pa/referendum/index.html>).

different order, beginning with increasing the Panama Canal's market share; making the canal more productive, safe, and efficient; sustaining its contributions to the National Treasury; and finally, maintaining the canal's competitiveness, with special mention of the fact that building a third set of locks will enhance the services cluster of Panama's national economy. Nevertheless, the official first objective of the Panama Canal Authority's Third Set of Locks Project is to be able to sustain and increase the Panama Canal's contribution to Panamanian society through its payments to the National Treasury.

Is the first objective of the Third Set of Locks Project simply a "national" goal? Or is it motivated to satisfy the political values of Panama's territorial-administrative society of the interior as well as the lower or transitional middle echelons of Panama's maritime-commercial society? It was important that the funding option approved for the Third Set of Locks Project by Panamanians in the 22 October 2006 public referendum be considered not only a sound but an equitable initiative benefitting the full social and geographic spectrum of the Panamanian population, regardless of whether they lived in the savannas of the Azuero Peninsula, further in the western interior in Chiriqui, on the less-populated Caribbean coast, or in the lowest income areas of Panama City.

For example, during its first six years of operation from January 2000 to September 2005, the Panama Canal Authority advertised the fact that its operations had directly contributed \$2.463 billion to the Panamanian National Treasury. The Panama Canal Authority mentions that for reference the \$2.463 billion contributed to the National Treasury, though not necessarily earmarked for public infrastructure, exceeded what the Republic of Panama spent as a whole on infrastructure between 2000 and 2004 including schools, roads, irrigation systems, hospitals, health centers, and bridges. In addition, the nearly \$500 million contributed to the National Treasury each year represents more than is collected from import taxes, twice as much revenue as the Republic of Panama collects from personal income tax, and five times what is collected in property taxes.

Nonetheless, an interesting question for the Panama Canal Authority is whether the investment in the \$5.25 billion Third Set of Locks Project will pay for itself, when that will occur, and how that will occur. As a result of increases in tolls implemented at the same time that the Third Set of Locks Project was authorized, and a result of projected likely traffic and external financial sources, the Panama Canal Authority expects increased revenues as a result of the Third Set of

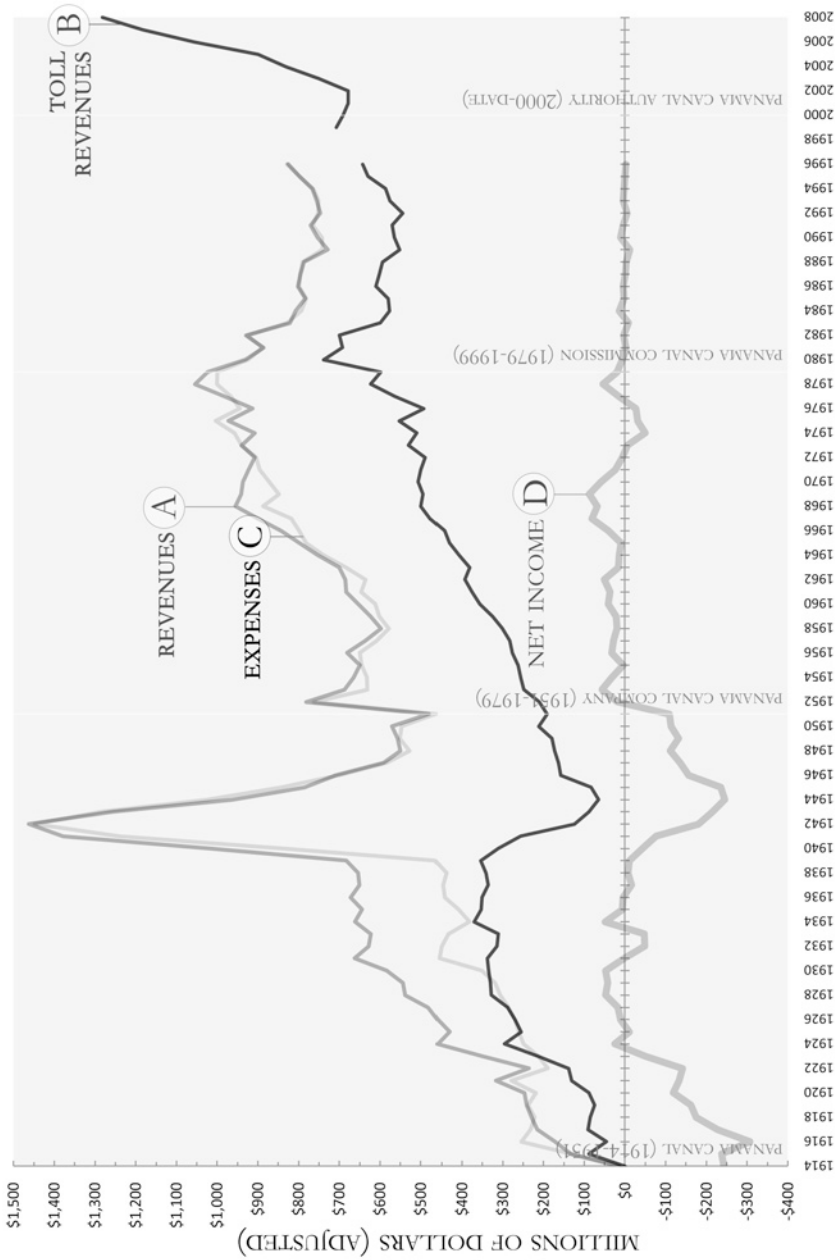
Locks project will repay external financing in eight years or less, i.e., by the year 2022.

Since its opening in 1914, the Panama Canal under varying organizations has operated under conditions where total revenues from tolls and other sources just barely covered total expenses (see Figure 20). Net income was basically zero after payments on the interest-bearing capital investment and payments to Panama. A detailed breakdown of the financial situation of the Panama Canal between 1914 and 1951, when growth in transits was flat instead of constantly increasing, illustrates how unprofitable even business operations like the commissaries were. The Panama Canal was barely able to pay the interest on its capital investment let alone the principal. The saving grace for the Panama Canal to pay off a \$400,000,000 capital investment by Congress was its reorganization in 1951, in which much of the Panama Canal's interest-bearing capital investments were depreciated.

Unlike the United States Congress in 1904, the Panama Canal Authority has to pay off its investment through direct payments over a specified period of time, and likely not through accounting measures like depreciation. The Panama Canal Authority has not clarified whether its \$5.25 billion investment will merely ensure that the Panama Canal's \$500 million per year in contributions to the National Treasury will not decline, or when its contributions to the treasury will increase and by how much. For the Third Set of Locks Project to be successful there may need to be an increase in contributions to the National Treasury, above and beyond the estimated \$500 million per year the Panama Canal already contributes – after debt payments have been subtracted.

3.2 Stimulate Maritime Services Cluster and the Economic System of the Canal

The second stated objective of the Panama Canal Authority's Third Set of Locks Project is to maintain the canal's competitiveness and its ability to contribute through direct, indirect, induced, and parallel ways to Panama's maritime "services cluster," in other words, the modern repertoire of Panama's maritime-commercial society. The maritime services cluster refers to "activities that are geographically close together...and at the same time, economically complementary," and the Panama Canal Authority recognizes four categories of clusters



20. Revenues, toll revenues, and expenses from Panama Canal operations from 1914–2008

in roughly three geographic areas around the Panama Canal and the maritime port cities.

One cluster of services lies within the Canal Operation Compatibility Area under the jurisdiction of the Panama Canal Authority. Immediately adjacent to the Canal Operation Compatibility Area is another cluster of services, activities, and infrastructure within the jurisdiction of the Interoceanic Region Authority.¹³ Finally, an even more all-encompassing envelope of services around the Canal Operation Compatibility Area and the Interoceanic Region lies within the jurisdiction of the Republic of Panama in the traditional domain of Panama's maritime-commercial society, including the financial services organizations clustered in the central business districts and upscale neighborhoods of Colón and Panama City.

The Panama Canal Authority estimated that in 2000 the economic services clusters of the Panama Canal employed 24.3 percent of the total national workforce and represented \$3.411 billion in economic activity, representing 36.4 percent of Panama's GDP in 2000. The estimate is the sum of four categories of economic activity, described in a straightforward way as flows of money into the domestic economy including direct, indirect, induced, and parallel to long-distance maritime flows of goods and people carried in vessels in transit through the Panama Canal.

As described very early in the book, the direct flows of money to the Panamanian economy are a result of activities related directly to canal operations including worker's wages, payments to the National Treasury, and local purchases. The indirect flows are a result of commercial activities and services related to provisioning vessels in transit including shipping offices, fuel bunkering services, vessel repair and maintenance, launch services, dredging, pilots, and other services provided to ship's crews and passengers. The induced flows of money to the Panamanian economy are the result of commercial activities in the Colón Free Trade Zone, most of the activities in the ports, tourism operators, logistics, the railroad and other intermodal services, export processing, maintenance of containers, and ground transportation; which are determined more by Panama's public policy and global

¹³ The Interoceanic Region Authority (ARI) was created 25 February 1993 in order to administer former Canal Zone properties transferred to the Republic of Panama by the United States under the terms of the 1977 Panama Canal treaties.

commerce than directly related to transits through the Panama Canal. Finally, the parallel flows of money to the economy are a result of the relative location of the Isthmus of Panama and Panama's monetary system including shipping, flags of convenience, banking, finance, insurance, legal services, airports, merchant marine, telecommunications, maritime courts, and other services.

4. *The Two Panamas and the "Labor Rights" Dispute Against the Panama Canal Authority by Rivals and Opposition of the Elite*

4.1 *No Right to Strike by Employees of the United States Federal Government*

The Panama Canal Authority says that once the Panama Canal reaches its maximum sustainable capacity any increase in profits could either come from an increase in tolls, which could cause an irreversible loss of market share, or from reductions in its operational costs. Reductions in operational costs would affect the salaries and employment of Panamanian skilled and unskilled labor. Although the Panama Canal Authority mentions the possibility of having to reduce its operational costs, it does not predict what would happen if it were forced to cut salaries or employment benefits of its Panamanian labor force.¹⁴

Former Panama Canal Commission Administrator Alberto Alemán Zubieta said in 1997 that because the canal provided an international service it could never fail to function due to domestic labor differences.¹⁵ Alfonso Regis, the president of the Association of Canal Employees (ASODECO), said it would be a serious error to allow workers their constitutional right to strike if it put the operational fate of the canal and the interests of the world in the hands of a few workers over a few dollars.¹⁶ ASODECO representatives conceded that as former employees of the United States federal government they have never worked

¹⁴ U.S. Congress (1995, 35). Mark Falcoff testified to the House Committee on Foreign Relations that "Panama does have a fairly high unemployment rate for a country of its level of development, and now President Perez Balladares has talked about or is suspected of wanting to modernize the canal administration, and there already are labor problems developing because there is fear, I do not know how well justified, that if he is able to win a second term he is going to fire a large number of canal employees to try to keep expenses down."

¹⁵ "Ley de la Autoridad del Canal debe resolver conflictos laborales" *El Universal de Panamá* [Panama City, Panama], March 18, 1997.

¹⁶ "Sería un grave error aprobar derecho a huelga en el Canal" *La Prensa* [Panama City, Panama], November 24, 1993: 14A.

with the right to strike so therefore nothing is changed but others claim that workers “will not have the guarantees and protection that American laws offered for the resolution of labor conflicts,” which is exactly why they need the right to strike.¹⁷

Title V of the United States Code states that an individual may not accept or hold a government position if they participate in a strike or assert the right to strike against the government of the United States. Despite the fact that canal workers do not have the right to strike they have exercised other labor actions tantamount to a strike. In August 1973, in response to the firing of five Panama Canal pilots over a relatively minor incident, the rest of the Panama Canal pilots either under-performed in their duties or actually went on strike – it is not clear – followed by several other employees. The fired pilots were immediately reinstated and canal operations resumed. On 20 March 1976, in response to a series of austerity measures including a proposal to reduce U.S.-rate employees’ wages and benefits to those of employees paid at local Panamanian rates, there was an eight-day “sickout” of U.S.-rate Panama Canal employees including pilots, lock operators, teachers, and other workers.¹⁸ For comparison, there have been several instances of vessels in transit through the Panama Canal sinking in the channel or catching on fire in the locks, which in most cases resulted in a delay in service lasting several hours. The eight-day March 1976 “sickout” represented the most serious interruption in canal service since a major landslide occurred near the Culebra Cut in 1915 affecting canal operations for six months.

4.2 *A Constitutional Right to Strike by Citizens of the Republic of Panama*

Labor negotiators for Panamanian employees of the Panama Canal Authority have already asserted that all Panamanians have a constitutional right to strike, with certain restrictions for employees in public service. Attorney-General (*La Procuradora de la Administración*) Alma Montenegro de Fletcher and the Panamanian Supreme Court disagreed, stating that Panamanian canal workers do not have the

¹⁷ “Piden al la Asamblea legislar contra el derecho a huelga en el canal” in *El Universal de Panamá* [Panama City, Panama], March 20, 1997: B1.

¹⁸ See Michael Murphy, *Anthrax strike: The 1976 outbreak of labor militancy in the Panama Canal Zone*, 2005 (http://www.serve.com/CZBrats/Builders/anthraxstrike.htm#_ftnref81).

right to strike. Although the Panamanian Constitution recognizes the right the strike, it also recognizes that “the law will regulate its exercise and subject the right to strike to special restrictions in the public services that it so determines.”¹⁹

The Panama Canal Pilots, a skilled and essentially irreplaceable component of Panama Canal operations, printed a position piece in the Panamanian newspaper *La Prensa* on 25 May 1996 stating that putting the constitutional rights of canal laborers in the hands of the Panama Canal Authorities Board of Directors would create a “veritable Pandora’s Box in terms of labor conflicts,”

We have already expressed our idea that the labor formulas of the new Constitutional Title compels the “Law” that refers to canal labor matters, ought to contain specific and detailed guidelines, if what is to be desired is to develop such constitutional precepts relative to labor... If all the rights of canal laborers remain held in the hands of the [Board of Directors of the Panama Canal Authority], to the detriment of its Regulations, we would be creating a veritable Pandora’s Box in terms of labor conflicts in the Canal. From their first day, those Regulations could be changed and reformed at the discretion of the [Board of Directors] and whatever its 11 directors are going to be thinking. This permanent insecurity is not a propitious climate for a labor relationship that has as its object the *Stable, Secure and Permanent* functioning of the Canal [Author’s translation].

One representative of a Panama Canal captains and pilots organization called the right to strike a “universal” as well as a constitutional right.²⁰ The pilot’s representative speculated that if Panama Canal Authority employees were not permitted to exercise their constitutional right to strike then tomorrow other workers in Panama would lose their right to strike, and offered a plan whereby only 50 percent of the workers could strike leaving the other half to operate the canal, similar to the terms of the Labor Code.²¹

Jorge E. Ritter, President of the Panama Canal Transition Commission and a former board member of the Panama Canal Commission, admitted that the issue over the right to strike was the only one that

¹⁹ “Reiteran prohibición de huelga en el Canal de Panamá” *El Universal de Panamá* [Panama City, Panama], May 11, 1997: 1A.

²⁰ “Prohibición de huelgas en el Canal se mantiene en firme” *La Prensa* [Panama City, Panama], May 6, 1997: 1A.

²¹ “No hay derecho a huelga en el Canal: Ritter” *La Prensa* [Panama City, Panama], April 23, 1997.

did not gain the desired consensus. However, he defended the necessity to suppress a Panamanian's constitutional right to strike and explained that the constitutional right to strike in the Labor Code does not apply to the Panama Canal because Article 316 of the Organic Law of the Panama Canal Authority placed it under a special labor regime. Ritter suggested that the Panama Canal Authority's labor code would be "completely different than the regime that governed Panamanian public employees and the Labor Code."²² Panama Canal Authority executives were questioned by reporters about the Authority's separate labor regime – whether it was tantamount to asserting its own separate territory or *republiquita* around the line of the Panama Canal like the United States federal government did for a century, and whether there was any danger of "the future administrative organism of the Canal becoming a new 'empire' or a 'little republic' due to the excessive autonomy that was conceded."²³

D. CONCLUSION

Territoriality over the environment of Panama during the '3rd republic' (1980–?) was an interaction between 1) a predominantly preventive American posture when it came to use of United States military forces in foreign territory to protect the free use and neutrality of the Panama Canal, and 2) a unified lower, middle, and elite rivalry and opposition against the increasingly rogue territorial-administrative power of the Panama Defense Forces in pursuit of civil liberties and participation in governance without intimidation or threat of deadly force.

The preventive-minded regime of the '3rd republic' (1980–?) demonstrated a resolve to exercise exclusive American control over its neutrality. By invoking the 1977 Neutrality Treaty in the December 1989 invasion, the regime of the '3rd republic' (1980–?) set a precedent for United States intervention or interposition. The word "intervention" normally suggests use of military forces to prevent threats of aggression against the Panama Canal including threats from sub-state or non-state militants both domestic, e.g., dictators, or foreign, e.g., international

²² "Obreros del Canal no se registrarán por el Código de Trabajo" *La Prensa* [Panama City, Panama], December 24, 1995: 1A.

²³ "Trabajadores del Canal deben mantenerse en sus puestos" *El Panamá América* [Panama City, Panama], October 14, 1993: 5A.

terrorists. A number of maritime security agreements and partnerships between the United States and Panama treat international terrorists and possible interdiction against transportation of weapons of mass destruction in American waters. For instance, Panama is a participant in the 2003 Proliferation Security Initiative launched by Republican President George W. Bush, part of the December 2002 United States National Strategy to Combat Weapons of Mass Destruction. Serious disruptions in Panama Canal service due to labor disagreements, not threats from sub-state or non-state militants, would be more likely to provoke some form of future extraterritorial legal interposition of the United States into the affairs of the Panama Canal Authority and its employees through the 1977 Neutrality Treaty.

CHAPTER THIRTEEN

THE FUTURE OF THE PANAMA CANAL AS AN ARTIFICIAL STRAIT

A. CHANGES IN PANAMA'S ENVIRONMENT AND COMPETITION FROM OTHER ROUTES

Does this book suggest that narrow water passages are inhabited by a set of circumstances that dooms human history to repeat itself in the future? The answer, of course, is no – or as Mark Twain would say – history doesn't repeat itself, at best it rhymes.¹ However, if one can recognize the combination of the three circumstances of environment, flows, and territoriality in the past then one can speculate about how expected changes in one set of circumstances over the next several decades could likely affect other circumstances.

The ancient physical environment of the Isthmus of Panama, once a natural strait, was already well-suited for an artificial strait. The human-built environment of the Isthmus of Panama has been physically modified in three major phases over the last four centuries from a system of rivers and trails, to a railroad, and then finally to a canal with locks. The Panama Canal Authority's Third Set of Locks Project is of a scale and expense that compares as a fourth major phase of physical modification of the Panamanian environment to facilitate flows. What about a fifth major physical modification for the Isthmus of Panama?

The Panama Canal Authority used simulations of vessel traffic based on a number of variables and assumptions in order to understand how long its proposed changes to the human-built environment, i.e., the Third Set of Locks Project, would maintain the Panama Canal's competitive earning potential. The models go as far as the year 2025. What happens after 2025? Will the Panama Canal have to undergo another round of major environmental modifications in order to handle increased traffic, e.g., a second set of deeper and wider channels?

¹ Dr. Leonard J. Hochberg, personal communication to author, 2009.

Holding that possibility aside, what about competition from other routes putting Panama Canal traffic into decline?

It is not certain whether any of the billions being invested in high-speed passenger rail corridors in the United States could lead to high-speed goods transport, becoming a competitor to the Panama Canal.² As for other maritime routes, the Panama Canal Authority's judgment was that they would not face competition from the Northwest Passage over any near time frame that they could estimate. However, a warming global climate could change circumstances in the physical environment of the Northwest Passage making it safer and more cost effective to put into place the necessary human-built environment infrastructure for international navigation on a regular basis. There are inherent distance-saving advantages in use of the Northwest and Northeast Passages over both the Panama and Suez Canals when it comes to flows between ports in the North Atlantic and the North Pacific. For instance, vessels leaving London bound for ports in East Asia would save half the distance of a route through the Panama Canal.³ Even a sea-level canal as wide and deep as what once naturally existed across the Isthmus of Panama would still be at a significant disadvantage in terms of distance-saved for North Atlantic and North Pacific ports.

The top six climate change prediction models for Arctic Ocean ice predict global climate change will likely clear the Arctic Ocean of summer ice as early as 2037.⁴ A 2004 Arctic Marine Transport Workshop warned that if model projections about the continued thinning of sea ice in the central Arctic Ocean are realized, and vessel traffic increases, security issues could be "compounded." However, participants at the workshop were divided about the "economic drivers" behind use of the Arctic Ocean for international navigation given the current lack of a human-built environment to facilitate flows. In order for shippers to decide to use the Arctic Ocean routes instead of the Panama Canal or Suez Canal, it would mean "large scale global investments of escort vessels, aids to navigation and staging ports to transfer cargo between

² Michael Cooper, "Slice of stimulus package will go to faster trains" *New York Times*, February 19, 2009 (http://www.nytimes.com/2009/02/20/us/20rail.html?_r=1&scp=3&sq=&st=nyt).

³ Based on the authors own GIS (Geographic Information System) calculation using a ratio of cost distance in a North Pole Azimuthal Equidistant projection.

⁴ Pharand (1984) did not present his study of the Northwest Passage in the context of regional impacts of global climate change, evidence for which at the time of his book was not nearly as clear as it is at present.

ice strengthened and non ice strengthened ships.” Apparently, not even the Canadian maritime transportation industry is focused on use of the Arctic Ocean as an alternative to the Panama Canal, “either now or within the next 10 to 20 years.”⁵

But again, what happens after 20 years? If model simulations are at all close to accurate then the probability is that environmental conditions in the Arctic Ocean will have reached the point where use of the Northwest Passage could be made safe and efficient enough to be an economically viable competitive summer alternative to the Panama Canal or Suez Canal in about 30 years.

1. *Changes in Flows Due to Economic Depressions or Other Events*

Each built environment across the Isthmus of Panama such as the Spanish rivers and trails, the Panama Railroad, the “original” Panama Canal and lock system, and now the Panama Canal with a third set of locks – experienced an ascending phase followed by a descending phase. The Panama Canal and its 1914-era lock system was due to experience a descending phase in terms of the capacity to deliver optimal levels of service sometime between 2009 and 2012 unless major steps were taken to enhance the interior and entrance channels and construct a larger additional set of locks.

Each built environment in Panama facilitated a different distribution and abundance of flows of goods, passengers, finance, and messages. The Spanish rivers and trails transported finance in the form of silver bullion from the Pacific coast of South America to Spain. The Panama Railroad transported passengers and freight between the Atlantic and Pacific coast of the United States. Before World War II, coastwise flows of goods carried in general cargo vessels between the Atlantic and Pacific coasts of the United States were the main source of toll revenue for the Panama Canal. After World War II and until very recently, flows of unfinished goods conveyed in specialized bulk carriers between the East and Gulf Coast of the United States and East Asia were the top source of toll revenue. Over the past decade or so, specialized vessels carrying finished goods in containers between

⁵ Institute of the North, U.S. Arctic Research Commission, International Arctic Science Committee, *Arctic Marine Transport Workshop* (Anchorage, Alaska: Northern Printing, 2004), 8–9.

East Asia and the United States have emerged as the top source of toll revenue.

The Panama Canal Authority uses simulation models assuming continued global economic growth to assert that the abundance of global flows will increase and that their distribution will continue to favor use of the Panama Canal, i.e., as long as the East Coast of the United States continues to import goods produced in the Pacific Rim. However, specialized vessels do not pay tolls on the same basis; it depends on the type of ship. Even with assumptions of constant economic growth and increases in vessel traffic, if there are any changes or unanticipated disruptions in the markets for goods thus changing the specialized vessels that use the Panama Canal, the Panama Canal Authority would have to be prepared to consider one of two things. On the one hand, the Panama Canal Authority could revise the methods it uses for assessing tolls in order to increase revenues, i.e., revise its territoriality over flows. On the other hand, the Panama Canal Authority could implement austerity measures to decrease its expenses, i.e., based on its territoriality over its own employees and operations, or fail to increase its payments to the Panamanian National Treasury, i.e., based on the lack of territoriality of the Republic of Panama over the wealth generated by the Panama Canal Authority. Some of these territorial considerations are reviewed and then considered below.

B. PANAMANIAN SOCIETIES AND AMERICAN POLICY REGIMES

The most unpredictable set of circumstances about the Panama Canal is the overlap in territorialities between adjacent and non-adjacent entities. When extraterritorialities from a non-adjacent entity – in form of American policy regimes – and the territorialities of adjacent entities – in the form of Panamanian societies – are introduced into the same environment, it is like when a ‘reagent’ is introduced into an ‘organic substrate.’ Sometimes when a reagent is introduced nothing happens. At other times, the reagent reacts with something in the organic substrate resulting in a chemical reaction like fizzling or smoking.

When adjacent and non-adjacent territorialities over a strait are mixed together it can cause a reaction. The non-adjacent and adjacent entities can decide to change the properties of their territorialities in response, i.e., through treaties. When there are breakdowns in international relations, the situation can become volatile the longer

that the two territorialities remain mixed together. One can get carried away with the analogy but the point is to examine the properties of American and Panamanian territorialities separately, and then in combination.

1. *A Look Back at Territoriality and American Policy Regimes*

Examination of the properties of American territoriality took us seemingly far afield into the historical background of transportation improvements in the United States and American geopolitics since the 1780s. Yet without understanding American territorial enlargement and consolidation of territory through transportation improvements, one would only be in a position to 'judge' rather than actually understand where differences in American policy over the Panama Canal and Canal Zone like those between Theodore Roosevelt and Jimmy Carter come from. American representatives have been in a gradual back and forth process of changing their minds about the Panama Canal and Canal Zone in terms of what they felt should or should not be under the exclusive domain of the United States, using a system of federal jurisdiction originally developed for the transcontinental railroads.

Over half-century periods, American political representatives have been motivated by either a predominantly avoidant or preventive posture: avoid the consequences of entangling alliances with foreign nations, or prevent the consequences of foreign threats to the general welfare and common defense. An avoidant or preventive posture applied to different levels of extraterritoriality over the Panama Canal and Canal Zone. Avoidant or preventive postures could apply to day-to-day jurisdiction over ownership, administration, operations, and maintenance. Avoidant or preventive postures could also apply to major geopolitical situations affecting neutrality and free use.

In predominantly preventive regimes, representatives of the United States were willing to use the constitutional powers of the federal government in foreign territory to control everything from day-to-day canal operations to neutrality, in order to prevent a European takeover. In predominantly avoidant regimes, representatives of the United States demonstrated little or no willingness to use the constitutional powers of the federal government in foreign territory to control the canal's day-to-day operations in order to prevent a European takeover. However, even during predominantly avoidant policy regimes

American representatives insisted on either an exclusive or a no less than equal role in protecting the canal's neutrality. Still, the preventive policies put in place by Hayes and Theodore Roosevelt during the '2nd republic' were partially reversed by avoidant policies of Franklin D. Roosevelt and Carter during the '2nd democracy,' representing just one long phase and counter-phase of American foreign policy over interoceanic communication.

2. A Look Back at Territoriality and Panamanian Societies

Examination of the properties of Panamanian territoriality took us far afield into the historical and geographic background of Panama's maritime-commercial and territorial-administrative societies. Without understanding the differences between and among Panamanians of the interior and the port cities, one would not be in a position to understand the political impacts of two Panamas maneuvering for control of one state. Panamanian political rivals and opposition groups have disagreed about who were rightful claimants as opposed to actual beneficiaries of the wealth generated by the Panama Canal and Canal Zone. Changes in the properties of Panamanian territoriality over the Panama Canal and Canal Zone resulted from changes in the balance of power between the maritime-commercial elite and the non-elite of Panama's territorial-administrative and maritime-commercial societies between the 1930s and the 1960s, resulting in an abrupt shift to a territorial-administrative military government between the 1960s and the 1980s, and then an abrupt shift back to the maritime-commercial elite after December 1989.

As Panamanian territoriality over the Panama Canal and Canal Zone changed its properties due to more open participation by representatives of the two Panamas in the social, political, and economic life of the state – it began to react against the elements of an American preventive posture. American preventive extraterritoriality during the '2nd republic' (1870s–1920s) created a canal under American control in terms of the day-to-day jurisdiction and neutrality. However, the changing properties of American postures from preventive to avoidant during the beginning of the '2nd democracy' (1930s–1970s) significantly affected Panamanian territoriality, as is generally understood with respect to lack of American intervention leading to the 1931 coup d'état. In the absence of an interventionist United States, only those Panamanian administrations that could manage the increasingly frac-

tious political dimensions of the two Panamas were successful, and so order was maintained by threat of paramilitary police force.

The important modifications to the 1903 Hay-Bunau-Varilla Treaty in 1936 by Harmodio Arias, in 1955 by Jose Antonio Remón Cantera, and in 1977 by Omar Torrijos, were ratified under administrations that gained power through a veritable coup d'état and intimidated their political rivals and opposition through their control over Panama's increasingly professionalized paramilitary police. In every other case when modifications to the 1903 Hay-Bunau-Varilla Treaty or other important agreements were signed with the United States by Panamanian administrations that could not manage order and control over rivals and opposition, for instance, such as in 1926, 1947, or 1967, those agreements were rejected by the Panamanian legislature.

Some authors see American intervention in 1989 as an 'anachronism' reminiscent of American policy during the first two decades of the 20th century. In some respects, that might be true. The predominantly avoidant posture of the United States during the '2nd democracy' (1930s–1970s) came to an end and a new predominantly preventive policy regime emerged, the '3rd republic' (1980s–?). In the interim between the political rise of Panama's paramilitary police between Harmodio and Arnulfo Arias during the 1930s and Manuel Noriega during the 1980s, a new policy regime had emerged in the United States. The 1977 Neutrality Treaty was invoked as part of United States military intervention in 1989, resulting in the military destruction of the Panama Defense Forces and then its legislative abolishment in 1994.

3. *A Look Forward to the Beginning of an Internationalized "Labor Rights" Protest Against the Panama Canal Authority*

In the 1906 Isthmian Canal Commission's annual report, President Theodore Roosevelt asked the commissioners to look into a series of allegations made in an article published in the *Independent* called "Our mismanagement of Panama." The article's author reported several disturbing events he claimed were based on knowledge gained during a trip to Panama. The article alleged, among a number of things, that the United States federal government had used taxpayer's money to ship a vessel full of Caribbean black women to work as prostitutes for the canal's manual labor workforce. It was a spectacular allegation. It was also completely false. The moral of the story in mentioning this article is

not to look at its factual basis, but its politics. Was the article intended as a form of criticism about preventive policies like Roosevelt's as the end justifying the means? Was a canal under American control a great work of engineering achievement in foreign territory, but one that was built on morally corrupt politics, racist dealings with a foreign labor force, and deaths due to disease and poverty? These are the sorts of back and forth issues that have preoccupied the American public about the Panama Canal.

Panamanians of the interior and of the port cities have been preoccupied with the wealth and status of the Panama Canal and its associated economic activities, including issues about who are its real beneficiaries versus who should be its rightful claimants. A *Time* magazine article published on 15 December 1997 entitled "Panama: The big switch" stated that there was a risk the Panama Canal Authority would become riddled with "elite" forms of cronyism, nepotism, and political favoritism. A 2006 article published in the German periodical *Spiegel Online* cites a vocal Panamanian critic of the Panama Canal Authority who said that the family of the president of the board of directors of the Panama Canal Authority controls the country's largest construction company, alleging there was a conflict of interest over contracts for the current expansion project.⁶ The criticism extended to all the members of the board of directors who were allegedly part of the country's "ruling families" and essentially a "mafia." The moral of the story, again, is not in its factual basis but its politics.

During discussions about the law that created the Panama Canal Authority in 1996, Jorge A. Terán, president of the Association of Panama Canal Pilots and the Pilot's Union (*Sindicato de Pilotos*), insisted that Panamanian political parties should participate in the process.⁷ Terán even met with leaders of the rival Arnulfista Party, the political party that claims its legacy from Arnulfo Arias, to solicit help when the document containing most of the disputed material hit the Legislative Assembly for debate. Terán said that the labor sector of the Panama Canal was in danger because there were no counterweights ensuring that canal employees would be given fair treatment. Terán proposed

⁶ Frank Hornig, "A bottleneck in the global economy: Panama wrestles over canal's future." *Spiegel Online*, October 20, 2006 (<http://www.spiegel.de/international/spiegel/0,1518,443376,00.html>).

⁷ "Pilotos rechazan ley que crea Autoridad del Canal" *El Panamá América* [Panama City, Panama], May 30, 1996: 12E.

that there be “an external entity” that watches and maintains leadership in the employee-employer relationship so that problems can be handled in a reasonable and expeditious way.⁸ Joaquín Vallarino, a member of the Presidential Commission of the Canal, said that if Panama Canal employees would attempt to resolve their labor disputes using outside leverage it would not be a very “nationalist” attitude.⁹

It is unlikely in the future that there would be riots and civil rights or labor demonstrations on a scale as seen in November 1959 and January 1964, for instance, protesting against the Panama Canal Authority as a “*republiquita*” and planting Panamanian flags around the administration building to try to illustrate that Panamanians’ constitutional right to strike does not apply there. What seems more likely is that Panama Canal labor in league with other national Panamanian labor organizations would protest possible austerity measures by organizing “sickouts” or similar actions causing service disruptions to the Panama Canal’s time-sensitive container markets, like the “sickout” of American pilots and other canal labor in March 1976.

Several very short articles appearing in March and April 2008 describe a peculiar three-month period of “chronic congestion” at the Panama Canal resulting in backlogs exceeding 10 days, lines 130 vessels long waiting to transit, and transit times averaging 53 hours instead of under 20 hours.¹⁰ By June 2008, things had suddenly improved. Ship agents said the Panama Canal Authority had yet to provide a satisfactory reason for the congestion, noting that the problems had been “widely attributed to an industrial dispute between the canal’s work force of 274 pilots.” The Panama Canal Authority’s explanation was that the delays were due to minor repairs to the locks, an explanation greeted with suspicion by ship agents who thought the delays were the result of internal issues. One ship agent said, “I do think there was something going on... [with] the pilots but as the canal authority said themselves, there is really no way of proving that... Yes there were heavy arrivals during February and March but there was obviously

⁸ “Adversan anteproyecto de ley,” *La Prensa* [Panama City, Panama], July 2, 1996.

⁹ “Condiciones laborales de Comisión del Canal permanecerán iguales” *La Prensa* [Panama City, Panama], December 27, 1993: 1A.

¹⁰ Michelle Wiese Bockmann, “Panama Canal transit times fall,” *Lloyd’s List*, June 11, 2008 (<http://www.lloydslist.com/ll/news/panama-canal-transit-times-fall/20017541813.htm>; jsessionid=46B326368A6EA124E5BF00AE1ED423D2)

something else that they wouldn't come out and say."¹¹ The article continued:

The Panama Canal has repeatedly denied agents' claims that pilots embarked on work-to-rule measures which slowed down transits and aggravated queues during the busiest time of the year for the crucial trade artery. But agents outlined several small but timesaving work practices that pilots had stopped, such as providing advance notice of boarding ships at anchorages, which could allow captains to start engines in advance.

Was the chronic congestion that occurred in the Panama Canal during February and March 2008 due to minor repairs, or was it an internal labor issue as ship agents suspected? A protest or a demonstration does not have to be as dramatic as climbing a chain link fence with the Panamanian flag in hand as in January 1964. Sometimes a protest comes in the form of refusing to implement timesaving work practices that are normally standard procedure. In fact, the etymology of the word "sabotage" itself comes from the banal actions of disgruntled workers who threw their "sabots" or wooden shoes into the mechanisms of a factory as a form of protest.

The United States bears the exclusive burden through the terms of the 1977 Neutrality Treaty to act in the event of a threat to the free and neutral use of the Panama Canal. The treaty has already been invoked in December 1989 to justify a military invasion. Does a series of protracted service delays constitute enough of a threat to have to invoke the treaty again? To this author's knowledge the Panama Canal and Canal Zone have never been struck from an attack by German, Japanese, or Soviet submarines and aircraft. The Panama Canal itself has never been damaged by communist militants or religious extremists planting explosives. Vessels have caught fire in the locks and vessels have sunk in the channel, causing delays only on the order of hours. For instance, in February 1968 the iron ore bulk carrier *Shozan Maru* struck the side of a bank and sunk in the middle of the Culebra Cut. The ship was refloated and removed in 18 hours and 20 minutes.¹² However, an eight-day "sickout" of American pilots and canal employees in March 1976 caused the most serious disruption in canal service

¹¹ Bockmann (2008).

¹² Panama Canal Company, *Annual Report* (Washington, D.C.: GPO, 1968), 15.

since the six-month closure of the Panama Canal after the Culebra Cut landslide in 1915.

If chronic disruptions in service were to reach a certain frequency and magnitude in a waterway that has consistently serviced about 12 percent of all American foreign waterborne trade, it would prompt United States representatives to invoke the 1977 Neutrality Treaty. American representatives would probably take one of two courses of action. An avoidant posture might result in American representatives traveling to Panama to participate in closed door labor talks between the Panama Canal Authority and pilots or other employees in a consulting capacity. If the Panamanian employees requested an open door televised or online meeting it would represent a situation ironically similar to the 1973 United Nations Security Council Meetings, a venue for Panamanian rivals and opposition of all sorts to vent their allegations in a court of world opinion. On the other hand, a preventive posture by American representatives might result in extraterritorial arbitration using United States laws that government employees cannot strike. A preventive posture could even take the form of threats by the President to replace the 200–300 Panamanian pilots with American pilots, e.g., from the American Pilots Association, until new pilots could be trained.

The potential to become entangled in the Panama Canal Authority's internal labor disputes suggests a wild speculation but one that fits the pattern of American policy regimes and the two Panamas. A predominantly avoidant regime of a possible future '3rd democracy' (c. 2020s–2070s) might try to disentangle the United States from its exclusive responsibilities by abrogating the 1977 Neutrality Treaty and replacing it with a multi-non-adjacent nation neutrality pact similar to the 1850 Clayton-Bulwer Treaty. The Clayton-Bulwer Treaty gave Britain and the United States, as non-adjacent entities, equal responsibilities for guaranteeing the neutrality of any interoceanic communication across the isthmus between North and South America. A 'North American Free Transit Agreement' could be signed by the United States, Canada, Mexico, Panama, and other countries – but excluding Asia and Europe – by which all parties to the agreement would mutually guarantee uninterrupted service and the neutrality of the aerospace and maritime territory surrounding any form of interoceanic communication between the Atlantic and Pacific Oceans.

C. CONCLUSION

It would be tempting to conclude from this book that a combination of circumstances is more important than free will when it comes to choosing to modify a strait's physical and human-built environment, conveying flows of goods through it and accumulating wealth, or asserting territoriality over all of the above. A wise caveat in this regard is that indeed people make history but never under conditions of their own choosing.¹³ This is particularly true in straits. In sum, a strait is the product of territoriality between adjacent and non-adjacent entities over flows through a unique type of environment formed by a narrow water passage. The history of an artificial strait like the Panama Canal unfolds as combination of environmental and human circumstances converging in a narrow water passage over very long periods of time – or as Braudel might say – a story with more than one history.

¹³ Turn of phrase adapted from Marx. Dr. Leonard Hochberg, personal communication to author, 1996.

APPENDIX

The following is a list of treaties and other international agreements for an interoceanic communication through Central and South America signed or proposed before the 1903 Hay-Bunau-Varilla Treaty. Agreements were compiled from three principal sources including: a) U.S. Congress, Senate, *Report of the Isthmian Canal Commission, 1899–1901*, 57th Cong., 1st Sess., Doc. No. 54 (Washington, D.C.: GPO, 1901); Manning (1931), and U.S. Congress (1977b); b) William R. Manning, comp., *Diplomatic correspondence of the United States: Inter-American affairs, 1831–1860. Vol. 5: Chile and Colombia* (Washington, D.C.: Carnegie Endowment for International Peace, 1935); and c) U.S. Congress, Senate, Committee on Foreign Relations, *Background documents relating to the Panama Canal*, Report prepared by Library of Congress, Congressional Research Service, 95th Cong., 1st sess. (Washington, D.C.: GPO, 1977b).

The codes in the column “Type” are the following: “A &NA” refers to an agreement between two governments, one adjacent to the route of interoceanic communication and one non-adjacent; “NA & NA” refers to an agreement between two non-adjacent governments; and “A & FPE” refers to an agreement between an adjacent government and a foreign private enterprise.

Year	Treaty Name	Signed	Type
1903	Hay-Herran Treaty	22 January 1903 at Washington, D.C.	A & NA
1902	Hay-Corea Treaty (Draft)	Working draft submitted to Hay by Corea in letter dated 14 May 1902	A & NA
1901	Hay-Pauncefote Treaty	18 November 1901 in Washington, D.C.	NA & NA
1900	Treaty between United States and Great Britain	5 February 1900	A & FPE
1900	Third Wyse Contract Extension	20 (or 25) April 1900 (Ten years to 31 October 1910); October 1894 New Panama Canal Company formed	A & FPE
1898	Concession to Interoceanic Canal Company (Nicaragua)	31 October 1898	A & FPE

Table (*cont.*)

Year	Treaty Name	Signed	Type
1897	Purchase of Contract by Atlas Steamship Company	30 September 1897	A & FPE
1894	Transfer of Contract to Maritime Canal Company	3 November 1894	A & FPE
1893	Second Wyse Contract Extension to 1904	4 April 1893 (Ten years from 31 October 1894) at Bogota	A & FPE
1892	Contract with Nicaragua Mail Steam Navigation and Trading Company	December 1891	A & FPE
1890	First Wyse Contract Extension	10 December 1890 in Bogota	A & FPE
1889	Maritime Canal Company of Nicaragua Incorporated	20 February 1889 (Concession declared forfeited 27 October 1899 due to abandonment of the work)	A & FPE
1888	Concession by Costa Rica to Nicaragua Canal Association (Supplement to 1887 Concession from Nicaragua)	31 July 1888	A & FPE
1888	Contract between Costa Rica and Maritime Canal Company	July 1888	A & FPE
1887	Concession to Nicaragua Canal Association	24 April 1887 (Ratified)	A & FPE
1884	Frelinghuysen-Zavala Treaty	1 December 1884 in Washington D.C.	A & NA
1881	Treaty between Colombia and Spain	1881	A & NA
1878	Modification of Wyse Contract on behalf of the International Interoceanic Canal Association of France	20 (or 23) March 1878; French Panama Canal Company in 1881; failed in December 1888; liquidation February 1889	A & FPE
1877	Contract with F. A. Pellas	16 March 1877	A & FPE

Table (*cont.*)

Year	Treaty Name	Signed	Type
1876	Contract with Lucien N.B. Wyse	Original concession signed May 1876	A & FPE
1869	Treaty between Costa Rica and Nicaragua	June 1869	A & NA
1867	Treaty Between the United States and Nicaragua	21 June 1867	A & NA
1860	Treaty between Nicaragua and Great Britain	11 February 1860	A & NA
1860	Treaty between Nicaragua and Great Britain	28 January 1860	A & NA
1859	Treaty between Nicaragua and France	11 April 1859	A & NA
1856	Convention between the United States and the Republic of New Granada, for the adjustment of claims	Not signed. Proposed by Secretary of State Marcy, 3 December 1856 to American treaty negotiators	A & NA
1856 and later	Treaty between Colombia and France	1856 and 1892	A & NA
1852	Treaty between United States and Costa Rica	10 July 1851	A & NA
1850 and later	Treaties between Nicaragua and various governments	Spain (1850), Belgium (1858), Italy (1868), Costa Rica (1869), Costa Rica (1869), Germany (1896)	A & NA
1850	Clayton-Bulwer Treaty	19 April 1850	NA & NA
1850	Treaty between Costa Rica and Spain	May 1850	A & NA
1849	Hise Treaty with Nicaragua	21 June 1849 in Guatemala City, Guatemala	A & NA
1849	Contract between Nicaragua and American Atlantic and Pacific Ship-Canal Company	27 August 1849 in Leon, Nicaragua	A & FPE

Table (*cont.*)

Year	Treaty Name	Signed	Type
1848 and later	Treaties between Costa Rica and various governments	Hanse Towns (1848), France (1848), Great Britain (1849), Netherlands (1852), Belgium (1858), Italy (1863), Germany (1875), Guatemala (1895), Honduras (1896)	A & NA
1848	Contract for Panama Railroad Company of New York	28 December 1848; Reformed 15 April 1850 and 16 August 1867; articles inserted 1876 and 1880; amended 18 August 1891	A & FPE
1847	Contract between New Granada and Mateo Klein ("Panama Company" of Paris) for Railroad	10 May 1847	A & FPE
1846	Bidlack-Mallarino Treaty	12 December 1846 in Bogota, New Granada	A & NA
1844	Convention for Isthmian Mail Transit between New Granada and the United States	6 March 1844	A & NA
1843	Abstract of Instructions by Granadian Government for concluding a treaty with the Maritime Nations for a Panama Canal	Mentioned in Blackford to Upshur, 3 November 1843	A & NA
1836	Decree granting privilege for intermarine communication to Charles Biddle	22 June 1836	A & FPE

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