

Shifting Alliances in the Accreditation of Higher Education:  
On the Long Term Consequences of the Delegation of Government Authority to  
Self-Regulatory Organizations

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## TABLE OF CONTENTS

	Page
Abstract.....	vi
1. Introduction.....	1
2. Of Governance and Regulation.....	12
Introduction.....	12
The Market System: How Efficient Is It? .....	13
Government Regulation: Addressing Market Failures .....	15
Self-Regulation Theory.....	21
Self-Regulating Industries vs. Self-Regulating Professions .....	31
Agency Theory.....	38
3. Research Question .....	46
4. Methodology.....	63
5. The Accreditation of Higher Education.....	72
Introduction.....	72
The Development of the Accreditation System: 1700s – 1940s.....	74
“A Service to the Broader Community”: 1944 - 1990.....	89
Baruch College v. Middle States: 1989 - 1991 .....	107
The Great Divide: 1990s - 2007.....	134
6. Findings.....	156
Introduction.....	156
Interviews with Leaders of Regional Commissions .....	157
Additional Interviews.....	182
Analysis of the Findings .....	188
7. Conclusion .....	200
List of References .....	204

## ABSTRACT

### SHIFTING ALLIANCES IN THE ACCREDITATION OF HIGHER EDUCATION: ON THE LONG TERM CONSEQUENCES OF THE DELEGATION OF GOVERNMENT AUTHORITY TO SELF-REGULATORY ORGANIZATIONS

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This dissertation uses the accreditation of U.S. higher education as a case study with which to analyze the applicability of multiple-principals theory to self-regulating professions. The multiple-principals theory, an offshoot of principal-agent theory, has been used in the past to examine the long term consequences of the delegation of government authority to private, self-regulatory organizations. As with most literature on self-regulation, it occurred within the context of an industry. This dissertation is the first application of the multiple-principal problem to a profession rather than an industry and it is one of the very few papers in the field of private governance to address the implications of that distinction.

The agents in this case-study are regional accreditation associations, which were originally created by colleges and universities to act as self-regulatory bodies, and the two principals are the regionals' member institutions and the federal government. The history of the accreditation of higher education is explored through the use of historical documents, texts and scholarly articles, original government legislation, transcripts from Congressional Hearings, letters exchanged between key players, news articles, and a series of interviews that has been conducted with the executive directors of five of the regional accreditation associations, an accreditation historian who is also the Vice President of one of the regionals, and the Co-Chair for the George Mason University Compliance Committee for the 2011 Reaffirmation of Accreditation. The final chapter of the dissertation uses additional data gathered from each of the five executive directors to identify which principal was the primary determinant of the associations' actions at various, crucial junctures in the history of accreditation.

Ultimately, analysis of the data provides only mild support for the version of multiple-principals theory that is used in this dissertation, revealing a large number of significant variables that have been overlooked. The underlying concept of multiple-principals, however, is found to be a significant determinant of the agent's actions, although it is not the only one; three other significant determinants are also identified. The dissertation concludes with a discussion of the implications of these findings for the delegation of government authority to private, self-regulatory organizations in both industries and professions.

## CHAPTER ONE: INTRODUCTION

*The study of accreditation and institutional eligibility is only to a small degree an educational issue; it is more a political issue, a study of how the power to distribute benefits is generated, channeled, and regulated.*

David A. Trivett, Accreditation and Institutional Eligibility

On December 5, 2006, the U.S. Department of Education, via the National Advisory Committee on Institutional Quality and Integrity (NACIQI), accused the American Academy for Liberal Education (AALE), a privately run accrediting agency, of failing to meet its responsibilities to the American public and then essentially shut it down.<sup>1</sup> The underlying reasons for this action are open to debate, but the questions that were raised by the actions taken by the federal government are indicative of a much larger issue that is occurring throughout the world: the attempt to reconcile private authority with public accountability.

Governments have found it useful in numerous cases to adopt the standards, rules, licensing requirements, and other outputs of privately run, self-regulatory bodies for their own purposes. These self-regulatory bodies are created by members of a given industry or profession and the governance of such bodies is usually reflective of the power

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<sup>1</sup> Elizabeth Redden, "The Heat is Turned Up," *Inside Higher Ed.* (December 6, 2006), <http://www.insidehighered.com/news/2006/12/06/aale>

dynamics within that self-regulating sector. A well-known example of a self-regulatory body would be the American Bar Association, which regulates the legal profession and which is made up of representatives from that same profession.

Adopting standards established by pre-existing, self-regulatory bodies is often significantly less resource-intensive than starting from scratch. The growing reliance on privately established standards and rules can also be attributed to the contemporary perception that governments are highly inefficient as compared to the private sector. From this perspective, it appears far more logical to simply incorporate the rules that have been already been established by the experts within industries rather than set government bureaucrats with limited industry-knowledge loose to regulate that which they may not fully comprehend.

This study examines the long term consequences of the delegation of government authority to self-regulatory organizations. In Walter Mattli and Tim Büthe's article, *Accountability in Accounting? The Politics of Private Rule-Making in the Public Interest*, the authors distinguish between the consequences of delegating government authority to a public agent, such as a government agency, and the delegation of that authority to a private agent:

“...[T]he key difference between delegation to a public agent and delegation to a private one is that in the latter case a multiple-principals problem emerges that is qualitatively different from the one usually considered in the literature. An agent's action will be determined by the relative tightness of competing principal-agent relationships. This tightness is a function of the relative importance of each principal

for the agent's financial and operational viability as well as its effectiveness in rule making."<sup>2</sup>

This dissertation uses the accreditation of higher education as a case study with which to test the explanatory power of Mattli and Büthe's theory. In this particular case, the private agents are the regional accreditation associations, which were originally created by colleges and universities to act as self-regulatory bodies, and the two principals are the regionals' member institutions and the federal government. The delegation of government authority which has occurred is not the authority to regulate higher education; in fact, the federal government has never had that authority and so would be unable to delegate it to any other organization. Rather, the authority that has been delegated is the role of "gate-keeper" of federal funds. As will be explained more fully in Chapter Five, postsecondary institutions must be accredited by one of the designated private, self-regulatory bodies in order to be eligible to receive federal funding.

Discussion of the multiple-principals problem is relatively recent; only a handful of articles have discussed this theory and only one, the Mattli and Büthe paper, has attempted to apply it to a situation in which government authority has been delegated to a private, self-regulating organization. Their paper, published in 2005, focuses specifically on the case of accounting standards. Mattli and Büthe hypothesize that the decision of the private agent to accommodate one principal over another will be based on the relative "tightness" of the relationship between the agent and each of its principals. This term is

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<sup>2</sup> Walter Mattli and Tim Büthe, "Accountability in Accounting? The Politics of Private Rule-Making in the Public Interest," *Governance: An International Journal of Policy, Administration, and Institutions* 18, no. 3 (July 2005): 399.

never fully defined within the article but the use of the term suggests that it refers to the degree to which the agent is dependent upon the principal for whatever method of payment or incentive is being used to motivate the agent to work on the principal's behalf. They further state that there are three variables that determine this tightness: financial viability, operational viability, and the macro-political climate.

Financial viability is self-explanatory; the agent will be highly receptive to the demands of the principal from which it derives its funding. This is one reason why a public agent might be expected to be less beholden to a single stakeholder than a private agent; the primary source of funding for a public agent is the government. Operational viability refers to the agent's need for specialized expertise.<sup>3</sup> Mattli and Büthe state that in most situations the private agent's authority is largely derived from its high degree of specialized expertise and that, in many cases, the source of that expertise is the industry itself. Finally, Mattli and Büthe's third variable, the "macro-political" climate, refers to the "cycles of broad public attitudes toward regulatory matters."<sup>4</sup>

The accreditation of higher education is used in this dissertation as a case study with which to test the explanatory power of Mattli and Büthe's theories. In this particular case, the private agents are the regional accreditation associations, which were originally created by colleges and universities to act as self-regulatory bodies, and the two principals are the regionals' member institutions and the federal government. This dissertation follows Mattli and Büthe's methodology by focusing on "episodes in which clearly divergent interests of the stakeholders and the agents can be well established

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<sup>3</sup> Ibid., 405

<sup>4</sup> Ibid., 406

based on original documents, prior analyses, and a series of interviews....”<sup>5</sup> For each such episode, the actions taken by the regional accreditors are analyzed to determine which principal was being accommodated. The decision to serve the interests of one principal over the other is then contrasted with the tightness of the principal-agent relationships at the time of the decision in order to determine if the actions taken by the regionals support or contradict Mattli and Bütthe’s hypotheses.

Very little work has been done with multiple principal problems and this is the first attempt to apply these theories to a profession rather than an industry, a distinction which will be clarified in Chapter One. Therefore the goal is not simply to test pre-existing hypotheses but also, in those cases in which existing hypotheses do not explain observed behavior, to generate new hypotheses with greater explanatory power. For this reason, the case study has been chosen as the most appropriate research strategy.

Chapter Two of this dissertation, *Of Governance and Regulation*, is a literature review that begins with a very brief description of the market system. By considering the problems inherent in an idealized market system, one in which there is a complete lack of regulation, this chapter then sets up the justifications that are commonly given for government regulation. Alternative theories of government regulation are then considered, including private interest theory and capture theory. After discussing the potential weaknesses of government regulation, self-regulation is then presented as a possible alternative. The significance of the distinction between professions and industries is

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<sup>5</sup> Ibid., 410

considered, and the implications of those differences for self-regulation theory are discussed. Having contrasted government regulation with self-regulation, this chapter then examines the growing tendency toward government delegation of authority to self-regulating organizations, a private sector-public sector hybrid that, at least in theory, combines the strengths of the previous two models. Finally, principal-agent theory is reviewed as well as a recent variant, multiple principals-agent theory. It is this final theory which will then be tested through analysis of the accreditation case study.

Chapter Three presents the research question, which is directly derived from Mattli and Bütthe's multiple-principals theory. This is followed by a series of definitions for terminology that will be used throughout the paper to describe the vast terrain of postsecondary education. Precise definitions are also provided for the agents in this case study, the regional accreditation associations, and for their two principals, the associations' member institutions and the federal government. The original research question is then restated as hypotheses that will be tested through analysis of the accreditation case study.

Chapter Four discusses the methodology used throughout the rest of the dissertation and Chapter Five, which is made up of four sections, provides a historical analysis of the accreditation of higher education. Section One of Chapter Five, *The Development of the Accreditation System: 1700s – 1940s*, considers the reasons why higher education developed differently in the United States than it did in the rest of the world, particularly as regards the absence of government interference. That strong tradition of autonomy in United States higher education helped to shape the accreditation

system that would later emerge. This section relies heavily upon historical documents and sections of it are taken from an earlier article that I have co-authored: A. Lee Fritschler, Paul Weissburg and Phillip Magness (2008). “Changing Relationships with Governments in Europe and the US: Balancing Quality Concerns with the Desire for Intellectual Independence in the University.” In: Amaral, Alberto (ed) Essays in Supportive Peer Review. Hauppauge, NY: NOVA Science Publishers, Inc. I thank both of my co-authors for their permission to use this material.

The first section of Chapter Five then examines the origins of the accreditation system and argues that the relationship between the accreditation agencies and the existing institutions of higher education was not a principal-agent dynamic as much as it was a case of intra-industry competition. That is to say, the original accreditation agencies were of, by, and for the higher education sector; they were used by schools of high quality to distinguish themselves from other, less prestigious institutions. This section relies heavily upon several scholarly articles written about early accreditation in the United States and, in particular, upon the following seminal works: Frederick Rudolph’s The American College & University: A History, 2<sup>nd</sup> edition (1990), John R. Thelin’s A History of American Higher Education (2004), Arthur M. Cohen’s The Shaping of American Higher Education: Emergence and Growth of the Contemporary System (1998), and Understanding Accreditation: Contemporary Perspectives on Issues and Practices in Evaluating Educational Quality, edited by Kenneth E. Young, Charles M. Chambers, H.R. Kells, and Associates (1983).

Section Two, “*A Service to the Broader Community*”: 1944 – 1990, examines the sequence of events by which the federal government came to rely upon the privately run accreditation commissions, thereby planting the seeds of the competing principal-agent relationships that would develop throughout the next several decades. In particular, this section focuses on the passage of the G.I. Bill, the problems that arose from that legislation, and the eventual solution that was developed by the federal government, the 1952 Veterans’ Readjustment Assistance Act. This section draws heavily from original government legislation as well as several scholarly articles on accreditation. R.H. Eckelberry’s “The Approval of Institutions under the ‘G.I. Bill,’” which was written only one year after the passage the G.I. Bill, has proven to be a particularly useful resource for establishing the original reasons for and reactions to the passage of the G.I. Bill.

Section Two then goes on to trace the numerous attempts by the federal government to use the accreditation system for purposes other than those originally intended, including attempts in the late 1960s and the 1970s to use the accreditations associations to regulate the proprietary sector, “to foster ethical practice” and to “encourage experimental and innovative programs.”<sup>6</sup> It is at this point that the multiple-principals problem first becomes apparent, as the accreditation agencies are pulled in different directions by the federal government and the higher education profession. This section, in addition to its reliance on historical documents and scholarly articles, makes extensive use of several reports on accreditation that were commissioned by the

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<sup>6</sup> Federal Register, 34, 30042 (1974). Cited in Charles M. Chambers, “Federal Government and Accreditation,” In *Understanding Accreditation: Contemporary Perspectives on Issues and Practices in Evaluating Educational Quality*, edited by Kenneth E. Young, Charles M. Chambers, H.R. Kells, and Associates (London: Jossey-Bass Publishers, 1983), 259.

Department of Education throughout the 1970s as well as transcripts of relevant Congressional Hearings.

Section Three, *Baruch College v Middle States: 1990-1991*, presents a sub-case study of a particularly interesting event in the history of U.S. accreditation. According to Mattli and Bütthe's hypotheses, the actions taken by an agency caught in a multiple-principals problem will be determined by the relative tightness of their competing principal-agent relationships; in other words, one should expect their actions to be directed at satisfying whichever principal they feel has the strongest hold over them. The Baruch case challenges this theory because the actions taken by the Commission on Higher Education of the Middle States Association of Colleges and Schools appear to have risked antagonizing both principals simultaneously. For that reason, thorough examination of this case is useful toward identifying some of the limitations of Mattli and Bütthe's hypotheses and, perhaps, suggesting alternatives to them.

Finally, Section Four, *The Great Divide: 1990s-2008*, presents a series of escalating conflicts between the federal government and the regional accreditation associations, the federal government and the higher education community, and between the higher education community and the regionals. Of particular importance is the fallout from the Baruch case, the 1992 and 1998 Reauthorizations of the Higher Education Act, the Congressional response to soaring student loan default rates, the creation of the Spellings Commission and the release of its report, the refusal of the Department of Education to renew recognition of the American Academy for Liberal Education (AALE) on December 5, 2006, and the controversy surrounding the Andrews Amendment on

November 14, 2007. In addition to historical documents and scholarly articles, this section draws upon a series of interviews that has been conducted with key participants from the events described above as well as people whose work has been directly affected by those events.

Chapter Six is a discussion of the findings of the accreditation case study. This chapter analyzes the sequence of events presented in Chapter Five and also presents original data derived from the above interviews. The heads of five of the regional accreditation commissions have been asked to answer the same two questions regarding changes in their organization's mission and the reasons behind those changes. Those questions are:

1.

A) In considering the history of the regional accreditation agencies from 1952 to the present, what would you say have been some of the most significant shifts in what the regionals do and how they do it?

B) For each of those shifts, what were the external forces pushing accreditation to change? Which stakeholders were the regionals attempting to satisfy?

2.

Who do you see as being the primary "client" or "customer" of your organization? Has that changed over the past several years?

These two questions are intended to establish which, if either, of the principals was of foremost concern at various critical points in the history of accreditation. Both questions are designed to result in straightforward, easily interpreted answers. This is important because the majority of this study focuses on events that defy simple explanations. Through the two questions described above, this dissertation directly asks the decision-makers which changes in their policies they consider to be the most significant and why those particular decisions were made. The questions then attempt to force the respondent to choose between the two principals by asking which client of their organization is of primary concern. The second question has deliberately been left open-ended to ensure that this study has correctly identified the two major principals to which the regionals must respond. If the respondents describe a “client” or “customer” other than the federal government or the higher education community, the underlying assumptions of this analysis will need to be reconsidered.

The history described in Chapter Five and the results of the interviews are then used to test the original hypotheses. It is found that the hypotheses are only partially supported by the accreditation case study; possible reasons for these results are suggested and alternative theories, derived from the above data, are considered.

Chapter Seven, the conclusion of the dissertation, discusses of the implications of the above findings for public policy. It is in this section that the dissertation returns to the macro-questions regarding the delegation of government authority to private, self-regulating organizations. Finally, potential directions for future research are suggested.

The long-term consequences of the delegation of government authority to self-regulatory organizations have been largely overlooked by the fields of political science, economics and public policy. This is a substantial oversight given that public policy is increasingly being created, and in many cases implemented, by private groups which are not accountable to the public and which face far fewer constitutional constraints than government institutions. This dissertation uses the accreditation case-study to test the explanatory power of Mattli and Büthe's theories to self-regulating professions. In the process of doing so, however, it is hoped that this dissertation will also provide insight into current debates about the accreditation system and the proper role of the federal government vis-à-vis higher education.

## CHAPTER TWO: OF GOVERNANCE AND REGULATION

### **Introduction**

The United States, along with much of the rest of the world, is experiencing a period during which government regulation is often accused of being inefficient, limiting economic growth, and obstructing entrepreneurship and innovation. The success of this critique—part of a larger neo-liberal economic doctrine—combined with the massive challenges faced by government agencies in a time of tremendous technological change and internationalization, has led to a substantial rise in government’s reliance on private self-regulation and other forms of private governance.

Toward better understanding the reasons underlying the delegation of government authority to self-regulating organizations, this section begins with a very brief description of the market system. By considering the problems inherent in an idealized market system, one in which there is a complete lack of regulation, this chapter then sets up the justifications that are commonly given for government regulation. Alternative theories of government regulation are then considered, including private interest theory and capture theory. After discussing the potential weaknesses of government regulation, self-regulation is then presented as a possible alternative. The significance of the distinction between professions and industries is considered, and the implications of those

differences for self-regulation theory are discussed. Having contrasted government regulation with self-regulation, this chapter then examines the growing tendency toward government delegation of authority to self-regulating organizations, a private sector-public sector hybrid that, at least in theory, combines the strengths of the previous two models. Finally, principal-agent theory is reviewed as well as a recent variant, multiple principals-agent theory. It is this final theory which will then be tested through analysis of the accreditation case study.

### **The Market System: How Efficient Is It?**

Charles Lindblom describes the market system in this way: “The market system organizes or coordinates activities not through governmental planning but through the mutual interactions of buyers and sellers.”<sup>7</sup> In its purest form, then, the market system is the complete absence of government regulation. Even the most zealous free market advocate, however, recognizes that without a system of law, particularly laws pertaining to private property and contracts, and some means of enforcement of those laws, it would be extremely difficult to have a functioning market system.

Although the market system is not a complete lack of rules, then, it is an economic system that minimizes the number of rules as much as possible. Libertarians and neo-liberals support a free market system because they believe that the market is the most efficient means of producing and distributing goods and services. To varying

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<sup>7</sup> Charles E. Lindblom, *The Market System: What It Is, How It Works, and What To Make of It* (New Haven: Yale University Press, 2001), 4.

degrees, they believe that every time the government or some other centralized power attempts to ‘fix’ the perceived flaws of the market system, they end up doing more harm than good.

Advocates of a free market system emphasize that the primary advantage of the market system over any type of government planning or regulation is that the free market is the most efficient system for the production of goods. There are two reasons for this increased efficiency. The first reason is that in a market system, individual consumption choices made by customers cumulatively send a very clear and specific message to the market elite (producers) about which goods and services are desired. Lindblom calls this giving the market system “precise direction.”<sup>8</sup> The second reason that is given for the efficiency of the market system is that the amount that consumers pay for a good or service provides information to the producer concerning the degree to which that good or service is desired.<sup>9</sup>

Although there are potential disadvantages to the market system, most economists agree that, in most situations, free markets do tend to maximize efficiency and therefore often have the effect of lowering prices, increasing consumer choice, and maximizing innovation. There may be other, unintended consequences resulting from a market system that some may find undesirable, but it does generally perform those three functions extremely well.

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<sup>8</sup> Ibid., 72.

<sup>9</sup> Ibid., 72-73.

## **Government Regulation: Addressing Market Failures**

There are several cases in which it may be argued that government regulation actually enhances market efficiency. One such example would be the prevention of monopolies. A monopoly occurs when a single firm controls an industry and so is able to set prices extremely high. Lindblom points out that, in their extreme form, monopolies seldom exist because even if a single producer has exclusive control over an industry, that producer must also compete with other industries that provide similar services.<sup>10</sup> Although Lindblom is correct in stating that even those with a relative monopoly are still subject to market forces, it is also true that when the demand for a good or service is largely inelastic, a monopoly or an oligopoly may result in excessive prices for the consumer, at least in the short term. It is for this reason that U.S. anti-trust laws prohibit monopolies in most cases.<sup>11</sup>

Government regulation may also be used to deal with externalities. In the case of an externality, or spillover, the true cost and/or benefit of a transaction is not borne by the seller or the buyer; instead it is passed on to a third party that is not directly involved in the transaction. As a result, the price of the good or service does not reflect the true cost or benefit to society, causing a market inefficiency. The most common example of an externality is pollution. Without government regulation it would be extremely difficult to

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<sup>10</sup> Ibid., 155-156.

<sup>11</sup> U.S. Code: Title 15, Chapter 1, Section 2.

[http://www.law.cornell.edu/uscode/html/uscode15/usc\\_sec\\_15\\_00000002----000-.html](http://www.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00000002----000-.html)

discourage pollution since the cost of the pollution—environmental damage and health risks—is not usually borne by those producing the pollution.<sup>12</sup>

The alleged efficiency of market solutions depends on certain assumptions being made; in particular, there must be “low transaction costs, perfect information, and the absence of collective action problems.”<sup>13</sup> Further, the efficiency that results from market solutions does not necessarily satisfy distributional concerns. That is, overall efficiency may be achieved without government regulation in certain cases, but this often overlooks distributive consequences that may further diminish efficiency, not to mention basic values such as fairness.

Government regulation may also be used to deal with collective action problems, as when workers are unable to organize to insist on safety rights.<sup>14</sup> Collective action problems are not unique to labor, however; firms may face collective action problems resulting from the need to remain competitive by maintaining low costs. For example, firms may find themselves unable to pursue costly, but environmentally responsible, policies unless they can be certain that their competitors are doing the same. In such a case, there must be some uniform set of standards that is being imposed upon all firms within the industry, as well as a reliable system of monitoring and enforcing those standards.<sup>15</sup>

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<sup>12</sup> Lindblom, *The Market System*, 147-153.

<sup>13</sup> Kenneth W. Abbott and Duncan Snidal, “International ‘Standards’ and International Governance,” *Journal of European Public Policy*, 8:3 (2001): 348.  
[taylorandfrancis.metapress.com/index/8CFAP21MMLYP5R3U.pdf](http://taylorandfrancis.metapress.com/index/8CFAP21MMLYP5R3U.pdf)

<sup>14</sup> *Ibid.*, 349-350.

<sup>15</sup> *Ibid.*, 353.

Traditionally, at least, the function of regulator has been fulfilled by the public sector and the target of regulation has most often been the private sector. Early theories of regulation, therefore, focused almost exclusively on government as the designer and implementer of regulation. The vast majority of these early theories were public interest theories, which were built around the assumption that government regulation “is supplied in response to the demand of the public for the correction of inefficient or inequitable market practices.”<sup>16</sup> Public interest theory assumes that economic markets are imperfect and that regulation is simply government’s response to the public demand that these imperfections be put right. Richard Posner, for one, disputes this notion, arguing that if this were really the reason for government regulation, one would expect to see government regulation occurring almost exclusively within industries that suffer from such market imperfections as monopolies or diseconomies. Such a correlation is not found, however, and from this Posner concludes that government regulation is not, in fact, a response to market imperfections.

Posner reformulates public interest theory to suggest that perhaps “regulatory agencies are created for bona fide public purposes,” but that they are “then mismanaged, with the result that those purposes are not always achieved.”<sup>17</sup> He then goes on to dismiss even this watered-down version of public interest theory on the basis that much of the evidence actually suggests that “the socially undesirable results of regulation are

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<sup>16</sup> Richard A. Posner, “Theories of Economic Regulation,” *The Bell Journal of Economics and Management Science* 5, no. 2 (Autumn, 1974): 335.

<sup>17</sup> *Ibid.*, 337.

frequently desired by groups influential in the enactment of the legislation setting up the regulatory scheme.”<sup>18</sup>

The implicit accusation here is that regulation is actually developed by and for private interest groups, a theory that is commonly referred to as private interest theory. Private interest theory can be traced back at least as far as the publication of Gabriel Kolko’s *The Triumph of Conservatism* in 1963. Kolko presented a controversial assessment of the motivating force behind government regulation. His thesis was that “[t]he dominant fact of American political life at the beginning of this century was that big business led the struggle for the federal regulation of the economy.”<sup>19</sup> Posner later refined Kolko’s thesis, stating that “regulation is supplied in response to the demands of interest groups struggling among themselves to maximize the incomes of their members.”<sup>20</sup>

Kolko was not the first to suggest that the function of regulation was to benefit private industries; earlier writers who had made similar observations include Kirkland (1938), Simons (1934), Hoan (1914), Gray (1940), and Mencken (1930).<sup>21</sup> However, the work of both Kolko and Stigler (1971) was instrumental in shifting the attention of political scientists as well as economists away from public interest theory and toward private interest theory.

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<sup>18</sup> Ibid.

<sup>19</sup> Gabriel Kolko, *The Triumph of Conservatism* (New York: Macmillan Co. 1963), 57-58. Cited in Jack High, “Introduction: A Tale of Two Disciplines,” in *Regulation: Economic Theory and History*, edited by Jack High. Ann Arbor, The University of Michigan Press, 1991: 2.

<sup>20</sup> Posner, “Theories of Economic Regulation,” 336.

<sup>21</sup> Jack High, “Introduction: A Tale of Two Disciplines,” in *Regulation: Economic Theory and History*, edited by Jack High. Ann Arbor, The University of Michigan Press, 1991: 4-5.

A variation of public and private interest theories is “capture” theory, which postulates that “over time regulatory agencies come to be dominated by the industries regulated.”<sup>22</sup> This suggests that public interest theory is largely accurate in describing the origins of regulation but that the regulatory agencies which are then created to interpret and enforce the regulations are highly vulnerable to rent seeking. Rent seeking occurs when public regulation is used by private interests for personal gain.

A more dynamic version of capture theory is the life cycle theory of regulatory agencies, which is a model that explains the various phases through which an agency develops before finally being captured by the industry that it was originally intended to regulate. Acting as a counter-balance to the gradual process of captures that occurs in the life cycle theory is bureaucratization, which Martimort defines as “the tendency of regulation to leave less and less discretion to regulators over time,” and which he claims is actually “an optimal dynamic response to the threat of capture.”<sup>23</sup> From this perspective, the gradually increasing reliance upon inflexible, quantitatively-based standards is a functional, if not always deliberate, strategy for a regulatory body to pursue. The industry or sector that is being regulated can be expected to oppose this process of bureaucratization as it will, if successfully implemented, inevitably lead to a substantial loss of industry autonomy.

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<sup>22</sup> Posner, “Theories of Economic Regulation,” 341.

<sup>23</sup> David Mortimort, “The Life Cycle of Regulatory Agencies: Dynamic Capture and Transaction Costs,” *Review of Economic Studies* 66, 1999: 931.

One useful element of the life cycle theory of regulatory agencies is that it acknowledges the possibility that an agency's goals and/or methods may change over time. Failure to recognize this possibility can easily lead to the fallacy of intention, which is the common mistake of attempting to infer the intentions of regulators solely by the effects of the regulation.<sup>24</sup>

Finally, another variation of private interest theory is interest-group politics, which occurs when two or more small groups compete to influence the creation of regulation. James Q. Wilson suggests that interest-group politics are most likely to occur when a subsidy or regulation is likely to "benefit a relatively small group at the expense of another comparably small group."<sup>25</sup> In such cases, the general public seldom involves itself one way or the other because there is a perception, which may or may not be correct, that they are not going to be strongly affected either way. In the accreditation case study, the higher education community has been accused of using the accreditation system to discriminate against proprietary schools and to raise barriers of entry against new colleges and universities. If true, this would be a clear example of interest-group politics. The proprietary schools, too, have also been accused of interest-group politics because of their recent lobbying of the federal government to create regulation that would directly benefit them but would disadvantage the rest of the postsecondary education community.

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<sup>24</sup> Barry M. Mitnick, "Review: Myths of Creation and Fables of Administration: Explanation and the Strategic Use of Regulation," *Public Administration Review* 40, No. 3 (May-June, 1980): 275-286. Reviewed Works: *The Smoking Paradox: Public Regulation in the Cigarette Industry* by Gideon Doron; *The Regulation Game: Strategic Use of the Administrative Process* by Bruce M. Owen and Ronald Braeutigam; *Social Movements and the Legal System: A Theory of Law Reform and Social Change* by Joel F. Handler; *The Environmental Protection Hustle* by Bernard J. Frieden.

<sup>25</sup> James Q. Wilson. "The Politics of Regulation." In *The Politics of Regulation*, edited by James Q. Wilson. Basic Books: New York (1980): 368.

All of the aforementioned theories are generally applied within the context of traditional regulatory systems in which the regulatory body is a government agency and the regulated entity is a private sector industry. In cases of self-regulation, however, the dynamics described by these theories may become far more complex.

### **Self-Regulation Theory**

Virginia Haufler defines regulation as “limits imposed on the behavior of particular actors, contained in rules and standards that are not voluntary.”<sup>26</sup> Haufler notes that, traditionally at least, the function of regulator has been fulfilled by the public sector and the target of regulation has most often been the private sector. She then adds, however, that the distinction between private and public has become increasingly blurred and that “those doing the governance now include a variety of actors besides representatives of the states.”<sup>27</sup>

One category of regulation is industry self-regulation, which Gunningham and Rees define as “a regulatory process whereby an industry-level (as opposed to a governmental or firm-level) organization sets rules and standards (codes of practices) relating to the conduct of firms in the industry.”<sup>28</sup> Because the rule-setting organization is not governmental but, rather, is self-appointed, it has no actual authority over firms

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<sup>26</sup> Virginia Haufler, “New Forms of Governance: Certification Regimes as Social Regulations of the Global Market,” *Social and Political Dimensions of Forest Certification*, eds. E. Meidinger, C. Elliot, and G. Oesten ([www.forstbuch.de](http://www.forstbuch.de), 2003), 237.

<sup>27</sup> Ibid.

<sup>28</sup> Neil Gunningham and Joseph Rees, “Industry Self-Regulation: An Institutional Perspective,” *Law & Policy* 19, no. 4, (October 1997): 364.

within the industry unless it is somehow sanctioned, either officially or implicitly, by the government. Therefore, in most cases it is necessary for the self-regulatory body to somehow persuade other firms operating within that sector of the body's legitimacy. Suchmann defines legitimacy as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions."<sup>29</sup> Without the perception of legitimacy, attempts at industry self-regulation are unlikely to succeed unless they are somehow clearly sanctioned by the government. In most cases, however, the self-regulatory body must achieve a degree of legitimacy within its own sector before it can be sanctioned by the government.

Weimer lists the following ways that private standards, which are a common form of industry self-regulation, are given legitimacy: adoption of standards by public regulators, incorporation of standards into private contracts, use of standards as a defense against tort, and use of standards in accreditation systems that are required for participation in government programs (e.g. Medicare and Medicaid).<sup>30</sup> Although private standards themselves are not legally binding, they may come to be used as though they were and, in some cases, may actually become legally enforceable. Weimer adds that "[t]he process by which private standards gain regulatory force generally involves the

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<sup>29</sup> The Suchmann (1995) definition was taken from Cashore (2002) by Vallejo and Hauselmann. Vallejo and Hauselmann do not provide the initial Suchmann citation and so I am unable to provide it here. Source: Cashore B., "Legitimacy and Privatisation of Environmental Governance: How Non-State Market-Driven (NSMD) Governance Systems Gain Rule-Making Authority," *Governance: an International Journal of Policy, Administration and Institutions* 15, no. 4, (October 2002): 503-529. Source: Nancy Vallejo and Pierre Hauselmann, "Multi-stakeholder Governance: A Brief Guide." International Institute for Sustainable Development. <http://www.idsd.org> (May 2004), 3.

<sup>30</sup> David L. Weimer, "The Puzzle of Private Rulemaking: Expertise, Flexibility, and Blame Avoidance in U.S. Regulation." *Public Administration Review* 66, no. 4 (July/August 2006): 575.

government tying the requirements of various sorts to certification, accreditation, or compliance to the standards already being developed by private organizations.”<sup>31</sup>

Certainly this has been the case with the accreditation of higher education in the US.

Industry self-regulation most often takes the form of private standard setting,<sup>32</sup> which is generally geared toward reaching an industry-wide agreement upon a single set of standards; this is often done to facilitate coordination and inter-operability of products.<sup>33</sup> In the United States the majority of standards are created by private sector standards-making organizations, most of which are coordinated through the American National Standards Institute (ANSI), which is itself a private organization.<sup>34</sup>

Private standard setting is only one form of self-regulation, however; industry self-regulation can also take other forms. Gupta and Lad, in a paper that classifies types of industry self-regulation by both substantive and institutional alternatives, suggest that there are three substantive categories: private standard setting; rate-setting and; market entry.<sup>35</sup> Gupta and Lad point out, however, that U.S. antitrust laws prohibit both rate-setting and private regulation of market entry except where Congress has explicitly given permission for them to occur.<sup>36</sup> “Consequently, industry self-regulatory efforts in the

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<sup>31</sup> Ibid.

<sup>32</sup> Anil K. Gupta and Lawrence J. Lad, “Industry Self-Regulation: An Economic, Organizational, and Political Analysis,” *The Academy of Management Review* 8, no. 3 (July 1983), p. 419. <http://www.jstor.org/view/03637425/ap010031/01a00060/0>

<sup>33</sup> Weimer, “The Puzzle of Private Rulemaking,” 574.

<sup>34</sup> Marc A. Olshan, “Standards-Making Organizations and the Rationalization of American Life,” *The Sociological Quarter* 34, no. 2 (1993): 319.

<sup>35</sup> Gupta and Lad, “Industry Self-Regulation,” 416-425.

<sup>36</sup> Ibid., 419.

United States can be expected to have been confined largely to standard-setting contexts.”<sup>37</sup>

There are several reasons why the firms within a given industry might choose to self-regulate. In the case of standard setting, the most common justification is the need to create and maintain interoperability among products and components. The government is ill-equipped to set many of these standards, the argument goes, due to a lack of technical expertise. Although regulatory agencies do exist, it is often argued that they have difficulty responding rapidly to changes, that they are highly inflexible,<sup>38</sup> and that civil service rules and procedural requirements which exist to ensure fairness in the hiring and firing of staff make it almost impossible for regulatory agencies to assemble a staff “with sufficient expertise to access fully the implications of innovative scientific research or novel technologies.”<sup>39</sup>

Additionally, it is argued that the government is unable to keep up with all of the different things it is supposed to be regulating;<sup>40</sup> Gunningham and Rees refer to this as regulatory overload.<sup>41</sup> Self-regulation, then, is seen as releasing the government from an unmanageable burden.

Gunningham and Rees note that another reason that is commonly given for why firms choose to self-regulate is that industry self-regulation can be used as a preemptive strategy; by self-regulating they may hope to design less strict and onerous rules than the

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<sup>37</sup> Ibid.

<sup>38</sup> Dara O’Rourke, “Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring,” *The Policy Studies Journal* 31, No. 1, (2003): 5.

<http://www.cnr.berkeley.edu/orourke/PDF/OutSourcingReg-PSJ.pdf>

<sup>39</sup> Weimer, “The Puzzle of Private Rulemaking,” 569.

<sup>40</sup> O’Rourke, “Outsourcing Regulation,” 1.

<sup>41</sup> Gunningham and Rees, “Industry Self-Regulation,” 363.

government might have imposed upon them if there had been no regulation at all.<sup>42</sup> In the case of the accreditation of higher education in the US, the outside forces that were imposing “strict and onerous rules” were not the government but, rather, private donors who were using the power of the purse to impose minimum standards on institutions that wished to receive their money.<sup>43</sup> In essence, however, the argument holds. By self-regulating, higher education institutions hoped to replace the standards that were being imposed upon them from outside the industry with a different, more flexible, set of rules.

From the perspective of the self-regulating industry, self-regulation often carries all the benefits of government regulation but few of the costs. Self-regulation can produce inter-operability and coordination within an industry, thereby increasing efficiency and reducing uncertainty;<sup>44</sup> this was one of the primary reasons that the higher education sector chose to self-regulate back in the late 19<sup>th</sup> century.

Gupta and Lad suggest a series of perspectives on industry self-regulation, each of which is based on a different framework. If one conceives of an industry as a rational actor, as industrial organization theorists do, then “industry self-regulation would be more likely when it could contribute to market growth, heighten barriers to entry, reduce the threat from substitute products, and/or reduce the power of buyers and suppliers.”<sup>45</sup> If, however, one considers industries to be information processing and decision making systems, then the likelihood of self-regulation occurring will depend largely on existing mechanisms for industry-wide information to be collected and processed. Further,

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<sup>42</sup> Ibid. 370

<sup>43</sup> Arthur M. Cohen, *The Shaping of American Higher Education: Emergence and Growth of the Contemporary System* (San Francisco: Jossey-Bass Publishers, 1998), 149-161.

<sup>44</sup> Olshan, “Standards-Making Organizations,” 324.

<sup>45</sup> Gupta and Lad, “Industry Self-Regulation,” 420.

mechanisms will be needed to monitor firms within the industry for compliance and to enforce standards where compliance is lacking.<sup>46</sup> Finally, the third perspective focuses on intra-industry competition, emphasizing the fact that different firms within a given industry have “divergent objectives” and that there will inevitably be “asymmetry in the distribution of power.”<sup>47</sup> If too much asymmetry is present, Gupta and Lad argue, those without a voice will have no reason to support self-regulation and will instead lobby for government regulation.<sup>48</sup>

In the case of postsecondary education in the U.S., either the first perspective, in which the industry is united in its goals, or the third perspective, in which different firms within the industry have “divergent objectives,” may be applicable. To determine which theory has better explanatory value, one must first clarify how the “industry” is being defined. If one is speaking exclusively of public and nonprofit schools, which this paper refers to as the higher education sector, then the concept of the industry as a single, rational actor appears to be quite applicable in most cases. If, however, one defines the “industry” to encompass all tertiary education institutions, for-profit as well as nonprofit, then the intra-industry model, which emphasizes intra-industry competition and asymmetries of power, is far more useful.

From the perspective of the general public, there are numerous potential disadvantages to industry self-regulation. There is no guarantee that the interests of the self-regulating regimes and those of the public will neatly coincide; if they do not, self-

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<sup>46</sup> Ibid., 420-422.

<sup>47</sup> Ibid., 422.

<sup>48</sup> Ibid.

regulating regimes should be expected to pursue their own best interests. In such cases, self-regulation may result in collusion, higher prices, and higher barriers of entry for new entrants. Another potential problem with industry self-regulation is that standards set by self-regulating industries may be weak and/or poorly monitored. Further, self-regulatory regimes sometimes choose to act beneath the public's radar. This may be deliberate or may simply be due to a lack of public interest. In either case, the result can be a lack of transparency and accountability.<sup>49</sup> Haufler notes that self-regulating industries can only be held accountable through the market-place or through litigation.<sup>50</sup> These mechanisms cannot function, however, if the public is unaware of the decisions that are being made.

Although at first glance self-regulation would seem like an ideal situation for those within the industry that is self-regulating, it should be noted that the benefits of self-regulation are not always shared by all participants equally. Self-regulatory systems can be tremendously unfair to those not represented in the relevant decision-making body; most often, those without a voice at the table are smaller firms and new entrants.<sup>51</sup> Again, this dynamic has been described in Gupta and Lad's discussion of the intra-industry competition perspective of industry self-regulation.

O'Rourke suggests four criteria by which to evaluate nongovernmental regulatory systems; these are legitimacy, rigor, accountability, and complementarity. The issue of legitimacy focuses on the inclusion of key stakeholders in standard setting, monitoring and enforcement. Rigor refers to whether or not standards are measurable and if they are

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<sup>49</sup> Gunningham and Rees, "Industry Self-Regulation," 366-370.

<sup>50</sup> Haufler, "New Forms of Governance," 243.

<sup>51</sup> Olshan, "Standards-Making Organizations," 325-327.

as strong as existing codes. Accountability, which is discussed more thoroughly later, is here used to describe the transparency of monitoring. Finally, complementarity refers to whether or not nongovernmental regulatory systems are consistent with pre-existing government regulation.<sup>52</sup>

All four of these four criteria may be applied to the accreditation system, at least in theory, to determine whether or not it is an appropriate method of regulation. In fact, the issue of rigor is one of the primary objections that has been made concerning the accreditation system; there is a large and vocal community that feels the current system is inadequate precisely because standards are not measurable. The issue of legitimacy is central to the criticism that a large segment of the postsecondary education community, most particularly the proprietary schools, is not well represented within the accreditation system. Accountability is also an issue as many have complained of a lack of transparency in the accreditation process and want the results of monitoring activities to be made public. Finally, complementarity has been an ongoing concern for postsecondary education; in fact, it was largely as a result of the inability of state governments to coordinate their own licensing efforts. The issue of complementarity is particularly relevant to understanding the controversy over the 1992 Amendments to the Higher Education Act, as will be discussed in a later section.

Sinclair observes that government regulation and industry self-regulation are not mutually exclusive but, rather, depend on each other to work. In particular, he notes that the threat of future government regulation often acts as a strong incentive for industries to

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<sup>52</sup> O'Rourke, "Outsourcing Regulation," 25.

truly regulate themselves, as opposed to simply paying lip-service to the idea of self-regulation.<sup>53</sup> The theory is sound, although in practice one might argue that the threat of future government regulation may act as a strong incentive for industries to give the appearance of self-regulation rather than to truly self-regulate.

Gunningham and Rees posit that a primary element of effective industry self-regulation is the development of an industry-wide normative system. Citing the Institute of Nuclear Power Operations (INPO) as an example of successful industry self-regulation, they talk about the importance of “building a moral competence into the structure of the enterprise.”<sup>54</sup> Their notion of developing industry norms comes across as somewhat overly idealistic; in particular, they do not make a persuasive case that industry morality and profit maximization can be expected to coexist comfortably in for-profit sectors. Even in a profession such as higher education, in which there is a strong sense of serving the public interest, their theory presupposes that some agreement could be reached concerning which practices and objectives are moral. For example, one of the ongoing debates in higher education is whether it is more important to increase accessibility or if schools should continue to focus on a merit-based system, which some consider to be elitist.

Gunningham and Rees also discuss the importance of institutionalizing accountability, a goal which seems slightly less nebulous than attempting to foster institutional morality. Here, again, they return to the example of the INPO, citing its

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<sup>53</sup> Darren Sinclair. “Self-Regulation Versus Command and Control? Beyond False Dichotomies?” *Law & Policy* 19, No. 4 (October 1997): 535-536. <http://www.blackwell-synergy.com/doi/abs/10.1111/1467-9930.00037>

<sup>54</sup> Gunningham and Rees, “Industry Self-Regulation,” 381-382.

successful use of performance monitoring and inspections and using it as an example of institutionalized transparency. They state that:

...[T]here are good grounds for thinking that the effectiveness of self-regulation depends enormously on the system's ability to produce and promulgate two kinds of information: (1) about the normative standards the industry has set for itself; and (2) about the performance of member companies in terms of those standards.<sup>55</sup>

However, the application of these ideas is less straightforward than it may appear. In the case of accreditation, for example, there is very little agreement regarding the normative standards that should be produced and promulgated, or even if standards should be produced at all. Further, many accrediting agencies have argued that increasing transparency regarding the performance of monitored institutions would interfere with the primary task of the accreditation system, which is to promote self-improvement.

The literature on industry self-regulation provides no simple answers to the question of whether government regulation or industry self-regulation is more effective. The answer depends largely on the nature of the industry being regulated, the content of the regulation, and the process by which that regulation occurs. The power to regulate presupposes legitimacy and authority, however, and as Cutler has noted "Within the democratic state, authority is traced to the consent of the governed, which is articulated through democratic processes and under a doctrine of limited government."<sup>56</sup> This

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<sup>55</sup> Ibid. 383

<sup>56</sup> A. Claire Cutler, "Locating 'Authority' in the Global Political Economy," *International Studies Quarterly* 43, No. 1, (March 1999): 64. <http://www.jstor.org/view/00208833/di012116/01p0254e/0>

suggests that the burden of proof should be on those industries which prefer to self-regulate.

### **Self-Regulating Industries vs. Self-Regulating Professions<sup>57</sup>**

The previous section discussed self-regulating industries. However, the focus of this dissertation, higher education, is not an industry; it is a profession. This section will discuss what is actually meant by the word *profession* and will analyze the process through which higher education became one. It will then consider the implications of that distinction when applying theories about self-regulating industries to a profession.

Eliot Freidson has written:

I use the word “professionalism” to refer to the institutional circumstances in which the members of occupations rather than consumers or managers control work. “Market” refers to those circumstances in which consumers control the work that people do, and “bureaucracy” to those in which managers are in control. Professionalism may be said to exist when a organized occupation gains the power to determine who is qualified to perform a defined set of tasks, to prevent all others from performing that work, and to

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<sup>57</sup> Portions of this section are adapted from A. Lee Fritschler, Paul Weissburg and Phillip Magness “Changing Relationships with Government in the US : Balancing Quality Concerns with the Desire for Intellectual Independence in the University”, in Alberto Amaral, et al., eds. (2008). *Essays on Supportive Peer Review*. Hauppauge , NY : New Science Publishers, Inc.

control the criteria by which to evaluate performance.<sup>58</sup>Freidson then notes that “few if any occupations can be said to fully control their own work” but that “those that come close are called professions....”<sup>59</sup>

It is generally alleged that professionals operate under an ideology quite different from those who are forced to respond directly to market pressures. Freidson states that “The professional ideology of service... claims devotion to a transcendent value which infuses its specialization with a larger and putatively higher goal which may reach beyond that of those they are supposed to serve.”<sup>60</sup> He explains that “the institutions of professionalism themselves support and encourage the ideal of independent service even though they are always under some pressure to serve the needs of the state and the ruling class.”<sup>61</sup>

A slightly more cynical perspective on the development of professions is provided by Magali Sarfatti Larson, who argues that that “the occupations that we call professions organized themselves to attain market power.”<sup>62</sup> Larson sees professionalization as a process of market control, often sustained through an extensive process of training. This training, which almost always occurs via the university, serves the dual purpose of justifying to the general public the high status and income that are accorded to

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<sup>58</sup> Eliot Freidson, *Professionalism, the Third Logic: On the Practice of Knowledge* (Chicago: The University of Chicago Press, 2001), 12.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid., 122.

<sup>61</sup> Ibid., 123.

<sup>62</sup> Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (Berkeley and London: University of California Press, 1977). Cited in Richard L. Abel, “The Rise of Professionalism,” *British Journal of Law and Society* 6, no. 1, (Summer, 1979): 82.

professionals while also creating barriers of entry that appear on the surface to be merit-based but which actually favor the rich.<sup>63</sup>

The precise sequence of events by which an occupation becomes professionalized is unclear. Wilensky<sup>64</sup> has created a table that lists several established, marginal, and new professions and then contrasts the years at which various milestones, such as the establishment of the first training school, the development of the first local professional association, the passage of the first state license law, etc. occurred. Although he is quick to point out that no single route to professionalization exists, he does note that certain patterns can be found. His observations will be briefly summarized here so that they can then be applied to the process by which higher education has become an accredited profession.

Wilensky states that, in the beginning, the activity must become something that people do full-time. For example, “[t]he sick were always nursed, but technical and organizational developments created nursing as an occupation.”<sup>65</sup> Shortly thereafter, the need for proper training arises. Wilensky notes that some training schools begin independently of universities but that eventually these become linked to the formal higher education system. The existence of training schools leads to a class of practitioners who have ceased their practice but now teach. This often leads to the formation of professional associations, although occasionally the sequence is reversed and the development of the professional association will lead to the creation of training schools. These associations

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<sup>63</sup> Abel, “The Rise of Professionalism,” 82-98.

<sup>64</sup> Harold L. Wilensky, “The Professionalization of Everyone?” *The American Journal of Sociology* 70, no. 2 (September, 1964): 143.

<sup>65</sup> *Ibid.*, 142.

become concerned with quality control within their profession and with the self-definition of specialists and a clear “pecking order” within the field. Entry into the field is limited to those who go through the proper training. The profession begins lobbying the government, usually on the state and local level, for legal support of their training and certification system. Finally, a formal code of ethics is developed.<sup>66</sup>

A case could be made that the teaching of higher education first became a profession in the US circa 1870, with the rise of the university. In his book, The Shaping of American Higher Education, Arthur M. Cohen notes that an important element of the professional is that s/he “gains a specialized body of knowledge during a long period of formal education. Ministry to a client population, autonomy of judgment, adherence to ethical standards, licensure or formal entry requirements, and associations that monitor all the above characterize the group.”<sup>67</sup> Prior to the rise of the university, Cohen argues, faculty at colleges were little more than tutors, teaching a wide variety of subjects with little or no area of expertise. With the development of the university, however, faculty became professors, each with a specialized area of knowledge and “a commitment to long-term, full-time employment.”<sup>68</sup>

US universities, greatly influenced by those in Germany, began to emphasize the pursuit of knowledge rather than the storage and dispensation of old knowledge.<sup>69</sup> This new emphasis on the pursuit of knowledge meant that universities were becoming places

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<sup>66</sup> Ibid. 144-145.

<sup>67</sup> Cohen, *The Shaping of American Higher Education*, 124.

<sup>68</sup> Ibid., 124-125.

<sup>69</sup> Ralph F. Fuchs, “Academic Freedom. Its Basic Philosophy, Function, and History,” *Law and Contemporary Problems* 28, no. 3, (Summer 1963): 435.

of research and were attracting prominent scholars and scientists.<sup>70</sup> Shortly thereafter, higher education institutions began to form their first voluntary membership associations.

One of Wilensky's final steps toward the professionalization of an occupation occurs when associations become concerned with quality control within their profession and with the self-definition of specialists. The higher education membership associations that were forming in the 1880s fit this pattern precisely. The original concern that led to their creation was the need for clear admissions standards, as well as concerns within the industry about the quality of the numerous secondary schools and colleges that had suddenly sprung up. The first of these associations to form was the New England Association of Colleges and Secondary Schools, created in 1885. This was followed shortly thereafter by the Middle States Association of Colleges and Schools and, ten years later, by the North Central Association of Colleges and Secondary Schools and, finally, in 1895 by the Association of Colleges and Secondary Schools of the Southern States.<sup>71</sup>

But it was not until August 3-4, 1906, that several such associations met to discuss the standards by which admissions to colleges would be defined. The meeting ended with all four existing regional associations agreeing to organize a commission for the purpose of accrediting schools; this process would ultimately lead to the creation of a nation-wide system of accreditation for institutions.<sup>72</sup>

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<sup>70</sup> Cohen, *The Shaping of American Higher Education*, 127.

<sup>71</sup> Wilensky, "The Professionalization of Everyone?" 143.

<sup>72</sup> Kenneth E. Young, "Prologue: The Changing Scope of Accreditation." In *Understanding Accreditation: Contemporary Perspectives on Issues and Practices in Evaluating Educational Quality*, ed. Kenneth E. Young, Charles M. Chambers, H.R. Kells, and Associates (London: Jossey-Bass Publishers, 1983), 2-3.

Of what importance, if any, was the designation of *profession* to the development of the accreditation system during all this activity? One of the distinguishing characteristics of most professions, as the word is used today, is that they are largely self-regulating. There are several reasons for this but the primary reason is that professions require expertise. Therefore, it is argued, policy decisions about professions are best made by those within the industry itself, for they alone have sufficient knowledge about the subject to make optimal decisions.<sup>73</sup>

Because the professions have been largely self-regulating, it has traditionally been the responsibility of their professional associations to set standards, monitor those within the profession, and discipline those who have strayed too far from their standards. In practice, standards have tended to be somewhat vague and flexible while incidents of expulsion or other disciplinary tactics have been extremely rare. Freidson cites numerous articles that support this claim.<sup>74</sup> This lack of disciplinary measures is explained as being “a result of their need to avoid the imposition of a rigid orthodoxy of norms on what should be a creative, even risk-taking, exercise of refined judgment.”(*ibid*)

Freidson’s observation regarding the preference of professionals for vague standards is exemplified in the accreditation case study. As will be discussed in Chapter Five, the Committee on Revision of Standards, which had formed in 1929 to address the exclusive use of quantifiable measures as the basis of accreditation, was a direct response

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<sup>73</sup> Eliot Freidson, "The Changing Nature of Professional Control," *American Review of Sociology* 10 (1984): 2-3.

<sup>74</sup> Carr-Saunders and Wilson 1933: 395-396, 403; Parsons 1951: 470-471; Barber 1962: 195; all cited by Freidson, "The Changing Nature of Professional Control," 2-3.

by the higher education community to the imposition of rigid standards from outside. The Committee's seven-volume report advocated a new approach to accreditation that focused on the goals and stated mission of the school rather than on quantifiable standards which, though easily measured, ignored diversity of mission.<sup>75</sup> Indeed, it is precisely this point that has led to the greatest division between the higher education community and the federal government over the principal function of accreditation.

This conflict has not been unique to higher education. It has been argued that many professions are in the process of becoming bureaucratized and therefore losing the ability to self-regulate. One commonly cited development has been the growth and vast bureaucratization of the organizations within which professionals work. For a bureaucracy to work efficiently, it must closely supervise and control its members.<sup>76</sup> Additionally, scandals occurring within professions have led to much public skepticism and a demand by some for government oversight of most professions.<sup>77</sup>

Freidson denies that the process of de-professionalization is taking place and counters several of the arguments describing its inevitability, but the case of higher education seems to support the existence of such trends. In particular, the bureaucratization of the higher education system does appear to pose a legitimate threat to the relative autonomy of those working within the profession. As the higher education system has become entangled with government programs and increasingly dependent

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<sup>75</sup> Young, "Prologue: The Changing Scope of Accreditation," 7.

<sup>76</sup> Freidson, "Professional Control," 10.

<sup>77</sup> *Ibid.*, 3.

upon government money, its continuing status as a truly self-regulating profession has become questionable.

It is beyond the scope of this dissertation to fully explore all of the implications of the distinction that exists between self-regulating industries and self-regulating professions, although its relevance to the accreditation of higher education will be addressed throughout this dissertation. Two points, however, are immediately apparent. First, given that expertise is one of the arguments that is commonly given for the use of self-regulation as opposed to government regulation, and given that one of the defining qualities of a professional is that s/he “gains a specialized body of knowledge during a long period of formal education,”<sup>78</sup> one might therefore conclude that, *ceteris paribus*, professionals have a particularly strong claim to the right to self-regulate.

The second distinction is that, at least in theory, “professionals are distinctive because they bring a special attitude of commitment and concern to their work....”<sup>79</sup> As noted above, one of the most common criticisms of industry self-regulation is that in those cases in which the interests of a self-regulating industry diverge from those of the general public, those firms that are represented within the self-regulatory organizations should be expected to side with their own industry. In the case of professions, however, this conclusion is not so clear. Professionals are not, at least in theory, primarily driven by a profit motive; rather, they have taken on a responsibility to serve the public interest.

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<sup>78</sup> Cohen, *The Shaping of American Higher Education*, 124.

<sup>79</sup> Freidson, “Professional Control,” 2.

These distinctions between self-regulating professions and self-regulating industries are central to the current debate regarding the proper role of the federal government with regard to the accreditation of higher education.

### **Agency Theory**

Agency theory, also referred to as Principal-Agent theory, is primarily concerned with “the *agency problem* that arises when (a) the desires or goals of the principal and agent conflict and (b) it is difficult or expensive for the principal to verify what the agent is actually doing.”<sup>80</sup> The principal is very broadly defined as the party which delegates work to the agent, and the agent as the party which performs that work. There is an implicit assumption in most agency theory literature that the incentive that is given to the agent to do the work is financial, but this is not always the case, as will be seen in the accreditation case study.

There are many examples of this dynamic but one of the most common is the relationship between an employer and her employee. The employer is the principal and she pays her employee, the agent, to perform some labor for her. Her problem is that the agent, according to agency theory, is driven by self-interest and so will attempt to do the minimum work necessary to keep his job.

The principal maintains only limited control over the agent due to the high costs of monitoring; unless she is constantly watching her employee, she cannot be certain that he is performing his job to the best of his ability. This leads to the problem of “shirking,”

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<sup>80</sup> Kathleen M. Eisenhardt, “Agency Theory: An Assessment and Review.” *The Academy of Management Review*; Jan 1989, Vol. 14, 1; 57-74. Italics hers.

a term that refers to those situations in which the agent pursues his own interests over the interests of the principal for which he is working.

Mattli and Bütke describe two types of shirking. The first, “leisure-shirking,” is largely an issue of how much effort the agent chooses to expend.<sup>81</sup> A simple example would be the case of a building manager, employed by the building’s owners, who only does the bare minimum to keep the building up to code but does not expend additional energy to improve conditions and increase the property’s value. As long as the building’s owners are unable to closely monitor the building manager, he has no incentive to work to his full potential because his additional labor would not benefit him personally.

The second type of shirking is “dissent-shirking,” which occurs “when principal and agent differ over substantive policy.”<sup>82</sup> Mattli and Bütke observe that dissent-shirking often occurs in those cases in which government authority has been delegated to a private agent.

“...[T]he key difference between delegation to a public agent and delegation to a private one is that in the latter case a multiple-principals problem emerges that is qualitatively different from the one usually considered in the literature. An agent’s action will be determined by the relative tightness of competing principal-agent relationships. This tightness is a function of the relative importance of each principal for the agent’s financial and operational viability as well as its effectiveness in rule making.”<sup>83</sup>

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<sup>81</sup> Mattli and Bütke, “Accountability in Accounting?” 404.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid., 399.

Although the accreditation associations have certainly been accused of leisure-shirking, this dissertation is more directly concerned with those situations in which dissent-shirking has occurred. Accreditation associations are the agents of (at least) two different principals: the federal government and the higher education community. Although the goals of those two principals did not initially conflict, over the past several decades the accreditation agencies have been caught between two very different sets of priorities. Regardless of which set of priorities the agencies pursue, it will always be the case that at least one of the principals will have a legitimate complaint that the accreditors are engaging in dissent-shirking. Indeed, it has often been the case that both principals have simultaneously made this accusation of the accreditation agencies. This is almost inevitable; the accreditation agencies are never free to completely disregard the demands of either group and so they are frequently in a position of partial compromise to both principals.

Mattli and Büthe hypothesize that public agents and private agents will respond differently to the demands of multiple stakeholders. Public agents, such as government agencies, will generally attempt to find a middle point that balances the interests of the stakeholders. They argue, however, that a private agent, such as a privately run self-regulatory organization, will be far more biased in its decisionmaking than a government agency would be and will generally place the interests of a single stakeholder, the industry from which it was created and by which it is controlled, over the interests of other stakeholders, such as the general public.<sup>84</sup>

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<sup>84</sup> Ibid., 405.

Of course, this is a highly questionable premise. Government agencies are subject to rent-seeking as well as political pressures and self-interest; it is difficult to conceive of a situation in which government agencies would be truly unbiased when deciding amongst the competing demands of various stakeholders. The point that the authors are trying to make, however, is that because a public agent is primarily accountable to the government and not to a private stakeholder, it will be more likely to remain unbiased than a private agent, which may be exclusively dependent upon one stakeholder.

There are a few assumptions in Mattli and Bütthe's hypothesis that must be addressed. To begin with, there is an unstated assumption that the primary goals of the two stakeholders do not coincide. This may be a valid assumption in most instances, but in the case of accreditation it will be argued that when the federal government initially delegated authority to the accreditation associations, the role that they wanted the accreditation associations to play did not conflict in any obvious way with the goals of the higher education community. Certainly one could argue that their goals were not identical; the federal government was concerned primarily with distinguishing which schools were legitimate and which were not so that they could put an end to the tremendous amount of fraud that had been occurring since the passage of the GI Bill. They used the accreditation associations as gate-keepers to federal funds. The higher education community, however, had several uses for the accreditation system, not the least of which was to assist in their own self-improvement. Nonetheless, the goals of the federal government and those of the higher education community initially coincided very

neatly and the accreditors were, for the most part, able to satisfy both constituents simultaneously.

The second point to be made about Mattli and Büthe's hypothesis is that it applies a theory intended to describe incentives and decisions made on the scale of the individual to an entirely different scale, that of the organization. As will be seen throughout Chapters Five, Six and Seven, the federal government is made up of a very large number of individuals, each of whom has her own set of values and priorities. This is important because the agent must determine which segment of the principal to appease, and this calculation greatly complicates the dynamic that Mattli and Büthe are attempting to describe. Similarly, the designated agent in both their article and this dissertation is an organization. Some members of the agent may share the goals of some members of the principal and shifting power dynamics within either organization may prove to be a far more significant determinant of the agent's actions than either of its principal-agent relationships. This problem will be further discussed in Chapters Six and Seven. Finally, as discussed above, it is important to distinguish between industries and professions. Earlier, it was suggested that members of a profession are, at least in theory, responding to a professional ideology rather than directly responding to market pressures.. This is a crucial distinction because it suggests that, even if Mattli and Büthe are correct in suggesting that a public agent will be more responsive to the public and less beholden to a private stakeholder than a private agent would be, their argument may not be as applicable to self-regulating professions such as higher education.

Mattli and Bütthe hypothesize that the decision of the agent to accommodate one principal over another will be based on the relative “tightness” of the relationship between the agent and each of its principals. There are three variables that determine this tightness: financial viability, operational viability, and the macro-political climate. Financial viability is self-explanatory; the agent will be highly receptive to the demands of the principal from which it derives its funding. This is one reason why a Public Agent might be expected to be less beholden to a single stakeholder than a Private Agent; the primary source of funding for a Public Agent is the government.

In the case examined within this dissertation, accreditation associations receive their funding directly from their members, which are the schools that they accredit. If a school decides that it does not value the services being provided by the accreditation association, it is free to cease payment, at least in theory. In practice, however, the authority that has been delegated to the accreditation associations by the federal government makes it very unlikely that a school would choose to cease its membership in the association; to do so would mean foregoing federal funding.

The result of this set-up is that, although the accreditation associations do depend on their members for funding, the primary incentive for those members to continue providing that funding is the authority that has been delegated to the accreditors by the federal government. If the government were to revoke that delegated authority, it is questionable whether or not the majority of those schools would continue to fund the accreditors. The issue of financial viability, therefore, is rather complex in the case of accreditation.

Operational viability refers to the agent's need for specialized expertise.<sup>85</sup> Mattli and Büthe state that in most situations the private agent's authority is largely derived from its high degree of specialized expertise and that, in many cases, the source of that expertise is the industry itself. They argue that this results in a sort of dependency which will lead the agent to place a very high priority on the accommodation of that principal.<sup>86</sup>

This concept is less persuasive than the previous one; it is difficult to think of many examples in which this would play out the way that they have described. Presumably, the people who are employed by the Private Agent are already experts in the field that they are regulating and have access to the information that they need. It would be a peculiar situation for a regulatory agency to be in a position in which it must rely upon the good graces of the group that it is regulating to provide the information that it needs in order to perform its job. Certainly in the case of accreditation, this idea does not appear to be applicable. In theory the colleges and universities could refuse to provide the accreditation associations with the information they need to determine which institutions should be accredited, but if they were to do so the obvious outcome would be that the accreditation associations would simply refuse to renew their accreditation.

Mattli and Büthe's third variable is what they refer to as the "macro-political" climate. This term is used to describe the "cycles of broad public attitudes toward regulatory matters."<sup>87</sup> Mattli and Büthe claim that the 1920s was a time in which government control over the private sector was extremely limited, but that the 1930s and

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<sup>85</sup> Ibid., 405.

<sup>86</sup> Ibid., 406.

<sup>87</sup> Ibid.

1940s were a much more pro-regulatory era. The 1950s and early 1960s saw a return to the pro-business ideology, they state, but this changed again in the mid-1960s and the government stepped in to regulate more heavily until the late 1970s, at which time the macro-political climate shifted again.<sup>88</sup>

This dissertation will return to Mattli and Büthe’s hypothesis regarding the “macro-political” climate in Chapter Six to analyze the extent to which the accreditation case supports or refutes it. Ultimately, it will be demonstrated that there is almost no correlation at all between the macro-political climate and the degree to which the accreditation agencies have cooperated with efforts by the government to regulate higher education. It is important to re-emphasize, however, that Mattli and Büthe appear to be specifically referring to the regulation of private industries rather than the regulation of professions. No such distinction is made in their article, but the example that they analyze, the development of accounting standards, is a case of standard-setting for a private industry. Further, the fact that they repeatedly describe “the private sector” and “business leaders” in describing shifts in the macro-political climate suggests that they are not attempting to apply this particular hypothesis to the regulation of professions. Therefore, the failure of this particular hypothesis to explain the actions of the accreditation agencies should not necessarily be taken as a weakness of their theory but rather as one example of the distinction that exists between self-regulating industries and self-regulating professions.

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<sup>88</sup> Ibid.

The following chapter will transform Mattli and Bütke's multiple-principals theory into a set of hypotheses which can then be tested through analysis of the case of the accreditation of U.S. higher education.

### CHAPTER THREE: RESEARCH QUESTION

This study examines the long term consequences of the delegation of government authority to a self-regulatory organization. More specifically, it applies Walter Mattli and Tim Büthe's theories, which were originally applied to the actions taken by self-regulatory organizations confronted with competing principal-agent relationships within a given industry, to a profession. In their article, *Accountability in Accounting? The Politics of Private Rule-Making in the Public Interest*, Mattli and Büthe distinguish between the consequences of delegating government authority to a public agent, such as a government agency, and the delegation of that authority to a private agent:

“...[T]he key difference between delegation to a public agent and delegation to a private one is that in the latter case a multiple-principals problem emerges that is qualitatively different from the one usually considered in the literature. An agent's action will be determined by the relative tightness of competing principal-agent relationships. This tightness is a function of the relative importance of each principal for the agent's financial and operational viability as well as its effectiveness in rule making.”<sup>89</sup>

For the purposes of this dissertation, their theory has been restated as the following Research Question:

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<sup>89</sup> Walter Mattli and Tim Büthe, “Accountability in Accounting?” 399.

**What are the long term consequences of the delegation of government authority to a self-regulatory organization?**

**Proposition A-1:** In the long term, the delegation of government authority to a self-regulatory organization will lead to a multiple-principals problem in which the agent's actions will be determined by:

- The relative tightness of competing principal-agent relationships. This tightness is a function of the relative importance of each principal for the agent's financial viability
- The relative tightness of competing principal-agent relationships. This tightness is a function of the relative importance of each principal for the agent's operational viability
- The relative tightness of competing principal-agent relationships. This tightness is a function of exogenous changes in the macro-political climate relevant to the principal-agent relationships

Two additional hypotheses have been included. The first alternative hypothesis is that, while Mattli and Bütte are correct in stating that the agent's actions will be determined by the relative tightness of its relationships with its principals, they have overlooked some significant variables which affect that tightness. That alternative hypothesis has been articulated as:

- In the long term, the delegation of government authority to a self-regulatory organization will lead to a multiple-principals problem in which the agent's actions will be determined by the relative tightness of competing principal-agent relationships. This tightness is a function of some variable other than the relative importance of each principal for the agent's financial viability, the relative importance of each principal for the agent's financial viability operational viability, or exogenous changes in the macro-political climate relevant to the principal-agent relationships.

The final alternative is the null hypothesis, which states that although Mattli and Büthe may be correct in stating that the delegation of government authority to self-regulatory organizations leads to multiple-principals problems, they have overestimated the significance that the resulting principal-agent relationships have on the agent's decisionmaking. This null hypothesis has been articulated as:

- In the long term, the delegation of government authority to a self-regulatory organization will lead to a multiple-principals problem, but the competing principal-agent relationships that result from that problem will not be a significant determinant of the agent's actions.

Another possibility that was considered as a null hypothesis was that the delegation of government authority does not lead to a significant multiple-principals

problem. Such a hypothesis would have been a complete refutation of Mattli and Büthe's theory and so would have presented a more absolute null hypothesis. This dissertation does not include such a hypothesis, however, because this aspect of Mattli and Büthe's theory seems largely self-evident. The ability to have one's decisions interpreted as law, whether explicitly so or not, is a form of power. Once that power has been given, however, the government has become a second principal of that agent.

It is not self-evident, however, that "[a]n agent's action will be determined by the relative tightness of competing principal-agent relationships," or that "[t]his tightness is a function of the relative importance of each principal for the agent's financial and operational viability" and of the macro-political climate at the moment of decisionmaking.<sup>90</sup> Therefore, it is those elements of the theory that are refuted by the alternative and the null hypotheses.

Before adapting the above hypotheses to the accreditation case study, it is first necessary to define *accreditation*. Numerous definitions have been developed and used to describe the accreditation of higher education. Harold Orlans, in his 1975 report, Private Accreditation and Public Eligibility, observed that "A clear definition requires a clear subject, but accrediting is anything but that."<sup>91</sup>

That said, Orlans has assembled the following sample of definitions:

One authoritative source defines accreditation as "a process of recognizing those educational institutions whose performance and integrity entitle them to the

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<sup>90</sup> Ibid.

<sup>91</sup> Harold Orlans, *Private Accreditation and Public Eligibility* (Lexington, MA: Lexington Books, 1975), 2.

confidence of the educational community and the public.” Another states that it is “the recognition accorded to an institution that meets the standards or criteria established by a competent agency or association.” That “competent” hides half the history of accreditation, for who is to decide which accreditors are “competent” and can the “incompetent” possibly be eliminated—or even openly identified?

In 1968, the then-U.S. Office of Education defined accrediting as “the voluntary process whereby an agency or association grants public recognition to a school, institute, college, university, or specialized program of study that meets certain established qualifications and educational standards, as determined through initial and periodic evaluations.” In 1974, the “voluntary” was dropped, for somewhat the same reason, one suspects, that a recent report characterized the “perception of accreditation as a private activity” as “anachronistic.” The use of accreditation to determine eligibility for government funds and other public benefits has lent an involuntary and public character to accrediting activities once regarded as entirely “voluntary” and “private.”<sup>92</sup>

In a Higher Education Research Report published in 1976 by the American Association for Higher Education, David A. Trivett explains the U.S. accreditation system in this way:

*Accreditation* is the process by which an institution or program of study is evaluated and recognized by another agency or organization, usually private in nature, that

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<sup>92</sup> Harold Orlans, *Private Accreditation and Public Eligibility*, 2.

certifies predetermined qualifications or standards are being met. It is usually asserted that institutions and programs voluntarily apply for accreditation.

Accreditation is granted for a limited period of time and is considered to be an indicator of quality. The organizations that grant accreditation may be *recognized* for that purpose by the U.S. Commissioner of Education<sup>93</sup>, who is charged with publishing a list of those organizations so recognized. Prior to seeking accreditation, an institution must seek a state *charter*, which establishes corporate existence for the institution under the laws of the state. The charter may or may not grant the right to award degrees. In many states a *license* is required to operate an educational institution, and such license may specify minimum standards, may regulate the use of terms such as “academy” or “college,” and may authorize the granting of degrees.<sup>94</sup>

Later in the same report, Trivett seeks to clarify the distinct but interdependent roles of the federal government, the state government, and the private accrediting agencies.

One paradigm for ordering and understanding this process is to visualize the mechanisms for determining eligibility as arrayed in a triad. The three components of the triad are the states, private accrediting agencies, and the federal government. In its ideal form, the states establish minimum legal and fiscal standards, compliance with which signifies that an institution can enable a student to accomplish his objectives because the institution has the means to accomplish what it claims it will do. Federal

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<sup>93</sup> Now the position is titled Secretary of Education

<sup>94</sup> David A. Trivett, *Accreditation and Institutional Eligibility*, AAHE-ERIC/Higher Education Research Report No. 9 (Washington, DC: American Association for Higher Education, 1976), 12.

regulations are primarily administrative in nature. Accrediting agencies provide depth to the evaluation process in a manner not present in either the state or federal government's evaluation of an institution by certifying academic standards.<sup>95</sup>

Orlans has stated that the "ideal model of accrediting" consists of the following steps:

1. A voluntary application for accreditation, which signifies a wish to (and, usually, the hope or belief that the applicant does) meet the accrediting agency's published standards;
2. A searching self-study by the applicant institution or program, which is conducted in accord with general guidelines provided by the accrediting agency;
3. An intensive visit of inspection, which is carried out by a team of volunteers dispatched by the agency;
4. A subsequent decision by the agency's accrediting commission, which is based upon the self-study, the team report, and any other information available to grant, deny, or renew accreditation for a given period, and which signifies that the applicant does, or does not, meet the agency's standards<sup>96</sup>

Orlans concludes, however, by wryly noting that "exceptions can be noted to every feature of this model."<sup>97</sup>

One of the greatest difficulties in analyzing a multiple-principals problem is in clearly identifying the agent and the principals. In Frederick W. Frey's *The Problem of*

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<sup>95</sup> Ibid., 7

<sup>96</sup> Orlans, *Private Accreditation and Public Eligibility*, 2-3.

<sup>97</sup> Ibid.

*Actor Designation in Political Analysis*, Frey notes that "...the actor designation involves a critical set of analytic decisions that go far toward shaping the nature and outcome of any political investigation."<sup>98</sup> For that reason, it was critical that the agent and both principals be clearly defined.

The first of the two principals to which the accreditation agencies must respond is its membership, which consists almost entirely of higher education institutions. *Higher education* is a term with a variety of definitions. In order to clearly define what is meant by *higher education*, it is also necessary to distinguish it from *postsecondary education*. The definitions of "higher education" and "postsecondary education" have changed substantially over time. Further, within a single piece of legislation, the definitions for each of these may change depending on which section of which Act is being referenced. For example, the *1998 Reauthorization of the Higher Education Act. Section 1, Title I: General Provisions* prefaces its *General Definition of Institution of Higher Education* by stating: "For purposes of this Act, other than title IV, the term 'institution of higher education' means...."<sup>99</sup> Later in the same text, an altered version of the definition is provided for use in title IV of the same Act.

This dissertation takes its definitions from more than one source, in an attempt to create clear and distinct categories that can be used consistently throughout the study.

#### Institution of Higher Education:

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<sup>98</sup> Frederick W. Frey, "The Problem of Actor Designation in Political Analysis," *Comparative Politics* 17, no. 2 (Jan., 1985): 129.

<sup>99</sup> 1998 Reauthorization of the Higher Education Act. Section 1, Title I: General Provisions. Draft Bill Language. <http://www.ed.gov/offices/OPE/PPI/Reauthor/legislation/reaut1bil.html> Accessed October 15, 2007. Italics mine.

"(a)(1) The term '**institution of higher education**' means an educational institution in any State that

"(A) admits as regular students only persons who

"(i) have a high school diploma or its recognized equivalent; or

"(ii) are beyond the age of compulsory school attendance in the State in which the institution is located;

"(B) is legally authorized within such State to provide a program of education beyond secondary education;

"(C) provides an eligible program, as defined in paragraph (2);

"(D) *is a public or other nonprofit institution*; and

"(E) is

"(i) fully accredited by an accrediting agency or association recognized by the Secretary under subpart 2 to be a reliable authority as to the quality of education or training offered; or

"(ii) preaccredited by an accrediting agency or association that has been recognized by the Secretary for the granting of preaccreditation status pursuant to subpart 2.

"(2) Subject to paragraph (3), the term 'eligible program' means an educational program

"(A) the successful completion of which *leads to an associate, baccalaureate, professional, or graduate degree*;

"(B) that consists of not less than two academic years *and is acceptable for full credit toward a baccalaureate degree*;<sup>100</sup>

For the purposes of this dissertation, the most important point is that *higher education* refers to *public or other nonprofit institutions*, thereby distinguishing *higher education* from *postsecondary education*, as seen below.

### Proprietary Institutions:

The terms *vocational institution*, *for-profit college*, and *proprietary institution* are often used interchangeably. This dissertation uses the term *proprietary institutions* to encompass all of the above. A study conducted by the State Higher Education Executive Officers Association in 1984 found that the majority of states define proprietary institutions as “private educational institutions organized ‘for-profit.’”<sup>101</sup> Across the states, however, there was a lack of consensus regarding whether or not proprietary institutions are eligible to confer degrees. For the purposes of this dissertation, proprietary institutions include those for-profit institutions that are eligible to confer degrees as well as those that are not.

### Postsecondary Education:

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<sup>100</sup> Ibid.

<sup>101</sup> John R. Wittstruck, “State Oversight of Degree Granting Authority in Proprietary Institutions,” Report of a SHEEO Survey. State Higher Education Executive Officers Association (SHEEO). (Denver, CO.: SHEEO, January, 1984), 17.

[http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/32/05/2a.pdf](http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/32/05/2a.pdf)

The Integrated Postsecondary Education Data System (IPEDS) of the National Center for Education Statistics, U.S. Department of Education, defines postsecondary education in this way:

The provision of a formal instructional program whose curriculum is designed primarily for students who are beyond the compulsory age for high school. This includes programs whose purpose is academic, vocational, and continuing professional education...<sup>102</sup>

For the purposes of this dissertation, the term *postsecondary education* encompasses all of the following: vocational programs, proprietary schools, for-profit colleges, state colleges and public universities. It is, in other words, the sum of all institutions of higher education and all proprietary institutions, as defined above.

The above distinctions having been made, this dissertation is concerned specifically with institutions of higher education and not with proprietary institutions. The decision to focus on higher education was made because one purpose of this dissertation is to apply Mattli and Bütke's theory to a profession rather than an industry.

The agencies being analyzed within this dissertation are the accreditation associations. There are three broad categories of accreditation associations, however, and

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<sup>102</sup> U.S. Department of Education, The Integrated Postsecondary Education Data System (IPEDS), National Center for Education Statistics, *Glossary* <http://nces.ed.gov/ipeds/glossary/?charindex=P> Accessed October 15, 2007. Italics mine.

each category has its own constituency to which it must respond. The web-site for the Council for Higher Education Accreditation<sup>103</sup> provides the following descriptions:

- **Regional accreditors:** Accredit public and private, nonprofit and for-profit, two- and four-year institutions. This is a comprehensive review of all institutional functions.
- **National accreditors:** Accredit public and private, nonprofit and for-profit institutions, frequently single-purpose institutions, including distance learning colleges and universities, private career institutions and faith-based colleges and universities.
- **Specialized and professional accreditors:** Accredit specific programs or schools including law schools, medical schools, engineering schools and programs, and health profession programs.

The decision to focus exclusively on the regional accreditation associations is a result of several factors. First, the regionals have a very long and well-documented history; this makes them an ideal subject for studying the long-term effects of the delegation of government authority. Also, the regionals have emerged from and almost exclusively dealt with institutions of higher education rather than proprietary institutions. As stated above, this dissertation is concerned with the long term effects of the delegation of government authority within professions rather than industries, and so the regional accreditation associations are the most appropriate subject of analysis. Finally, an added

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<sup>103</sup> Judith Eaton, "An Overview of U.S. Accreditation," The Council for Higher Education Accreditation, [http://www.chea.org/pdf/overview\\_US\\_accred\\_8-03.pdf](http://www.chea.org/pdf/overview_US_accred_8-03.pdf)

convenience is that there are only seven regionals<sup>104</sup> and their interests have historically been quite similar, if not identical. The number of specialized accreditors, on the other hand, has varied dramatically, with Fred O. Pinkham complaining in 1954 that there were “over one hundred agencies participate in some form of accreditation of colleges and universities.”<sup>105</sup> Further, specialized accreditors deal with a wide variety of professions, ranging from the legal profession to funeral services.

For the purposes of this study, it was important to choose a group that not only had shared characteristics but also a high degree of behavioral cohesion. Frey states:

Collectivities, often called “groups,” have generally been distinguished along two main dimensions: shared characteristics (interests, attitudes, resources, social background factors, stratificational positions, etc.) and organization or behavioral cohesion (acting in concert). The initial problem has been that of deciding upon the analytic roles to be given to these two types of features. A common confusion has been to assume that the first implies the second. Thus, for example, women, students, farmers, the rich or poor, and intellectuals have often been assumed to be cohesive, unitary political actors because they have a shared characteristic.

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<sup>104</sup> I do not include the New England Association of Schools and Colleges (NEASC-CTCI) Commission on Technical and Career Institutions because this study is concerned solely with institutions of higher education. I do, however, count Western Association of Schools and Colleges (WASC-ACCJC) Accrediting Commission for Community and Junior Colleges and Western Association of Schools and Colleges (WASC-ACSCU) Accrediting Commission for Senior Colleges and Universities as two separate associations, as is the most common practice. There is a general lack of consistency in this matter, and that is why some sources report that there are only six regional accreditation associations, others report that there are seven, and still others (including CHEA) state that there are eight.

<sup>105</sup> Fred O. Pinkham, “The Accreditation Problem,” *Annals of the American Academy of Political and Social Science* 301, Higher Education under Stress. (September, 1955): 65, <http://www.jstor.org/stable/1032529>

Shared characteristics do not necessarily imply behavioral coordination; potentials and probabilities at best are suggested and must be specifically explored to justify the assertion of a true group actor.<sup>106</sup>

One could make the argument that all of the accreditors have shared characteristics, but Frey is correct in stating that shared characteristics do not necessarily lead to organizational or behavioral cohesion. As will be seen in Chapter Five, however, the seven regionals have managed to follow very similar paths, oftentimes emulating one another's changes in methodology, while each maintaining its own individual autonomy.

I originally believed that the second principal of the accreditation commission is the federal government, but the interviews that were conducted for this dissertation suggest that this is an oversimplification. Several of the leaders of the regional accreditation commissions identified their second principal as the public, which may or may not be represented by the federal government. The significance of this distinction will be discussed more fully in Chapter Six, but for now I will simply note that it is the federal government, and not the general public, that delegated its authority to the accreditation associations and it is the federal government that has attempted in recent years to alter its relationship with them. Clearly, the identification of the second principal is not as simple as suggested in Mattli and Büthe's article.

In any case, this dissertation focuses on the federal government as its second principal. More specifically, it describes actions taken by the leaders of the Department

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<sup>106</sup> Frey, "The Problem of Actor Designation," 142.

of Education and that department's predecessors as well as those agencies that have been established to deal specifically with the accreditation of higher education. In some cases, the statements of specific members of Congress have also been included in this analysis, depending on the degree to which their opinions could be said to be representative of Congress as a whole or their importance to the events being discussed. Congressional legislation and the holding of Congressional hearings are also considered relevant signifiers of positions held by the federal government.

There are often a variety of conflicting positions within the federal government. An effort has been made throughout this dissertation to articulate all of the major arguments made by government representatives and to indicate the degree of support that existed for each of them. Ultimately, however, this dissertation is most concerned with those representatives of the federal government that have been in direct contact with the accreditation commissions and whose actions have had the greatest impact on them. For example, statements made by U.S. Secretary of Education Margaret Spellings are extremely relevant to the case study of accreditation not simply because of her position, but also because of the impact of her actions on the regionals. Lamar Alexander is another former Secretary of Education who is frequently cited throughout the dissertation. Other men and women who have held that office, however, are never mentioned.

Finally, one might question the decision to focus on the federal government rather than state or local governments. It is certainly the case that state and local governments exert a tremendous amount of power over accreditors and so are highly relevant to the case study. They are less relevant, however, for the purposes of this dissertation because

there have been fewer major policy changes regarding the use of accreditation by state and local governments and because the key legislation, such as the Higher Education Act and the 1952 Veterans' Readjustment Assistance Act, was passed by the federal government. In order to test the research question described above, it is necessary that at least one of the two principals instigate significant changes in their relationship with the agent. If both principal-agent relationships remain static, the effects of the changes regarding the tightness of the two relationships cannot be tested. It is for this reason that the federal government was chosen as the second principal.

Having identified and defined the agent and both principals, it is now possible to restate the research question as hypotheses that can be tested through analysis of the accreditation case study.

**Question:** What have been the long term consequences of the delegation of government authority to the regional accreditation commissions?

**Hypothesis 1:** In the long term, the delegation of government authority to the regional accreditation commissions that began in 1952 has led to a multiple-principals problem in which the commissions' actions have been determined by:

- The relative tightness of competing principal-agent relationships. That tightness has been a function of the relative importance of each principal for the accreditation commissions' financial viability
- The relative tightness of competing principal-agent relationships. That tightness has been a function of the relative importance of each principal for the accreditation commissions' operational viability
- The relative tightness of competing principal-agent relationships. That tightness has been a function of exogenous changes in the macro-political climate
- The relative tightness of competing principal-agent relationships. That tightness has been a function of variables other than the relative importance of each principal for the accreditation commissions' financial viability, the relative importance of each principal for the accreditation commissions' financial viability operational viability, or exogenous changes in the macro-political climate

**Hypothesis 2:** In the long term, the delegation of government authority to the regional accreditation commissions has led to a multiple-principals problem, but the competing principal-agent relationships that have resulted from that problem have not been a significant determinant of the commissions' actions.

The following chapter will explain the methodology that will be utilized to test the above hypotheses.

## CHAPTER FOUR: METHODOLOGY

This study examines the long term consequences of the delegation of government authority to self-regulatory organizations. More specifically, it applies Mattli and Büthe's hypotheses, which were originally designed to explain the actions taken by self-regulatory organizations confronted with competing principal-agent relationships within a given industry, to professions. In the case study used within this dissertation, the self-regulatory organizations being studied are regional accreditation commissions and the two principals are their member institutions and the federal government.

This dissertation follows Mattli and Büthe's methodology by focusing on "episodes in which clearly divergent interests of the stakeholders and the agents can be well established based on original documents, prior analyses, and a series of interviews...."<sup>107</sup> For each such episode, the actions taken by the regional accreditation commissions are analyzed to determine which principal, if either, was being accommodated. The decision to serve the interests of one principal over the other is then contrasted with the tightness of the relationships with each principal to determine if the actions taken by the regionals support or contradict Mattli and Büthe's hypotheses.

Very little work has been done with multiple principal problems and this is the first attempt to apply these theories to a profession rather than an industry. Therefore the

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<sup>107</sup> Mattli and Büthe, "Accountability in Accounting?" 410.

goal is not simply to test pre-existing hypotheses but also, in those cases in which existing hypotheses do not explain observed behavior, to generate new hypotheses with greater explanatory power. For this reason, the case study has been chosen as the most appropriate research strategy.

A case study is defined by John Gerring as “an intensive study of a single unit for the purpose of understanding a larger class of (similar) units.”<sup>108</sup> He further notes that “what distinguishes the case study method from all other methods is its reliance on covariation demonstrated by a single unit and its attempt, at the same time, to illuminate features of a broader set of units.”<sup>109</sup> The value of a case study lies not in its ability to confirm a pre-existing theory, although it might be used to disconfirm one, but rather in the opportunity that a well executed case study provides to do exploratory research.

Gerring distinguishes between what he calls the “generative moment” and the “skeptical moment” in research.<sup>110</sup> The generative moment is the initial, exploratory research that can lead to new hypotheses and perspectives. Case studies, he states, are ideal for this function because of the extremely close engagement that they provide. The skeptical moment occurs later, after hypotheses have been analyzed and tested.

Robert A. Yin suggests several guidelines toward determining which research strategy is most appropriate for a given study. Yin states that, when choosing a research strategy, one must first consider the following:

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<sup>108</sup> John Gerring, “What is a Case Study and What Is It Good for?” *American Political Science Review* 98, no. 2 (May 2004): 342.

<sup>109</sup> *Ibid.* 343.

<sup>110</sup> *Ibid.* 349.

(a) the type of research question posed, (b) the extent of control an investigator has over actual behavioral events, and (c) the degree of focus on contemporary as opposed to historical events.<sup>111</sup>

Case studies, he explains, can be very useful when trying to answer a *how* or *why* question. This dissertation is concerned with why the regional accreditation agencies have made certain decisions and whether the reasons for those choices either support or contradict Mattli and Bütte's hypotheses.

Toward testing those hypotheses, the history of the accreditation of higher education in the United States is examined in Chapter Five. Section One of Chapter Five, *The Development of the Accreditation System: 1700s – 1940s*, provides the necessary historical background. This section considers the reasons why higher education developed differently in the United States than it did in the rest of the world, particularly as regards the absence of government interference. That strong tradition of autonomy in United States higher education helped to shape the accreditation system that would later emerge. This section relies heavily upon historical documents and sections of it are taken from an earlier article that I have co-authored: A. Lee Fritschler, Paul Weissburg and Phillip Magness (2008). "Changing Relationships with Governments in Europe and the US: Balancing Quality Concerns with the Desire for Intellectual Independence in the University". In: Amaral, Alberto (ed) *Essays in Supportive Peer Review*. Hauppauge,

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<sup>111</sup> Robert K. Yin, *Case Study Research: Design and Methods 3<sup>rd</sup> Edition*, (London, Sage Publications, 2003): 5.

NY: NOVA Science Publishers, Inc. I thank both of my co-authors for their permission to use this material.

The first section of Chapter Five then examines the origins of the accreditation system and argues that the relationship between the accreditation agencies and the existing institutions of higher education was not a principal-agent dynamic as much as it was a case of intra-industry competition. That is to say, the original accreditation agencies were of, by, and for the higher education sector; they were used by schools of high quality to distinguish themselves from other, less prestigious institutions. This section relies heavily upon several scholarly articles written about early accreditation in the United States and, in particular, upon the following seminal works: Frederick Rudolph's The American College & University: A History, 2<sup>nd</sup> edition (1990), John R. Thelin's A History of American Higher Education (2004), Arthur M. Cohen's The Shaping of American Higher Education: Emergence and Growth of the Contemporary System (1998), and Understanding Accreditation: Contemporary Perspectives on Issues and Practices in Evaluating Educational Quality, edited by Kenneth E. Young, Charles M. Chambers, H.R. Kells, and Associates (1983).

Section Two, "*A Service to the Broader Community*": 1944 – 1990, examines the sequence of events by which the federal government came to rely upon the privately run accreditation commissions, thereby planting the seeds of the competing principal-agent relationships that would develop throughout the next several decades. In particular, this section focuses on the passage of the G.I. Bill, the problems that arose from that legislation, and the eventual solution that was developed by the federal government, the

1952 Veterans' Readjustment Assistance Act. This section draws heavily from original government legislation as well as several scholarly articles on accreditation. R.H.

Eckelberry's "The Approval of Institutions under the 'G.I. Bill,'" which was written only one year after the passage the G.I. Bill, has proven to be a particularly useful resource for establishing the original reasons for and reactions to the passage of the G.I. Bill.

Section Two then goes on to trace the numerous attempts by the federal government to use the accreditation system for purposes other than those originally intended. In particular, there is a reoccurring effort by the federal government to use the accreditation system to regulate the proprietary sector in addition to the nonprofit sector. Then, in the late 1960s and the 1970s, the federal government attempts to use the accreditations associations "to foster ethical practice" and to "encourage experimental and innovative programs."<sup>112</sup> It is at this point that the multiple-principals problem first becomes apparent, as the accreditation agencies are pulled in different directions by the federal government and the higher education profession. This section, in addition to its reliance on historical documents and scholarly articles, makes extensive use of several reports on accreditation that were commissioned by the Department of Education throughout the 1970s as well as transcripts of relevant Congressional Hearings.

Section Three, *Baruch College v Middle States: 1990-1991*, presents a sub-case study of a particularly interesting event in the history of U.S. accreditation. According to Mattli and Bütthe's hypotheses, the actions taken by an agency caught in a multiple-

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<sup>112</sup> Federal Register, 34, 30042 (1974). Cited in Charles M. Chambers, "Federal Government and Accreditation," 259.

principals problem will be determined by the relative tightness of their competing principal-agent relationships; in other words, one should expect their actions to be directed at satisfying whichever principal they feel has the strongest hold over them. *Baruch College v. Middle States* challenges this theory because the actions taken by the Middle States Association of Colleges and Schools appear to have risked antagonizing both principals simultaneously. If that is correct, thorough examination of this case may indicate some limitations of Mattli and Büthe's hypotheses and, perhaps, suggest alternatives to them.

Finally, Section Four, *The Great Divide: 1990s-2007*, presents a series of escalating conflicts between the federal government and the regional accreditation agencies, the federal government and the higher education community, and to a lesser extent between the higher education community and the regional accreditation agencies. Of particular importance is the fallout from *Baruch College v. Middle States*, the Congressional response to soaring student loan default rates, the 1992 and 1998 Reauthorizations of the Higher Education Act, the creation of the Spellings Commission and the release of its report, and the refusal of the Department of Education to renew recognition of the American Academy for Liberal Education (AALE) on December 5, 2006. In addition to historical documents and scholarly articles, this section draws upon a series of interviews that has been conducted with key participants from the events described above as well as people whose work has been directly affected by those events.

Chapter Six is an analysis of the findings. It begins with the results of a series of interviews that were conducted with the acting leaders of five of the six regional

accreditation commissions. The five participants were: Dr. Barbara E. Brittingham, President/Director of the Commission on Institutions of Higher Education of the New England Association of Schools and Colleges, Dr. Steven Crow, Executive Director of the North Central Association of Colleges of Colleges and Schools, Dr. Sandra Elman, Executive Director of the Northwest Commission on Colleges & Universities, Dr. Belle S. Wheelan, President/Director of the Southern Association of Colleges and Schools: Commission on Colleges, and Dr. Ralph Wolff, Executive Director of the Western Association of Schools and Colleges. Each of the participants was asked the same two questions:

1.

A) In considering the history of the regional accreditation agencies from 1952 to the present, what would you say have been some of the most significant shifts in what the regionals do and how they do it?

B) For each of those shifts, what were the external forces pushing accreditation to change? Which stakeholders were the regionals attempting to satisfy?

2.

Who do you see as being the primary “client” or “customer” of your organization?  
Has that changed over the past several years?

In addition to the five interviews that were conducted with heads of regional accreditation commissions, two other interviews provided insight into the relationship

between the regionals and the federal government, the regionals and the public, and the regionals and their membership organizations. These interviews were with Dr. G. Jack Allen, Vice President of the Commission on Colleges of the Southern Association of Colleges and Schools (SACS), and Wendy Payton, Assistant Provost for Academic Affairs for George Mason University. The nature of these interviews was quite different from those conducted with the regional leaders; the format was much looser and I was permitted between thirty to forty minutes with each of them, as opposed to the self-imposed twelve minute limitation I'd had with the heads of the regionals. Further, the interview with Wendy Payton was conducted in person, rather than being held over the telephone.

More so than any other section of this dissertation, it is Chapter Six that is intended to provide internal validity and reliability. Internal validity refers specifically to causal mechanisms; the researcher must demonstrate that X causes Y.<sup>113</sup> It is often difficult to establish why a particular decision is made; oftentimes, the decision-maker herself may not be able to provide a satisfactory answer. By asking the leaders of the regional accreditation agencies which stakeholders were being accommodated, however, this paper is attempting to directly establish internal validity. For example, if all of the respondents state that the regionals were attempting to accommodate the higher education community in the 1970s but that the decisions made in the past decade were intended to satisfy the demands of the federal government, that would be a significant finding. If, on the other hand, the respondents never mention the higher education community or the

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<sup>113</sup> Yin, *Case Study Research*, 36.

federal government, that will suggest that Mattli and Bütthe's hypotheses have overlooked some important factors or else that I have badly misinterpreted who the regional accreditation agencies' principals are.

Reliability refers to the likelihood that one would "arrive at the same findings and conclusions" if all of the same procedures were followed using the same case study.<sup>114</sup> Toward this end, Yin advocates thorough documentation of the procedures being followed and the operationalization of as many steps as possible.<sup>115</sup> The answers derived from the two questions above should provide a high degree of reliability because of their simplicity and the fact that each respondent will be asked the exact same questions and in the same sequence.

Ultimately, it may not be possible to conclusively prove or disprove Mattli and Bütthe's hypotheses, but through the use of interviews, archival data, original documents, transcripts of congressional hearings, and a wide variety of articles, this dissertation attempts to use the case study of the accreditation of higher education to test those hypotheses' explanatory power. In those cases in which their hypotheses do not seem to explain decisions that have been made by the leaders of the regional accreditation commissions, this dissertation suggests alternative hypotheses that are derived directly from the words of the decision-makers themselves.

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<sup>114</sup> Ibid., 37

<sup>115</sup> Ibid., 38.

## CHAPTER FIVE: THE ACCREDITATION OF HIGHER EDUCATION

### **Introduction**

Since the founding of the first colonial colleges, higher education in the United States has gone through several significant changes. Originally a training-ground for clergy, then a center of acculturation for the children of the wealthy, and today a gateway to the middle-class, institutions of higher education have evolved over time to fit the changing needs and mood of the country. As the function of higher education has shifted, the role of accreditation in the United States has changed as well. Originally a form of pure self-regulation, today accreditation associations answer to numerous stakeholders, including the public, the federal government, and their own member institutions.

Early accreditation associations were not designed to distinguish the quality institutions from the diploma mills; rather, they originally came together to answer the question: What is a college? It was not until the early part of the 20<sup>th</sup> century that accreditation began to be used as an indicator of quality and it was not until the middle of the century that the accreditation process began to change its methodology and its purpose in ways that have led directly to its current form.

Initially, the federal government had no reason to concern itself with the activities of the accreditation associations; it is only in the past seventy years that the federal

government has become actively involved with the regulation of higher education. Recently, arguing that the vast amount of federal funding that is being channeled into higher education necessitates a high degree of accountability, the U.S. Secretary of Education attempted to use the accreditation system as a tool with which to impose change on post-secondary institutions. Although that effort was ultimately blocked, questions remain regarding the degree to which accreditation associations should serve their member institutions and the degree to which they must respond to the public interest, as interpreted by the federal government.

This chapter does not seek to answer that debate, but rather to explain the origins of accreditation and the process by which it became an agent of two principals: the institutions of higher education that created the accreditation system and the federal government, which has delegated its own authority to accreditors. This chapter will also provide an analysis of the decisions that have been made by the regional accreditation commissions in an attempt at providing evidence to either support or refute Mattli and Bütte's multiple-principals theory. Ultimately, it will be shown that although the multiple-principals theory has some explanatory power, there are numerous, significant factors that it overlooks.

## I. The Development of the Accreditation System: 1700s – 1940s

From the very beginning of the nation’s history, the Founders of the United States were largely inclined to keep the government out of higher education. This decision arose partially out of a strong fear of centralized government, as reflected in the US Constitution, the Federalist Papers, the Bill of Rights, and other important documents from early US history. By the time that the Constitution was written and signed, there was a begrudging acceptance by most political leaders that some form of centralized government would be necessary, but all involved were eager to limit its powers as much as possible.<sup>116</sup>

The suspicion about pure majoritarianism that influenced the federal government to remain out of higher education and other professions for almost two centuries is actually rooted in the founding principles of American political philosophy. James Madison famously expressed this distrust in the *Federalist Papers*, when he wrote that “If a majority be united by a common interest, the rights of the minority will be insecure.” To guard against this potential for injustice, he reasoned, “[a]mbition must be made to counteract ambition.”<sup>117</sup> It follows that a multitude of divergent interests would be

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<sup>116</sup> Parts of this section are taken from A. Lee Fritschler, Paul Weissburg and Phillip Magness “Changing Relationships with Government in the US: Balancing Quality Concerns with the Desire for Intellectual Independence in the University”, in Alberto Amaral, et al., eds. (2008). *Essays on Supportive Peer Review*. Hauppauge, NY : New Science Publishers, Inc.

Although much of what has been taken from that article was written by this author, it is important to note that the sections on Madisonian government and the National University, as well as the reference to Olson, are almost entirely the work of Phillip Magness. This author would like to thank both Magness and Fritschler for their permission to use their work in this paper.

<sup>117</sup> James Madison, (1788). “Federalist #51” in C. Kessler and C. Rossiter, (Eds.). *The Federalist Papers*. New York: Signet Classics.

necessary to sustain a healthy and truly representative democracy; their absence, in turn, could become its downfall.

What Madison described as the dangers inherent to democratic government applied no less to higher education, if subjected purely to popular whim. In the early days of the republic, religion was an important component of higher education and the wide diversity of religious backings reflected the variety of religions being practiced throughout the country. Centralization of higher education, therefore, was seen as a threat to religious freedom.

In one sense, then, academic freedom directly mirrors Madisonian government, where competition between numerous political factions, each potentially disruptive if left unchecked, produces in aggregate a healthy and responsive republican democracy. In similar suit, the principles of academic freedom ensure a multitude of viewpoints, ideas, and avenues of open inquiry, all subjected to the competitive process of peer review under the guidance of credentialed expertise. The very absence of an outside state regulator, itself vulnerable to majoritarian factional pressures, sustains this necessary condition of competition.

Delegates to the constitutional convention did, however, briefly entertain a proposal to establish a “National University” with direct federal oversight. Dr. Benjamin Rush, a signer of the Declaration of Independence and founder of Dickinson College in Pennsylvania, first suggested the idea in January, 1787:

In this university, let every thing connected with government, such as history  
– the law of nature and nations – the civil law – the municipal laws of our country

– and the principles of commerce – be taught by competent professors. Let masters be employed, likewise, to teach gunnery – fortification – and every thing connected with defensive and offensive war. Above all, let a professor, of, what is called in the European universities, economy, be established in this federal seminary. His business should be to unfold the principles and practice of agriculture and manufactures of all kinds.<sup>118</sup>

Though delegates to the constitutional convention ultimately rejected a clause creating a national university, Rush’s idea gained a proponent in George Washington, who suggested it to the first Congress. According to Albert Castel, the national university proposal was motivated by several commendable ideals. Like Rush, its proponents sought a means of establishing the American university system beyond its infancy. They also perceived the proposal as a “unifying force” and a tool to instill civic education in the first generation of the new nation’s leaders.<sup>119</sup>

Washington advocated the proposal for the better part of his presidency, as did John Adams, who briefly entertained an offer from a University of Geneva professor to relocate his faculty to the United States.<sup>120</sup> Alexander Hamilton advised Washington on a national university’s benefits, while even James Madison, chief architect of the *Federalist Papers* theory of faction, saw hope in the proposal. When brought before the first Congresses, however, other founders were more skeptical. Despite its lofty intentions, a national university was vulnerable to factional dominance. In reflection,

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<sup>118</sup> B. Rush, (1787). “Address to the People of the United States.” *American Museum*, January.

<sup>119</sup> Castel, A. (1964). “The Founding Fathers and the Vision of a National University,” *History of Education Quarterly*, 4 (4), 280-281.

<sup>120</sup> *Ibid.*, 284.

Castel observes that “only a miracle would have prevented a national university... from being wrecked in the fierce North-South controversies over slavery, or from being reduced to sterile mediocrity by political pressures and religious bigotry.”<sup>121</sup> Recognition of this danger was not lost upon the founding era Congresses, which rejected the proposal.

The autonomy of US higher education was made explicit by the Dartmouth College case of 1819, which established that once a charter had been granted, it could not be revoked or abridged by the state.<sup>122</sup> The Supreme Court ruled that once a school, church, or corporation had been granted its charter, it was free to operate without legislative interference.<sup>123</sup> Daniel Webster, arguing the Dartmouth case before the Supreme Court of the United States, very articulately expressed the reasoning that lay behind the autonomy of higher education in the United States:

The case before the court is not of ordinary importance nor of every-day occurrence. It affects not this college only, but every college and all the literary institutions of the country. They have flourished hitherto, and have become in a high degree respectable and useful to the community . . . . It will be a dangerous, a most dangerous experiment, to hold these institutions subject to the rise and fall of popular parties, and the fluctuation of political opinions . . . . Colleges and halls will be deserted by all better spirits, and become a theatre for the contentions of politics. Party and faction will be cherished in the places consecrated to piety and learning.<sup>124</sup>

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<sup>121</sup> Ibid., 298.

<sup>122</sup> Trustees of Dartmouth College v. Woodward, 17 US 518 (1819).

<sup>123</sup> Cohen, *The Shaping of American Higher Education*, 59-60.

<sup>124</sup> Trustees of Dartmouth College v. Woodward, 17 US 518 (1819).

This ruling greatly reduced the power of the state to regulate higher education by establishing that Dartmouth, and by extension other institutions, were private organizations serving a public purpose. Following the Dartmouth case, it was a simple matter to open a college and there was no process by which to discern which schools were legitimate and which were not.

Cohen states:

Any group could solicit funds, write a declaration of principle, obtain a business license, employ a few reasonably learned people, and open for instruction. As long as they could attract a steady trickle of tuition-paying students and collect enough donations to pay the staff and buy food and firewood, they could sustain the enterprise.<sup>125</sup>

The federal government, meanwhile, limited its involvement to occasional gifts of unused land. The Morrill Act of 1862 donated nearly 17.5 million acres of federally-owned land to all of the states with the instruction that the money raised from the sale of this land should be used to create colleges that would specialize in agriculture and the mechanic arts.<sup>126</sup> The Morrill Act is often cited as an important precedent for, and evidence of, federal support of higher education. John R. Thelin, however, argues that this is inaccurate and that the legislators who supported and ultimately passed the Morrill

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<sup>125</sup> John R. Thelin, *A History of American Higher Education* (Baltimore, The Johns Hopkins University Press, 2004), 58-9.

<sup>126</sup> “Act of 1862 Donating Lands for Colleges of Agriculture and Mechanic Arts.” July 2, 1862 (12 Stat. 503). Ohio Agricultural Research and Development Center. <http://www.oardc.ohio-state.edu/www/morrill.html>

Act were far less concerned with higher education policy that they were with establishing a precedent for the dispensation of unsettled lands.<sup>127</sup>

Indeed, the federal government remained almost entirely out of higher education throughout the 19<sup>th</sup> century and well into the 20<sup>th</sup> century. During that period, higher education institutions were semi-regulated by private donors, particularly the Carnegie Foundation. This was not, however, regulation in the traditional sense; colleges and universities were largely dependent upon the largesse of donors and so were always conscious of the need to maintain certain standards, but it was not until the early 20<sup>th</sup> century that any of these donors would make an explicit effort to evaluate the quality of higher education institutions.<sup>128</sup> By that time, however, the first steps toward self-regulation had already been taken.

Higher education institutions didn't begin to form voluntary membership associations until the 1880s. In a recent interview with Dr. G. Jack Allen, Vice President of the Commission on Colleges of the Southern Association of Colleges and Schools (SACS) and accreditation historian, Allen discussed the history of SACS and, through that, of regional accreditation:

What they [the charter institutions of SACS] wanted to do—and this came up not from any governmental type of thing—but what they wanted to do was to establish what a college really meant. In those days, in the 1870s and into the 1880s and 1890s, the colleges and secondary schools were sort of competing for students because the

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<sup>127</sup> Thelin, *A History of American Higher Education*, 78.

<sup>128</sup> Pinkham, "The Accreditation Problem," 65.

colleges didn't have any admission requirements, most of them. So, what they would do is, they would recruit students as young as fifteen into college and they would remediate them; they called it conditioning then. And so, there came a counter-movement against this....

[The regional accreditation commissions decided that they needed] to establish some guidelines on what a higher education institution is and, what they really decided on was admissions policies. And if you look at our first ones, they really said, "The college has to have admission policies, they have to have certain units of work at the secondary unit before they can admit a student." And it sort of paralleled the Carnegie people, later on, about high school units and all of that, but the major principle was, you ought to be prepared to go to college and if you take something in college, you should have the prerequisites in high schools.

And they really wanted to make a demarcation between what is a high school and what is a college... [M]ost of the institutions in the South, and probably all over the country in 1895, when we started, were open admissions and so this was pretty revolutionary... For example, the University of Virginia had open admissions. If you went to high school in Virginia, you could go to the University of Virginia. And this is what really they were trying to do, so from 1895 to about 1920, the emphasis was on admissions. And, for example, one of our standards was you couldn't admit any student younger than sixteen.

But that was it. We had no really highly developed standards.

This was not a professional accreditation system, however. These voluntary membership associations were primarily an opportunity for headmasters and principals from secondary schools to meet with college presidents and leaders to agree upon standards that would help ensure that those entering college would have the necessary skills. The first of these associations to form was the New England Association of Colleges and Secondary Schools, created in 1885. This was followed shortly thereafter by the Middle States Association of Colleges and Schools and, ten years later, by the North Central Association of Colleges and Secondary Schools and, finally, in 1895 by the Association of Colleges and Secondary Schools of the Southern States.<sup>129</sup>

The United States Bureau of Education, meanwhile, was attempting to establish a clear definition for *college* and *university*,<sup>130</sup> but it ran into the same barriers that had prevented the federal government from regulating higher education throughout the previous century. Not only was there the Tenth Amendment of the Constitution to contend with; the federal government was also discouraged from involving itself in higher education because of the tradition of academic freedom that had begun in the German universities but which came to fruition in the United States. Ultimately, the Bureau decided to simply publish a list that included every institution calling itself a college or a university that had been authorized by one of the state governments.<sup>131</sup> It was a list that made no distinctions in quality, length of programs, curriculum, or any other standard by which one might judge such an institution.

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<sup>129</sup> Ibid., 43

<sup>130</sup> Frank G. Dickey and Jerry W. Miller, *A Current Perspective on Accreditation*, 1972, (The ERIC Clearinghouse on Higher Education, Published by the American Association for Higher Education, 1972), 6.

<sup>131</sup> Pinkham, "The Accreditation Problem," 65.

In 1905, frustrated by the federal government's inability to do so, the Carnegie Foundation for the Advancement of Teaching issued its own list of higher education institutions that it considered to be of sufficiently high quality.<sup>132</sup> One scholar has suggested that, in addition to the usual reasons given for accreditation, this particular list arose in response to demands by the administrators of European universities for a guide to the educational standards of American colleges and universities. This had become necessary because of the large numbers of American students traveling to Europe and applying to European universities. Without some sort of guide, schools in Europe had no way of assessing the educational background of American applicants.<sup>133</sup> The fact that standards were now being developed by outside forces would soon prompt those within the higher education profession to take a more proactive stance toward self-regulation.

On August 3 and 4, 1906, the National Association of State Universities met to discuss the standards by which admissions to colleges would be defined. Although there was some consensus within regions, there had been no coordination of national standards.<sup>134</sup> Out of this meeting came the formation of the National Conference Committee of the Associations of Colleges and Preparatory Schools. The National Conference met annually for the next seventeen years and, ultimately, proposed the development of common definitions and standards that could be used by the schools and the regional boards to aid coordination. It also helped to create the College Entrance

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<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Kenneth Young, "Prologue: The Changing Scope of Accreditation," 2-3.

Examination Board and facilitated the nationalization of accreditation, initially at the secondary education level and later for colleges and universities.<sup>135</sup>

At roughly the same time, the North Central Association of Colleges and Secondary Schools was deciding to accredit member colleges; previously, they had only accredited high schools. Standards were developed in 1909 and in 1913 they published their first list of accredited higher education institutions.<sup>136</sup>

The federal government was also attempting, yet again, to bring some order to the higher education sector. In 1911, the first U.S. Bureau of Education Specialist in Higher Education, Kendric C. Babcock, began to develop a classification of colleges and universities in cooperation with the Association of American Universities.<sup>137</sup> Frank G. Dickey and Jerry W. Miller, writing in 1972, tell the following story:

Classification was completed on October 21, 1911. Copies of the proof were sent to various collegiate deans for their criticism and in November 1912, a revision in galley form was sent to officers of the graduate and professional schools for additional comments. While this revision was underway, the newspapers secured information about the report. The publicity that followed resulted in tremendous political pressure upon President Taft not to release the report, as a result of which he requested the Commissioner of Education to withhold publication. President Wilson, despite the plea of the Association of American Universities (AAU), subsequently upheld Taft's decision. Since that time, no attempt has been made by the Bureau of the present U.S.

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<sup>135</sup> Ibid., 3.

<sup>136</sup> Ibid.

<sup>137</sup> Dickey and Miller, *A Current Perspective on Accreditation*, 6

Office of Education to compile a classified or “accredited” list on its own responsibility.<sup>138</sup>

Writing in 1912, a clearly frustrated Kendric Babcock wrote:

To deny that the term (college) is fully applicable to any institution calling itself a college is to offer serious affront to individuals connected with the institution, all who hold its degrees, and to all their friends. Yet definition, or at least exact discussion, is absolutely necessary if an institution is to deal honestly with the great public to whom it appeals and with the students who it receives in its classes.<sup>139</sup>

The Bureau of Education, having found itself forbidden from developing a system of categorization by which to determine the numbers of colleges and universities, opted instead to facilitate the development of standards from within the profession. Toward that end, the Bureau sponsored a committee of professional, higher education organizations to develop their own system of categories. The first meeting occurred in 1914 and drew representatives from the existing regional accreditation associations of that time as well as the Association of American Universities, the National Association of State Universities, the American Medical Association, the Society for the Promotion of Engineering Education, and the Association of American Colleges.<sup>140</sup>

Strong opposition by the associations was voiced to any classification of colleges as had been proposed in Babcock’s original list. It was finally agreed that the U.S.

Bureau of Education should furnish data on the colleges and universities of the nation

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<sup>138</sup> Ibid., 7

<sup>139</sup> Ibid., 9

<sup>140</sup> Ibid., 7

regarding enrollment, offerings, etc. and that each college or university should make its own classification of institutions.” The first such report, containing data about 252 colleges of arts and sciences, was published as *Bulletin No. 30, 1918* (87).<sup>141</sup>

Of course, measuring the quality of higher education institutions was problematic, at best. Accreditors initially focused on criteria that could easily be measured, such as faculty salaries or library holdings. The American Council on Education (ACE), a coordinating body for the nation's higher education institutions, came up with this list of standards for colleges in 1919:

[A]n institution that required for admission the completion of an accredited four-year secondary program, required at least 120 semester hours for graduation with a baccalaureate, had at least one hundred students and eight department heads, had professors who taught no more than sixteen hours per week in classes averaging no more than thirty students, had an annual operating income of at least \$50,000 and a library of at least eight thousand volumes.<sup>142</sup>

Significantly, none of these criteria focused on what was actually being learned. The emphasis here, as elsewhere, was on “quantifiable data regarding students, faculty, physical plant, and funding.”<sup>143</sup>

The development of accreditation was not without its critics. One problem was the accusation that accreditation was being used by well-established institutions to tarnish

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<sup>141</sup> Ibid., 8

<sup>142</sup> Cohen, *The Shaping of American Higher Education*, 149-50.

<sup>143</sup> Ibid.

the reputations of those schools that did not found fit their standards. “Used in this way, accrediting became a powerful device for protecting and promoting a selected group.”<sup>144</sup>

In 1924, the members of the National Association of State Universities gathered to make a public statement concerning the over-standardization of higher education that they felt would be the inevitable byproduct of accreditation as it was developing. They accused the accreditation system of limiting “both local initiative and that freedom of experimentation which is necessary for educational advance.”<sup>145</sup>

In 1929, the Committee on Revision of Standards was formed to address the exclusive use of quantifiable measures as the basis of accreditation. The Committee’s seven-volume report has had a lasting effect on accreditation that continues to the present. The report advocated a new approach to accreditation that focused on the goals and stated mission of the school rather than on quantifiable standards which, though easily measured, ignored the diversity of institutions’ missions. It stated that “an institution will be judged for accreditation upon the basis of the total pattern it presents as an institution of higher education” and that “the facilities and activities of an institution will be judged in terms of the purposes it seeks to serve.”<sup>146</sup>

North Central Association was the first of the regionals to adopt this new approach to accreditation. In 1929, the Higher Commission of North Central appointed a Committee on Revision of Standards. The Committee’s mission was to evaluate the NCA standards and accrediting procedures and to develop new criteria for the measurement of

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<sup>144</sup> Pinkham, “The Accreditation Problem,” 67.

<sup>145</sup> Ibid.

<sup>146</sup> Louis G. Geiger, *Voluntary Accreditation: A History of the North Central Association, 1945-1970* (Chicago: Published for] the North Central Association of Colleges and Secondary Schools [by] G. Banta Co., Menasha, Wis, 1970), xv.

institutions.<sup>147</sup> This led, in 1934, to the adoption of the following “five guiding principles for accreditation”:

1. A standard should not be regarded as fixed but as referring to something alive and developing.
2. A standard should be an induction, something to proceed from.
3. The North Central Association should be less a judge and more a creator.
4. The North Central standards should be statements of policy, not the framework or skeleton outline of a scheme.
5. The standards of the North Central Association should be such that a school would know whether it was improving and measuring up to reasonable conditions.<sup>148</sup>

This new philosophy of accreditation emphasized the institution as a whole. North Central declared that it would no longer focus on specific standards but would instead consider “the total pattern... as an institution,” stating that:

While institutions will be judged in terms of the characteristics noted in this statement of policy, it is recognized that wide variations will appear in the degree of excellence attained. It is accepted as a principle of procedure that superiority in some characteristics may be regarded as compensating, to some extent, for deficiencies in other respects. The facilities and activities of an institution will be judged in terms of the purposes it seeks to serve.<sup>149</sup>

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<sup>147</sup> Ibid., xiv

<sup>148</sup> Ibid., 25-26

<sup>149</sup> Ibid., 26.

Louis G. Geiger, in his written history of North Central Association, discusses the development of a new terminology of accreditation that reflected these changes:

Indicative of the spirit of the NCA reforms in college requirements following the Cooperative Committee report of 1934 was the changed language associated with accreditation. ‘Inspection’ gave way to ‘evaluation,’ ‘standard’ was used with decreasing frequency, and such words as ‘criteria,’ ‘ideals,’ ‘growth,’ ‘objectives,’ and ‘individuality’ were conspicuous. A new principle of ‘individuality of institution’ was given a prominent place; uniformity was even marked down as undesirable, and experimentation was to be ‘encouraged.’<sup>150</sup>

Although the North Central Association was the first regional association to adopt these new standards, the others quickly followed.<sup>151</sup>

A crucial premise of the new system of accreditation was that an institution should define its own objectives and then be accredited on the basis of those self-chosen goals.<sup>152</sup> This was predicated on the conviction that there was no single measure by which an institution should be judged.<sup>153</sup> There was a firm conviction that all colleges and universities were not, and should not, be working toward the exact same goals and that “institutional individuality and carefully planned experimentation should be encouraged.”<sup>154</sup> Accreditation did not exist, in other words, as a means of standardizing higher education. On the contrary, it was specifically intended to encourage diversity of

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<sup>150</sup> Ibid., 27.

<sup>151</sup> Young, “Prologue: The Changing Scope of Accreditation,” 7.

<sup>152</sup> A. J. Brumbaugh, “The Significance of Accreditation,” *Annals of the American Academy of Political and Social Science* 265, (September 1949), 65.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

both mission and method. This freedom to define one's own purpose would help to facilitate the tremendous diversity of higher education institutions that followed throughout the 20<sup>th</sup> century.

## II. “A Service to the Broader Community”: 1944 – 1990

One of the pivotal events in the history of accreditation occurred on June 22, 1944, with the passage of the Servicemen’s Readjustment Act, also known as the G.I. Bill of Rights, although the act itself said absolutely nothing about the accreditation system. The original purpose of the act was not to initiate a new, more federally active policy toward higher education, but rather to prevent massive unemployment following the return of millions of veterans at the end of World War II. The result, however, was a massive surge in the number of students attending colleges and universities<sup>155</sup> and, according to one study, “a national transformation from elite to meritocratic, and then to mass or universal, higher education.”<sup>156</sup> “In the peak year of 1947, veterans accounted for 49 percent of college admissions. By the time the original GI Bill ended on July 25, 1956, 7.8 million of 16 million World War II veterans had participated in an education or training program.”<sup>157</sup>

The G.I. Bill stated that the education would be received at an “approved educational or training institution” chosen by the veteran but the details regarding how

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<sup>155</sup> One source states that in 1940 there were 1.5 million students enrolled in colleges and universities in the U.S. but that by 1946 that number had increased to over 2 million students, nearly half of whom were veterans attending through the provision of the G.I. Bill. Source: James Forest & Kevin Kinser. “Higher Education in the United States: An Encyclopedia.” New York: ABC-CLIO Publishers. 2002. [http://www.higher-ed.org/heus/Important\\_Events.pdf](http://www.higher-ed.org/heus/Important_Events.pdf)

<sup>156</sup> Anne Prisco, Alicia D. Hurley, Thomas C. Carton, and Richard C. Richardson Jr. “Federal Policies and Higher Education in the United States,” *The Alliance for International Higher Education Policy Studies*, March 2002, 2. <http://www.nyu.edu/iesp/aiheps/downloads/finalreports/fed.pdf>

<sup>157</sup> “Born of Controversy: The GI Bill of Rights.” United States Department of Veterans Affairs: GI Bill History. Updated July 10, 2007. [http://www.gibill.va.gov/GI\\_Bill\\_Info/history.htm](http://www.gibill.va.gov/GI_Bill_Info/history.htm)

schools would be approved were left to the state governments. The Act further stated that:

From time to time the Administrator [of veterans' affairs] shall secure from the appropriate agency of each state a list of the educational and training institutions... within such jurisdiction, which are qualified and equipped to furnish education or training..., which institutions, together with such additional ones as may be recognized and approved by the Administrator, shall be deemed qualified and approved to furnish education or training to such persons as shall enroll under this part [of the Act].<sup>158</sup>

An article written by R.H. Eckelberry less than one year after the passage of the G.I. Bill provides a thorough analysis of the legislation and the problems that arose from its implementation. One problem was that, although the bill clearly stated that institutions could be approved by either the state governments or the Administrator of Veterans' Affairs, the Administrator announced almost immediately thereafter that he would "not approve institutions within the states except in special circumstances, such as neglect by the state authorities to do so."<sup>159</sup> The result was that all decision-making power was left to the states.<sup>160</sup>

On the day that the G.I. Bill was approved, the governor of each state was notified of the bill's significance and each governor was requested to quickly put together a list of qualified institutions. Most, though not all, of the states complied, but it was soon

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<sup>158</sup> Servicemen's Readjustment Act of 1944, PL346, 58 *Statutes at Large* 284.

<sup>159</sup> R. H. Eckelberry, "The Approval of Institutions Under the 'G.I. Bill,'" *The Journal of Higher Education* 16, no. 3, March 1945, 121.

<sup>160</sup> *Ibid.*

apparent that the states had used a very wide variety of methods to determine which institutions were qualified and that, as a result, there was no consistency of standards.<sup>161</sup>

A study conducted shortly afterward found that, whereas only 517 colleges and universities had been accredited by the regional accreditors at that time, 666 had been accepted for the program by the states. Even more significantly, only 21 professional and technical schools had been accredited by the regional accreditors whereas 134 had been approved by the states.<sup>162</sup> In some cases, “the mere request of an institution was the basis for approval.”<sup>163</sup>

Eckelberry warned, somewhat presciently:

It is probable that among the unaccredited and unlisted institutions [that have received state approval to receive money through the G.I. Bill], there is a substantial number of unworthy ones. Moreover, there is still danger of the approval of additional ones, since states ‘from time to time’ may add to their list of approved institutions. It is notorious that there are hundreds of weak institutions which call themselves colleges, universities, or professional schools, but which are not able to meet reasonable educational standards. To such institutions, the millions of dollars of Federal money available for veterans’ use must look like a gold mine. In many cases, state departments will be subjected to pressure to approve such institutions.<sup>164</sup>

Indeed, with the sudden surge in federal spending into higher education, numerous schools of dubious quality opened up overnight. Fraud was rampant and, by

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<sup>161</sup> Ibid., 122

<sup>162</sup> Ibid., 124

<sup>163</sup> Ibid., 123

<sup>164</sup> Ibid., 126

1952, it became apparent that the government was going to have to take active steps to determine which schools were legitimate and which were not.

The federal government took its first major step toward regulating the accreditation of higher education with the passage in 1952 of the Veterans' Readjustment Assistance Act (VRAA).<sup>165</sup> The final legislation again attempted to delegate the primary responsibility to the state governments, asking that each of them conduct an approval process for postsecondary schools operating within their borders. Perhaps mindful of past problems with the use of state governments for this purpose, the legislation also stated that "For the purpose of this title the commissioner [of the Office of Education] shall publish a list of nationally recognized accrediting agencies and associations which he determines to be reliable authority as to the quality of training offered by an educational institution."<sup>166</sup> Those accreditation agencies that received recognition now had the power, and ostensibly the responsibility, to determine which schools were eligible to receive federal student aid and which were not.

The fact that the Office of Education was responsible for publishing a list did not mean that they had any actual power or authority in this matter. For one, state approval agencies were not required to base their decisions on an institution's accreditation. Further, the Office of Education was not intended to have any real authority in this matter. This was a deliberate decision resulting from the Constitutional prohibition on federal involvement in higher education. The OE's role was simply to provide a list for the use of

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<sup>165</sup> Also known as the Korean War G.I. Bill of 1952.

<sup>166</sup> Section 1775 of Public Law 82-250.

the Veterans Administration, which was the government agency that was responsible for the disbursement of the G.I. Bill funds.

The U.S. Office of Education had published occasional lists of accredited institutions prior to the passage of the VRAA, but there had been no regulatory consequences involved. Further, there had been no detailed process for determining which accrediting agencies were recognized as being legitimate by the government and which were not. After the VRAA was passed, however, the Commissioner of Education needed to find a way to publish his list without being perceived as interfering with higher education or with the accreditation process. The question, therefore, became this: How does one determine which accrediting bodies are “nationally recognized” and “reliable?”

The answer, as determined by Commissioner Earl McGrath, was to approach the National Commission on Accrediting (NCA) and to ask them for the list of accrediting agencies that they had put together. The NCA was an organization that had been formed to help limit the number of accrediting agencies with which universities had to contend. The presidents of the major higher education institutions did not object to the regionals, which performed accreditation on an institutional level and which they dominated; the problem was the rapidly growing number of specialized accrediting agencies.<sup>167</sup>

Unfortunately for McGrath, the NCA, and the presidents of the institutions, no such list existed. The NCA had begun to determine which accrediting bodies it considered to be superfluous, but there was still no screening process and no definitive list that could be given to McGrath. NCA director Fred Pinkham reluctantly informed

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<sup>167</sup> Chambers, “Federal Government and Accreditation,” 239-242.

McGrath that the commission would have to prepare his own list, but warned him that the list must be used for the sole purpose of meeting the requirements of the VRAA and that the list must not be perceived by anyone as an endorsement by the federal government of select accrediting bodies.<sup>168</sup>

Caught between conflicting requirements, the commissioner ultimately decided to simply publish the list of accrediting bodies in the Office of Education's directory, *Accredited Higher Institutions*. This meant that, for all practical purposes, almost every existing accreditation agency that existed at that time was officially designated as being both "nationally recognized" and "reliable." Ironically, the publication of this list completely sabotaged the NCA's efforts to control the number of specialized accreditors; now that they had all been judged to be "reliable" by the federal government, it would have been pointless for the NCA to attempt to argue the point.<sup>169</sup>

As increasing numbers of veterans were using federal funds to attend proprietary schools, which were not accredited by regional or specialized accreditation agencies. The proprietary schools had only just begun experiment with a similar process using their own national associations, but those associations were not recognized by the NCA and they were not listed in the OE directory. McGrath was hesitant to include them in his list, realizing that to do so would indicate that they could be trusted to distinguish between legitimate schools and diploma mills. It was McGrath's assessment that, in fact, the national associations were not yet at a point where they could be used for this purpose and so left them off his original list. Of course, this was no solution, as it essentially

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<sup>168</sup> Ibid.

<sup>169</sup> Ibid., 242-243.

meant that no proprietary school could receive federal funds. The national associations fought back and, by the late 1950s, they were listed alongside the regionals and the specialized accreditors.<sup>170</sup>

Federal reliance on accreditation increased in 1958 with the passage of the National Defense Education Act (NDEA), which Charles M. Chambers states “inaugurated a new link between accreditation and federal eligibility that has continued, virtually unchanged, to this date.”<sup>171</sup> This legislation gave the responsibility for the disbursement of funds to the Office of Education, which was a complete reversal of the VRAA legislation. It also explicitly stated that funds could only be used at “institutions of higher education,” which were defined within the legislation as being public or nonprofit, thereby excluding the proprietary schools once again. Further, the NDEA stated that in order for a school to be eligible to receive federal funds, it must be accredited by a nationally recognized accrediting body. In other words, accreditation was now mandatory.<sup>172</sup>

Until this point, accreditation had been a purely voluntary undertaking. Schools that wanted to use accreditation to provide evidence of their quality or for the purpose of self-improvement were free to do so, but it was certainly possible for colleges and universities to prosper without accreditation. The passage of the NDEA changed that, however. Colleges and universities may not have been legally required to receive accreditation, but those that failed to do so would be prohibited from receiving federal

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<sup>170</sup> Ibid.

<sup>171</sup> Ibid., 245.

<sup>172</sup> Ibid. 245-247.

funding and no students attending such institutions would be eligible to receive student loans.

Writing in 1992, Orlans discussed the ramifications of this change:

[Accreditation] is less and less voluntary as the entire universe of eligible institutions becomes accredited. Thereafter, lack of accreditation can be stigmatizing. It can handicap an institution in attracting students, make the acceptance and transfer of course-credits more difficult, and hamper or prevent students from obtaining financial aid from the federal government, foreign students from obtaining a visa, and graduates from obtaining a state license to practice their profession. The statutory requirement that, if they are to receive government funds, students must attend accredited institutions, has made accreditation necessary to many of them and has given accrediting agencies a quasi-governmental function and power.<sup>173</sup>

Matthew W. Finkin (1994) has written extensively on the issue of accreditation agencies' "quasi-governmental function and power," suggesting that this use of private agencies to determine eligibility for public funding is a direct violation of the nondelegation doctrine. He has noted in particular that that the Higher Education Act, which greatly expanded the both the funding and the scope of the NDEA and the G.I. Bills, "presented an almost total lack of any statutory standards to guide the Commissioner" and that it also "lacked any requirement for due process for those

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<sup>173</sup> Orlans, *Private Accreditation and Public Eligibility*, 514-515.

affected by adverse accreditation decisions, and lacked any provision for judicial review of the delegate's action."<sup>174</sup>

By the early 1960s, the regionals had clearly become agents of a second principal: the federal government. In the short-term, however, the delegation of government authority to the regionals had minimal impact on them. In essence, they were simply being asked to continue what they had been doing all along. No attempt was made by the federal government to exert any influence over the higher education sector. This 'hands-off' policy was made explicit under the National Defense Education Act of 1958, Section 102 of which read:

Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system.<sup>175</sup>

Again, the role of the Commissioner of Education was simply to "publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered."<sup>176</sup> It was not until the mid 1960s, and particularly with the passage of the Higher Education Act (HEA) of 1965, that the federal government began to seriously reconsider which functions it wanted the accreditation associations to perform.

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<sup>174</sup> Matthew W. Finkin, "The Unfolding Tendency in the Federal Relationship to Private Accreditation in Higher Education," *Law and Contemporary Problems* 57, no. 4, Autumn 1994, 95.

<sup>175</sup> U.S. Statutes at Large, Public Law 85-864, p. 1580-1605

[http://tucnak.fsv.cuni.cz/~calda/Documents/1950s/Education\\_58.html](http://tucnak.fsv.cuni.cz/~calda/Documents/1950s/Education_58.html)

<sup>176</sup> Ibid.

The Higher Education Act was passed as part of President Johnson's domestic policy, which focused on equal opportunity and the war on poverty.<sup>177</sup> The new legislation increased federal funding for students but it also broadened the variety of post-secondary institutions that the government was willing to help finance. The HEA offered federal funding for "anywhere from 7,000 to 30,000 proprietary schools... that might close, reopen, change hands, or alter their courses on a moment's notice."<sup>178</sup> The accreditation system that existed at that time was completely incapable of monitoring all of these schools; it had never been intended to do so. Access to funding, however, remained firmly linked to accreditation status.

Frustrated with the inability or unwillingness of accreditation associations to provide oversight for the proprietary sector, the Commissioner of Education created the Accreditation and Institutional Eligibility Staff (AIES) in 1968 to help develop criteria by which to evaluate accrediting agencies and to attempt to achieve some degree of oversight and coordination. Writing in 1976, David A. Trivett explained:

In 1968, the Commissioner of Education, facing the burden of eligibility determinations brought by the Higher Education Act of 1965, established the Accreditation and Institutional Eligibility Staff (AIES) and an advisory committee. The purpose of the AIES is to administer criteria and procedures for approving accrediting organizations, list them, and determine preliminary eligibility of

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<sup>177</sup> Susan B. Hannah, "The Higher Education Act of 1992: Skills, Constraints, and the Politics of Higher Education," *The Journal of Higher Education* 67, no. 5, Sep.-Oct., 1996, 504.

<sup>178</sup> Finkin, "The Unfolding Tendency," 99.

institutions. By this move of administrative necessity, the Office of Education became more involved with the operation of accrediting agencies.<sup>179</sup>

Tension quickly grew between the Office of Education and the accreditation agencies. Limitations were placed and rules were established regarding the number of accreditation agencies permitted within a given geographical area or able to accredit a given field of study or program. Accreditors bristled at the government control, but ultimately acquiesced.

The first director of the AIES, John Proffitt, based the authority of the government to regulate on what amounted to a public good argument, stating that:

[A]ccrediting bodies are performing an increasingly important societal role—a role in service to the broader society rather than one solely in service of the narrower educational community.<sup>180</sup>

In many ways, this was a turning point in the relationship between the federal government and the accreditation agencies. Before 1968, accreditation agencies had been more or less able to serve both the higher education community and the federal government simultaneously; the purposes for which those two principals were using the accreditation system were not identical, but there was enough overlap that both parties were relatively satisfied. Now, however, the agencies' status as quasi-governmental institutions was being directly addressed.

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<sup>179</sup> Trivett, *Accreditation and Institutional Eligibility*, 3.

<sup>180</sup> John Proffitt, Address at the Meeting Sponsored by the U.S. Office of Education and the National Commission on Accrediting (Nov. 6, 1970), quoted in Finkin, "The Unfolding Tendency," 100.

The 1972 Amendments to the Higher Education Act further muddied the waters by establishing that “equal opportunity” was now “the principal focus of federal policy toward higher education.”<sup>181</sup> This new focus on equal opportunity would have major ramifications for all institutions of higher and postsecondary education, setting the stage for the so-called “massification” of higher education that would occur in the 1990s.<sup>182</sup>

The 1972 Amendments also further broadened the definition of “postsecondary education” and attempted to increase the accountability of higher education in general. This effort toward greater oversight of higher education was aimed primarily at schools’ finances and accounting standards, but it was vehemently resisted by those within the higher education community, who feared that such legislation might ultimately lead to further attempts by the federal government at regulating higher education.<sup>183</sup>

The late 1960s and early 1970s saw the release of several government reports discussing the future of accreditation, many of which were directly commissioned by the federal government. In 1969, Frank Newman was asked by Secretary Robert Finch of the Department of Health, Education, and Welfare (HEW) to chair the first Task Force on Higher Education. Ultimately, Newman’s Task Force released two reports, one in 1971 and the other in 1973, which would later become known as the Newman Reports.<sup>184</sup>

The findings revealed that many of the federal financial aid policies available to students of higher education were inordinately selective and biased towards the

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<sup>181</sup> Hannah, “The Higher Education Act of 1998,” 504.

<sup>182</sup> F. King Alexander, “The Changing Face of Accountability: Monitoring and Assessing Institutional Performance in Higher Education,” *The Journal of Higher Education* 71, no. 4, July 2000, 415.

<sup>183</sup> Hannah, “The Higher Education Act of 1998,” 504.

<sup>184</sup> “Frank Newman Memorium.” The Special Collections Unit of the University Library, University of Rhode Island. [http://www.uri.edu/library/special\\_collections/exhibits/newman/newman\\_memoriam.htm](http://www.uri.edu/library/special_collections/exhibits/newman/newman_memoriam.htm)

agendas of the institutions that regulated them. The report was received enthusiastically by HEW officials, but remained controversial and widely debated in the academic community.<sup>185</sup>

Frank G. Dickey and Jerry W. Miller, writing in 1972, were less critical of the accreditation system than Newman had been but recognized that the system, which had originally been a form of self-regulation, was now faced with societal obligations as a result of its quasi-governmental status.

...[H]istorically, accrediting agencies in education have faced, like a Janus, in two directions at once: first, inwardly toward their own institutional and professional members; secondly, externally to the public. But these orientations have not been symmetrical by any means. Primary emphasis in the less recent past has been on internal affairs and institutional improvement and welfare. The accrediting business approximated a closed community with specially vested, highly controlled, professional interests.

In the past two decades this imbalance has shifted and been redressed to the point where the prime emphasis of accrediting agencies is viewed as a social obligation... This is because education has come to be recognized as indispensable to private individual benefit and to the public welfare.<sup>186</sup>

In 1974, the Office of Education published a new set of regulations describing the responsibilities of accrediting bodies. The federal government wanted to begin using accreditation agencies, and through them the institutions that they were accrediting, as

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<sup>185</sup> Ibid.

<sup>186</sup> Dickey and Miller, *A Current Perspective on Accreditation*, 3.

instruments of social policy. Accrediting boards were now expected “to foster ethical practice, such as nondiscrimination and equitable tuition refunds” and to “encourage experimental and innovative programs.”<sup>187</sup> While few argued with the worthiness of those goals, there was no statutory authority for the commission to make such demands. “The statutes were clearly limited to the purpose of establishing institutional eligibility for federal funding programs.”<sup>188</sup>

In an interview held for the purposes of this dissertation, an executive director of one of the regional accreditation associations provided the following overview of the contextual changes that were occurring to postsecondary education during this period and how the regionals responded to them:

In the decade of the 50s to the mid-60s, accreditation, to my knowledge, was not as consequential. Colleges were basically private, liberal arts colleges... the whole community college movement didn't really begin until the 60s... and [then] there were junior colleges, private junior colleges. So, I would say in the '50s [the regional accreditation associations] were just embracing the notion that [accreditation] was going to be recognized by the Feds and that there would be a linkage with Title IV.

In the '60s, there was a huge growth in institutions, particularly public institutions. Accreditation had to adapt, had to develop systems. It took it quite some time, I'm not even sure we're even there, yet, to deal with massified education, the explosion of the community college movement, the growth in the size of the number of universities.

And accreditation had to accommodate those changes.

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<sup>187</sup> Federal Register, 34, 30042 (1974). Cited in Chambers, “Federal Government and Accreditation,” 259.

<sup>188</sup> *Ibid.*, 260.

Come into the '70s, you have the development of highly innovative institutions... You have the adult learning that begins to take hold. Accreditation had to adapt. In the late '70s and early '80s, was the beginning of off-campus programs; although there had been some, they began to explode [in number]... and accreditation had to develop standards for off-campus programs.

Now you have this whole... explosion of what we'll call the non-traditional learners in the '0s. So accreditation had to deal with geographical expansion, external degree programs... every region has them in the late '70s early '80s. [A]ccreditation was no longer campus-based. It's no longer the 18-22 year olds. So... most of us developed standards for off-campus, external degree programs and the like. There was an explosion of ideas and innovation and accreditation had to define standards in judgment. There was a tremendous challenge in the late '70s and '80s, a backlash to the innovation, to the accreditation of these innovative movements.

At the time, if you were to look back historically at any of the regionals, accreditation standards didn't exist in the '60s and the '70s. There were these six broad statements... Does the institution have a clearly stated mission? Does the institution have admissions policies that consist with the mission? Does it have financial resources enabling them to support their mission and is it reasonably achieving their mission? And a couple of other questions. Very broad questions. You could drive a truck through them.

And it wasn't until the mid '70s, the late '70s, that the backlash to all this innovation from traditional institutions began to occur. ...[T]here was the Carnegie

study of higher education—I think that was in the '70s—a multi-volume, an amazing study of all the dimensions of higher ed. There was a Kellogg-funded study on the non-traditional and the adult learner that I recall, in the mid-70s that really talked about the need to address those learners.

I mean, public policy wasn't as prominent on a national scale, then, but there were these studies... that came out and talked about the need for all of higher education and accreditation to adapt along with, and innovate. Then the backlash hit....

[I]n 1981, we had... a set of formal standards, nine standards that weren't just these broad principles and so there was a shift from—or, if you will, an emergence of—mission-centered accreditation.... And it still is very heavily mission driven...but, you know, we really began to become much more articulate... [regarding] what were the standards that we review across institutions. I would say the development of standards was a major shift.

The major change in accreditation that occurred during the 1980s did not involve the relationship between the accreditors and the federal government; rather, it was the shifting emphasis toward learning outcomes. Dr. G. Jack Allen, Vice President of the Commission on Colleges of the Southern Association of Colleges and Schools (SACS), who was also interviewed for this dissertation, has stated:

I think the biggest trend has been in our particular regional association has been to look more at outcomes of education. This started probably in the early 1980s. And I think that it was because of the concern about the quality of students that were coming out of secondary school, those who were graduating from college.... [T]here

were all kinds of charges that they couldn't read and write, and do math, and this kind of thing, and I think that partially had us move to a further emphasis on the outcomes of education rather than just the structural requirements.

And I think there was much more emphasis. Particularly with us. I think we were probably the first of the regionals to really go into this area. In the mid 1980s. And to ask that in addition to these things that we always think are part of a collegiate education, like you have to have library books, you have to have qualified faculty, you have to have an appropriate curriculum... that somehow the institutions need to move to a more effective assessment of quality of the students who graduate.

... I would say that when we adopted our first standards that really spoke to student outcomes, asking institutions to directly assess those, develop goals and for programs, etc., that was in the mid-1980s. Probably 1985.

A report on accreditation that was published by the Council for Higher Education Accreditation in mid-2008 also identifies SACS as the first regional to begin actively pursuing a method by which to assess learning outcomes. Author Peter T. Ewell states that:

The so-called 'assessment movement' in U.S. higher education, aimed at gathering systematic evidence about student learning outcomes, began in the mid-1980s....

Among regional accreditors, the Southern Association was the first to act concretely by adopting an "Institutional Effectiveness" standard in 1984. This required institutions to establish goals and measure achievements in all of its area of operation,

but with a special focus on evidence of student academic achievement. This approach was shortly adopted by other institutional accreditors.<sup>189</sup>

The focus of the accreditation associations throughout the 1980s and into the 1990s, then, was primarily on the assessment of learning outcomes. Granted, there was a degree of tension between accreditors and the federal government, but this was largely a period during which both principals of the regionals were reasonably content with the work that the associations were doing. It was, in retrospect, the end of an era that had begun with the passage of the Veterans Readjustment Act in 1952 and that would end in the early 1990s with the Baruch College case and the 1992 Reauthorization of the Higher Education Act. For those forty years, accreditors had been able to accommodate both of their principals simultaneously. They had been highly respected, albeit not particularly well understood, by the general public and there had been relatively little pressure on them aside from the pressure to adapt to contextual changes, such as advances in technology and the growing diversity of postsecondary education.

Until the beginning of the 1990s, the regional accreditation associations enjoyed a degree of security in both of their principal-agent relationships that they may never fully recapture.

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<sup>189</sup> Peter T. Ewell, *U.S. Accreditation and the Future of Quality Assurance: A Tenth Anniversary Report from the Council for Higher Education Accreditation* (Washington, DC, Council for Higher Education Accreditation, 2008), 42-43.

### **III. *Baruch College v Middle States*: 1989 – 1991**

According to the multi-principals theory, as described by Mattli and Bütke, the decisions made by agents, in this case the regional accreditation commissions, will be determined by the relative tightness of their competing principal-agent relationships. The Baruch case poses a challenge to this hypothesis because the actions taken by the leaders of the Middle States Association of Colleges and Schools (Middle States) appear to have risked antagonizing both principals simultaneously. For that reason, thorough examination of this case may be useful in discovering the limitations of Mattli and Bütke's hypotheses and, perhaps, in suggesting new ones.

#### **The Facts of the Case**

In November 1989, the Middle States Association sent an accreditation team consisting of six vice-presidents or deans, two professors and a librarian to Baruch College. Baruch College had approximately 16,500 students at that time and was known primarily for its School of Business and Public Administration program. It was a school with an excellent reputation; Standard and Poor's had recently ranked Baruch College "fourth in the nation for the number of alumni who serve[d] as senior executives of major American corporations."<sup>190</sup>

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<sup>190</sup> Samuel Weiss, "Baruch School Losing Chief amid Unease," *New York Times*, April 5, 1990, Sec. B.

Just a few years earlier, in 1988, the Middle States Association's Commission on Higher Education (CHE) had held a series of meetings during which institutional representatives had discussed revisions to the commission's accrediting standards. One of the primary issues that had been discussed was diversity requirements. Then-Executive Director Robert Kirkwood recorded in his notes from that meeting that the participants of the meeting discussed including "a statement advocating diversity" to "the section on institutional integrity."<sup>191</sup>

The Commission on Higher Education released a document shortly thereafter, *Characteristics of Excellence in Higher Education Standards for Accreditation*, in which they announced that, in addition to the usual requirements for accreditation, it would now be mandatory that an institution "...have a governing board which includes a diverse membership broadly representative of the public interest and reflecting the student constituency...." Further, the document stated that "An important index of an institution's caliber is its admissions policy as evidenced in... the efforts it makes to achieve diversity in the student population...." As regards faculty, they stated that "[S]teps must... be taken to achieve appropriate diversity of race, ethnicity, gender, and age in faculty ranks...."<sup>192</sup> Clearly, then, Middle States was quite serious about its new diversity requirements.

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<sup>191</sup> Robert Kirkwood, Memorandum to [Middle States] Committee on Characteristics of Excellence in Higher Education, 19 March, 1988. Cited by Orleans, *Private Accreditation and Public Eligibility*, 521.

<sup>192</sup> *Characteristics of Excellence in Higher Education Standards for Accreditation*. Commission on Higher Education, Middle States Association of Colleges and Schools. Revised December 1988.

Several member institutions of Middle States would later claim that CHE had developed the diversity requirements without their support, but Harold Orlans has disputed this argument, observing that:

[T]he regional associations are associations of academic administrators. The suggestion of some critics that the standards of diversity were somehow foisted by staff of the Middle States Associations upon unknowing colleges is not sustained by the record. The standards were distributed to, discussed, endorsed, and adopted by college representatives with little dissent.”<sup>193</sup>

In any event, the chairman of the accreditation team sent to evaluate Baruch College, T.H. Bonaparte, determined that the college demonstrated insufficient diversity in its faculty. At that time, approximately 44 per cent of the Baruch’s students were black or Hispanic, but only 8 per cent of its professors and associate professors came from a similar ethnic background.<sup>194</sup> The Middle States accreditation team would later cite this as evidence of a lack of diversity, although Orlans and others have pointed out that the presentation of these statistics was misleading:

Such statistics are common at public urban colleges. Their low tuition fees attract many students from poor black and Hispanic families, but there are simply not enough qualified black and Hispanic candidates to fill vacant teaching posts in most departments. The annual number of PhDs awarded to blacks would fill one position on every third campus in the country... Still fewer PhDs are awarded to Hispanics.<sup>195</sup>

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<sup>193</sup> Orlans, *Private Accreditation and Public Eligibility*, 521.

<sup>194</sup> *Ibid.*, 522-523

<sup>195</sup> *Ibid.*

Nonetheless, Bonaparte complained of insufficient diversity at Baruch, citing conversations that he had had with two black professors.<sup>196</sup> One of the two professors was Dr. Donald H. Smith, “chairman of the college’s education department and former chairman of the college’s Black and Latino Faculty Association,” and the other professor, Dr. Arthur Lewin, was at that time the acting chairman of the Black and Latino Faculty Association.<sup>197</sup> A *New York Times* article released several months later quoted Dr. Smith as stating that “Baruch is presently a college that is completely controlled and dominated by an administration and a faculty primarily white. In fact, the administration of the college is almost exclusively white male.”<sup>198</sup>

Despite the concerns raised by Smith and Lewin, the initial report by the Middle States accreditation team did not indicate that Baruch College was in danger of losing its accreditation; in fact, it gave the business programs the highest grade possible and praised the School of Business and Public Administration, claiming that it was “one of the best... in the nation.”<sup>199</sup> The primary concern reflected in the team’s initial report was that Baruch College was focusing too much on the research aspects of the college at the expense of providing sufficient remedial courses for students in need of extra academic assistance. The accreditation team therefore recommended that “[R]esource allocation to meet students’ needs must certainly be considered as high a priority as resource

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<sup>196</sup> Ibid., 522

<sup>197</sup> Weiss, “Baruch School Losing Chief Amid Unease.”

<sup>198</sup> Ibid.

<sup>199</sup> Orlans, *Private Accreditation and Public Eligibility*, 523.

allocation for research.”<sup>200</sup> Perhaps an argument might have been made that the accreditation team was attempting to impose their own priorities on the college, but as the report seemed to be mostly positive, there was no need to argue the point. Indeed, in one passage the accreditation team actually praised the efforts that had already been made by Baruch College to foster an awareness of diversity on its campus, stating that “It is to the College’s credit that it goes to great lengths to educate and sensitize its citizens regarding the institution’s commitment to cultural pluralism and diversity....” The report finally concluded that “...the administration, in particular the President, displayed a sound knowledge of all aspects of the College, its problems and possible solutions to these problems; indeed, the visiting team uncovered no problem which was not already known to the administration and on which the administration had not already started to form a resolution.”<sup>201</sup>

Despite these generally positive findings, on March 14, 1990, a confidential letter was sent to President Segall of Baruch College by Dr. Sarah R. Blanshei, then chairwoman of the Middle States Commission on Higher Education, notifying him that Baruch College’s reaccreditation had been deferred. The primary reasons that were provided for the deferment were “lack of minority representation on the faculty and administration, and low student retention rates” as well as “concerns about the college’s lack of effectiveness in creating a positive teaching/learning environment for all students” and “the paucity of minority representation on the faculty and in the administration and

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<sup>200</sup> “Reports and Documents. The Progress of Affirmative Action: Accreditation and Diversity.” Pages 537-538. Cites: “Report to... Bernard M. Baruch College by An Evaluation Team [of]...the Middle States Associations...After...A Visit...On November 12-15, 1989.”

<sup>201</sup> Ibid.

the perhaps concomitant racial tensions that are present among all constituencies of the Baruch community.” Additionally, Dr. Segall was informed of “the [accreditation] team’s sense that the institution was fraught with racial tensions and that the institution should move to broaden its sensitivity to diverse students with many social needs.”<sup>202</sup> No further clarification was provided.

The Middle States Association’s decision to defer Baruch College’s accreditation was quickly brought to the public’s attention via a series of articles in *The New York Times*. President Segall would later report that the response to the articles was almost immediate: “[T]wo prospective donors cancelled scheduled meetings with the president; college officials received innumerable calls from anxious parents and feared applications would decline....”<sup>203</sup>

On April 4, 1990, Segall announced his decision to resign as of August 30, 1990, explaining in his official statement that he was doing so “voluntarily without pressure from any source or authority—except my family.”<sup>204</sup> Segall also drafted a plan of action and, in a letter postmarked April 25, 1990, promised the Executive Director of Middle States that minority candidates would be aggressively recruited for appointment as instructors. Further, minority instructors would not be required to have a PhD but would be enrolled by the college in a PhD program so that, when their doctoral studies were completed, they could then be appointed to the rank of Assistant Professor. Segall also

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<sup>202</sup> “Reports and Documents. The Progress of Affirmative Action: Accreditation and Diversity.” Page 539. Cites March 14, 1990 letter from Sarah R. Blanshei, Chair of the Commission on Higher Education, Middle States Association, Philadelphia to Dr. Joel Segall, Office of the President, Bernard M. Baruch College.

<sup>203</sup> Orlans, 1992, 524

<sup>204</sup> Samuel Weiss. “Baruch Chief Acknowledges Problem with Reaccreditation,” *New York Times*, April 18, 1990, Section B.

stated that, as requested by Middle States, he had “carefully review[ed] the list of suggestions delineated by the Black and Hispanic Faculty Caucus...” and he assured the accreditation commission that the college was already working on developing majors in Black and Hispanic Studies, ensuring that their library reflected “cultural diversity,” and removing “cultural bias” from their courses.<sup>205</sup>

On May 9, President Segall recommended the appointment of Dr. Samuel D. Johnson, the Dean of Students, as Vice President for Student Development. This appointment was quickly approved by the school as was the appointment of Dr. Jane Bond-Howard as Associate Dean of the School of Liberal Arts and Sciences. Dr. Johnson and Dr. Bond-Howard were both African-American.<sup>206</sup> These actions were all well-received by Middle States and Baruch College was reaccredited in early June 1990.<sup>207</sup> Months later, Segall would describe his own actions as “a cave-in to Middle States.”<sup>208</sup>

Although Baruch College had by this time been reaccredited, the controversy had only begun. On October 18, 1990, the *New York Times* reported the following:

Faculty members in Baruch’s School of Business and Public Administration are pursuing a grievance against the Middle States association before the Council on Post-Secondary Accreditation, a Washington group that oversees the nation’s major

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<sup>205</sup> “Reports and Documents. The Progress of Affirmative Action: Accreditation and Diversity.” Pages 542-543. Cites: Letter dated April 25, 1990 from Dr. Joel Segall, President of Baruch College, to Dr. Howard Simmons, Executive Director of Middle States Association.

<sup>206</sup> “Reports and Documents.” P. 545. Letter from Dr. Joel Segall, President of Baruch College, to Dr. Howard Simmons, Executive Director, Middle States Association. May 24, 1990.

<sup>207</sup> Samuel Weiss, “Baruch College is Reaccredited; Pledges Reforms.” *New York Times*, June 28, 1990, Section B.

<sup>208</sup> Joel Segall, “When Academic Quality is Beside the Point,” *Wall Street Journal*, 29 October, 1990.

accrediting organizations. The grievance claims the deferral of the college's reaccreditation was unjustified.<sup>209</sup>

Divisions within the higher education community quickly formed, with some applauding the actions taken by Middle States while others argued that social issues are not a basis for denying accreditation and expressed concern that this precedent could easily lead to quotas for hiring and admissions. As a result of this controversy, the National Advisory Committee on Accreditation and Institutional Eligibility (NACIQI), an advisory panel of the U.S. Department of Education that had recently been created to help with the evaluation of accreditation agencies for recognition status, recommended that the Secretary of Education delay the scheduled five-year extension of Middle States' recognition.<sup>210</sup> Education Secretary Lamar Alexander, concerned that the accreditation commission had overstepped its boundaries, concurred.

In a letter to Middle States dated April 11, 1991, Secretary Alexander expressed his discomfort with Middle States' recent decisions regarding Baruch College and also with a similar case that was occurring at Westminster Theological Seminary.<sup>211</sup> Middle States had demanded that Westminster include a woman on its governing board. Again, the issue was a lack of sufficient diversity. The leaders of the seminary had explained to the Middle States members repeatedly that their charter "required that the institution be governed by a board of trustees consisting only of ordained elders, who in traditional

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<sup>209</sup> Samuel Weiss, "Nobel Winner Salves a Bruised Branch." *New York Times*, October 19, 1990, Section B.

<sup>210</sup> Samuel Weiss, "Panel Questions a Basis for Accrediting Colleges." *New York Times*, November 22, 1990, Section A.

<sup>211</sup> Samuel Weiss, "Education Chief Challenges Rule on Campus Mix." *New York Times*, April 13, 1991.

Presbyterian belief must be men.” The seminary was being threatened with the loss of its accreditation over what was, ultimately, a religious principle.<sup>212</sup>

Secretary Alexander pointed out in his letter that it was the job of the Department of Education, not of the accreditation agencies, to enforce federal civil rights statutes. He further stated that the accrediting agency itself might be in violation of federal civil rights laws due to its “incorrect imposition of race- or gender-based admissions of hiring procedures.” Ultimately, in denying the two schools renewal of recognition, Middle States was “wielding federal power in a manner that threatened academic freedom and diversity *among* institutions.”<sup>213</sup>

The position of the Middle States Association was supported by both the President of the American Council on Education and the Executive Director of the Council on Postsecondary Education, who pointed out that Section 103 of the Department of Education Organizational Act (the “DEOA”) prohibited the Secretary of Education from placing any such restrictions on accreditation agencies. Thus, the question facing Secretary Alexander was two-fold: Did Middle States have the legal right to require that schools meet the association’s standards of diversity in order to be accredited and, if not, did the federal government have the legal right to intervene.

Secretary Alexander chose to delay Middle States’ reauthorization while he considered the issue. The Middle States leadership strongly objected to this decision,

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<sup>212</sup> Samuel Weiss, “Seminary Challenges Order to Appoint a Woman.” *New York Times*, May 30, 1991.

<sup>213</sup> Jeffrey C. Martin, “Recent Developments concerning Accrediting Agencies in Postsecondary Education,” *Law and Contemporary Problems* 57, no. 4, Private Accreditation in the Regulatory State (Autumn, 1994): 128. Cites: Decision of the Secretary of Education Remanding Petition for Renewal of Recognition of the Commission on Higher Education of the Middle States Association of Colleges and Schools (April 11, 1991).

noting that the Secretary lacked the authority to question their academic policies.<sup>214</sup> Ultimately, Secretary Alexander decided that, technically, the regional was correct in saying that he lacked that authority. He concluded that the accreditors were free to do as they wished because they were, after all, private entities and both Westminster and Baruch had chosen to subject themselves to Middle States' standards by pursuing accreditation status. That status was, technically speaking, strictly voluntary. He further noted, however, that in reality there was nothing voluntary about the process at all, precisely because the federal government had delegated its authority to these membership organizations and, as a result, their accreditation was necessary in order for institutions and their students to be eligible to receive federal funding. In a letter written to Professor Martin Trow, the Chairman of the National Advisory Committee on Accreditation and Institutional Eligibility, dated November 14, 1991, Secretary Alexander wrote:

[J]ust as I do not believe that the federal government should be lending its authority to help an accrediting association impose its definition of diversity on a college or university, I am equally sure that it is not a good idea for the Secretary of Education... to be defining... what the accrediting process should be. That should be for the association and its member schools—who voluntarily belong to the association—to decide. The problem is that, because most institutions don't want to risk losing federal financial aid... and because Department regulations have seemed to restrict competition among accrediting associations, the Federal government has helped to create a system that effectively removes from a dissenting school the option

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<sup>214</sup> Samuel Weiss, "Accrediting Group Defends Diversity," *New York Times*, August 7, 1991.

of saying “no” to an accrediting association that takes actions the school believes are inappropriate....<sup>215</sup>

Having found himself unable to regulate the accreditation association, however, Secretary Alexander then wrote that he was interested in considering alternatives to the existing system in which access to Federal financial aid was linked to accreditation, noting in particular that it might be desirable to establish a system that would bypass the regional accrediting bodies altogether. That letter was made public on November 16, 1991, and was subsequently described in a *New York Times* article. The article discussed the recent controversy regarding Baruch College but noted that Secretary Alexander had also cited “the high default rates on student loans at certain accredited institutions” as a reason to consider dismantling the current system.<sup>216</sup>

The staff of the Department of Education, meanwhile, released a report recommending that the Secretary extend Middle States’ authorization for one year, “rather than the customary five,” to allow for “further review” or the cultural diversity standard. The Middle States Association’s Commission on Higher Education responded by requesting that the final hearings be postponed.<sup>217</sup> They subsequently decided to amend their diversity standards, putting an end to the controversy.

A few months later, Secretary Alexander extended Middle States’ recognition from its one-year probationary status to the full five years. In his decision, Secretary

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<sup>215</sup> Letter from Secretary Lamar Alexander, United States Department of Education, to Professor Martin Trow, Chairman of the National Advisory Committee on Accreditation and Institutional Eligibility (November 14, 1991).

<sup>216</sup> Karen De Witt, “Education Chief Urges College Accrediting Change,” *New York Times*, November 16, 1991.

<sup>217</sup> Samuel Weiss, “Ruling is Delayed on Status of School-Accrediting Unit,” *New York Times*, November 19, 1991.

Alexander wrote that Middle States' membership solved the problem" by "clarifying that each school is free to define diversity for itself, and that the diversity standards are not mandatory conditions for accreditation."<sup>218</sup>

Baruch College and Westminster Theological Seminary regained their accreditation status and the numerous legal and ethical questions that had arisen from Middle States' actions remained largely unresolved. Certainly, one can understand the accreditors' decision to put the matter behind them rather than continue fighting for an extremely unpopular, albeit legally valid, position. Nonetheless, it is somewhat unfortunate, from a legal perspective, that Middle States acquiesced. Had they pursued their policy, the matter would have continued to draw attention to the disparity between accreditors' legal status as a privately run, voluntary membership organization and the authority that had been delegated to them by the federal government. As things turned out, however, the matter was simply put to rest and the question of whether or not accreditation could, or should, be used to coerce colleges and universities to change their policies would not be directly addressed again until late 2006, when Secretary of Education Margaret Spellings would attempt to use accreditation associations to dictate policy to their member institutions.

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<sup>218</sup> Karen De Witt, "Accrediting Agency Wins Renewed Federal Approval," *New York Times*, April 15, 1992.

## **Analysis**

The actions taken by the Middle States Commission of Higher Education in the Baruch case do not appear to provide much support for the multiple-principals theory proposed by Mattli and Bütte. If the theory were correct, the actions taken by Middle States would have been targeted at accommodating one, or both, of their principals. The evidence, however, seems to suggest that there were other significant determinants at work.

One challenge posed by the Baruch case is that neither of Middle States' principals appears to have been terribly pleased by the actions taken by CHE, with significant factions of both principals actively opposing them. The conclusion that Middle States' member institutions did not support the decision to defer Baruch's reaccreditation is supported by the claim that was later made by several of those institutions that they had never approved the diversity requirements, as cited above.

If the actions taken by Middle States were not directed at pleasing its member institutions, perhaps the goal was to accommodate the federal government, their other major principal. Again, however, the evidence does not seem to support this possibility. Clearly, the Secretary of Education was not pleased by the decision of CHE to defer accreditation based on diversity standards. Any uncertainty regarding Secretary Alexander's reaction surely would have been resolved after he wrote to the leadership of Middle States, suggesting that the accrediting agency might have violated federal civil

rights laws by imposing race- and/or gender-based standards on the schools' hiring procedures.

What follows, then, is a list of alternative explanations for the actions taken by the Middle States Association:

### ***Individual Self-Interest***

One possible limitation of the multiple-principals theory as it has been articulated by Mattli and Büthe is that it overlooks the individual scale, focusing instead on the organizational scale. It is undoubtedly the case, however, that individuals within organizations sometimes have their own personal goals that they are pursuing. In those cases in which individuals with a strong personal agenda, whether it is selfish or ideological, are in a decision-making position within an organization, that organization may be used to further the individual's goals. In such cases, analysis on the organizational scale may be of limited use.

An example of this is the conflict of interests held by the chairman of the accreditation team that was sent to evaluate Baruch College, T.H. Bonaparte. In a letter to Dr. Howard Simmons, Executive Director of the Commission on Higher Education of the Middle States Association, it was noted by a faculty member of Baruch College that approximately two months after Bonaparte's evaluation team visited the college and determined that its accreditation should not be renewed because of the need for greater diversity, Bonaparte applied for a position as provost of Baruch College. The author of

the letter, Dr. James F. Guyot, wrote that “This situation constitutes, in my understanding, a clear conflict of interest, and one contrary to the Commission's ethics statement which specifies that within one year of serving on an evaluation team no member shall serve as a consultant or be considered for permanent employment with the institution evaluated.”<sup>219</sup> Guyot was, if anything, generous in his recounting of the events described above; he did not choose to call attention to the fact that Bonaparte had essentially told the school that they must hire more ethnic minorities for positions precisely like the one for which he was now applying and that—coincidentally?—Bonaparte himself was an ethnic minority.<sup>220</sup>

Simmons wrote back, acknowledging that Bonaparte had applied for the position at Baruch and that that had been a violation of Middle States’ policy, but denying that this had been a factor in the decision to defer Baruch College’s accreditation. The letter also stated that Bonaparte, who now “admitted that he misinterpreted the Commission's policy,” had withdrawn his application. Simmons concluded the letter by stating that “Even though we regret that the circumstances were not different, we can assure you that the integrity of the Commission's decision-making processes remain intact.”<sup>221</sup>

Simmons’ assurances notwithstanding, there would appear to be reasonable cause to question the degree of integrity exercised by Bonaparte. That said, the evidence does not suggest that Bonaparte’s personal motives were the sole factor in the decisions made by the Middle States Association. For one, Bonaparte was only one of nine people on the

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<sup>219</sup> Letter to Dr. Howard Simmons, Executive Director, Commission on Higher Education of the Middle States Association, from Dr. James F. Guyot. April 3, 1990.

<sup>220</sup> Harold Orlans, “Accreditation in Higher Education: The Issue of ‘Diversity,’” *Minerva* 30, (1992): 524.

<sup>221</sup> Letter to Dr. James F. Guyot from Dr. Howard Simmons. April 19, 1990. p. 540.

team that was sent to evaluate Baruch College. Although he was the Chairman of the group, it seems unlikely that the other eight members would have deferred to his judgment if they had not found some merit in the case that he presented. Further, the leadership of Middle States continued to support Bonaparte's decision in the face of tremendous resistance. Certainly one could attribute their initial defense of Bonaparte to organizational face-saving or to the personal loyalty they may have felt for their colleague, but if they truly believed that Bonaparte's judgment was incorrect, it is difficult to account for their decision to stick by him once the situation escalated to the point that Secretary Alexander was threatening to dismantle the relationship between the Department of Education and the regional accreditation commissions.

Finally, even if Bonaparte's personal agenda was the primary determinant of the commission's decision to defer Baruch College's accreditation, it was an isolated incident and so provides no insight into their decision in the very similar case of Westminster Theological Seminary. For that reason, even though a case could certainly be made that individual self-interest was a factor in the decisions made by the Middle States Association in the Baruch case, it provides only a partial explanation.

### ***Miscommunication between Agent and Principal***

Although the actions taken by the Middle States Association angered the Secretary of Education, there is some evidence to suggest that Middle States genuinely believed at the time that they were fulfilling a function that had been set for them by the

federal government and that, therefore, their actions would please their principal.

Following the decision of Secretary Alexander to defer their recognition, the trustees of the Middle States Association were quoted in the *New York Times* as stating that Secretary Alexander had “apparently changed the rules and policies” governing the Department of Education’s “attitude fostering equity, diversity and ethnicity in U.S. colleges and universities.”<sup>222</sup>

The article then elaborated on the reaction of the trustees of the Middle States Association to Secretary Alexander’s decision:

The trustees [of the Middle States Association] also argued Mr. Alexander was "apparently" (sic) backing away from policies by his predecessor, Lauro F. Cavazos, to foster cultural diversity in American colleges and universities. They cited a letter by Mr. Cavazos dated Sept. 15, 1990, to every college president in the country in which the former Secretary wrote: "President Bush and I are deeply committed (sic) to building a more tolerant, pluralistic America."

Speaking yesterday in a telephone interview for the association, Leon M. Goldstein, chairman of the Middle States Association's Commission on Higher Education, said Mr. Alexander's action regarding the association "appears to be a step backward and appears inconsistent with what Mr. Cavazos said the president wanted."<sup>223</sup>

A parallel explanation would be that the leadership of Middle States genuinely believed that it was fulfilling the wishes of its members. It is possible that its members

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<sup>222</sup> Samuel Weiss, “Education Chief Assailed on Ratings.” *New York Times*, May 3, 1991.

<sup>223</sup> Ibid.

did, in fact, initially support the development of the diversity standards, as Orleans has argued, and that they simply chose to deny their support afterwards to avoid being pulled into the controversy. One piece of evidence that supports the Middle States Association's claim that their members had supported the new standards is a quote by the president of Kingsborough Community College that was printed in the *New York Times* in the midst of the controversy. The president was quoted as stating that "the cultural diversity criterion 'is not something that has simply been imposed by the association,' but is 'a standard that has been fully discussed and supported' by the approximately 600 colleges and universities accredited by the commission."<sup>224</sup> Even if the members did initially support the new standards, however, surely their lack of enthusiasm for the rather strict and uncompromising approach toward enforcement that Middle States was taking could have been easily predicted.

Ultimately, the evidence suggests that there may have been a genuine misunderstanding of what Middle States' two principal wanted but it is not clear, if this was the case, why Middle States chose to enforce the policy so strictly in the two cases cited above or why they persisted in their actions long after it had become apparent that the Department of Education, in particular, was upset with the actions they had taken. This explanation, then, appears to have some validity and may have been a factor in the decisions that were made, but it only as a complementary factor and not as a primary driver of their actions.

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<sup>224</sup> Weiss, "Education Chief Challenges Rule on Campus Mix."

## *Ideology*

One possibility that should not be overlooked is that the accreditation team sent by Middle States and the Middle States leadership based their decisions on a sincere belief that Baruch College had a legitimate problem and that it was in violation of its own anti-discrimination policies. In other words, the actions taken by the Middle States leadership may not have been based on their principal-agent relationships but, rather, may have simply been a case of an organization attempting to fulfill its function.

Here, again, the distinction between a profession and an industry is significant. Firms within an industry are primarily driven by the profit-motive. Individuals within firms may have ideological goals that they are attempting to pursue and the firm itself may attempt to be “socially responsible” in addition to being profitable, but the primary function of a firm is to maximize profit.

Professions, however, are different. As noted in Chapter Three, “professionals are distinctive because they bring a special attitude of commitment and concern to their work. . . .”<sup>225</sup> Those working in professions are expected to place a high priority on serving the public interest.

Evidence that the Middle States Commission was acting for ideological reasons can be found in the testimony of Patricia McGuire, President of Trinity College and a member of the Middle States Commission, before the National Advisory Committee on Accreditation and Institutional Eligibility on November 13, 1990. McGuire told the

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<sup>225</sup> Freidson, “Professional Control,” 2.

committee that the diversity standards that the Middle States Commission was applying to Baruch College had been set by all of the colleges together. She further stated that:

[T]he accrediting process should reflect the values of higher education that all of us are aspiring to... it's not just an academic policy or an accrediting policy--it is the public policy of this nation since 1954 to try to eliminate segregation in places of public accommodation... Middle States' standard on diversity is responsive to the public policy of this nation...

[I]f you come on to any one of our campuses, all of us are at fault. All of us have segregated campuses in one way or another... our students are living segregated lives. Most of our boards are not diversified... the membership of the Middle States Association... felt that it was high time for us to put into practice the words that we were saying.<sup>226</sup>

Even if one suspected McGuire of subterfuge, it is noteworthy that Joel Segall, the President of Baruch College who lost his job as a result of the Middle States evaluation, also seemed to attribute their actions to ideology. In a meeting of the National Advisory Committee on Accreditation and Institutional Eligibility on November 22, 1991, Segall made the following statement:

Finally, I was reduced to asking the executive director [of the Middle States Commission] what it was that he wanted. And his response--social justice. Well, that's fine except that social justice means different things to different people. To

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<sup>226</sup> Patricia McGuire, President of Trinity College and a member of the Middle States Commission, before the Department of Education's National Advisory Committee on Accreditation and Institutional Eligibility on November 13, 1990, 556.

Middle States, it probably means equal outcomes as in graduation rates. And to many other people, it means outcomes based on merit and performance....

[T]he way Middle States treats accreditation is less a matter of careful analysis of academic worth than... zealotry in pursuit of what is essentially a political agenda and social goal.<sup>227</sup>

Segall's testimony is particularly significant because he clearly was not trying to defend the decisions that had been made by the Middle States Commission. He had no discernable incentive to lie to the committee about the motives of the Middle States leadership and, because he had been one of the primary participants in the conflict, he was in an excellent position from which to determine the reasons that lay behind the commission's actions.

Dr. Samuel T. Logan, then president of Westminster Theological Seminary, made a very similar argument in an interview<sup>228</sup> conducted in December of 1991. The following excerpts from the interview are highly critical of the decisions made by the Middle States Commission, but it is clear that he does not attribute their actions to a cynical effort to maintain power; rather, he appears to believe that they were sincere, albeit misguided:

**Iannone:** To return to Westminster's relationship with Middle States, everything seemed to be fine until the 1980s, when the problems began.

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<sup>227</sup> Joel Segall, former President of Baruch College, speaking before the National Advisory Committee on Accreditation and Institutional Eligibility on November 22, 1991

<sup>228</sup> Samuel T. Logan and Carol Iannone, "God, Man, and Middle States," *Academic Questions* 4, no. 4, December 1991.

**Logan:** I'm not sure exactly when the problems began... but sometime in the early to mid-1980s two of the six regional accrediting associations--Middle States and the Western Association of Colleges and Schools--began to argue that accreditation should focus on matters of social justice as they defined them.

**Iannone:** How explicit were they?

**Logan:** Early on not very, but they became increasingly more so. It started, in my judgment, in a very legitimate way, one that I would affirm. If, after all, you are concerned about educational quality, then campus environment/s a factor.

...The difficulty is that as you become more and more specific in defining what an acceptable environment is, you go beyond the area legitimately within the purview of an accrediting association. And that is what has happened.

Middle States and Western have now come to the point of specifying in detail things that must be present in order for a campus environment to be acceptable; and that is dangerous because different religious or even political traditions have distinct standards for making such judgments. ...[W]hat has happened... is that the two regional associations have created some arbitrary guidelines which, in their judgment, automatically and universally measure the acceptability of the learning environment.

**Iannone:** And they are deriving these guidelines from the contemporary *Zeitgeist*?

**Logan:** That's the best guess I've got.

Ideology can be a significant determinant of the actions taken by an individual or by an organization; this is particularly true within the context of a profession rather than an industry. Mattli and Bütte focus almost exclusively on the tightness of principal-agent relationships and so overlook the potential importance of ideology as a determinant of the actions taken by an agent. This is a serious limitation of their theory.

### *Second Tier Principals*

Mattli and Bütte discuss the multiple principals problem that emerges when government authority is delegated to a private agent, stating that "...[T]he key difference between delegation to a public agent and delegation to a private one is that in the latter case a multiple-principals problem emerges that is qualitatively different from the one usually considered in the literature."<sup>229</sup> The implication, which is consistent throughout their article, is that the agent is then constantly trying to choose between two, clearly defined principals.

In practice, however, there may be several principals. A principal can be any stakeholder that has delegated some form of power to an agent and who can, therefore, take that power away if dissatisfied with its actions. Some principals delegate their power directly to the agent while others, such as the voting public, could be considered second-tier principals. Generally speaking, second-tier principals are a latent group. However, if

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<sup>229</sup> Mattli and Bütte, "Accountability in Accounting?" 399.

they are provoked into action, second-tier principals may exercise strong influence over the agent's first-tier principals, forcing them to take action against the agent.

In the two cases described above, there were a variety of second-tier principals, including:

- The Presidents of Middle States' member institutions
- The Trustees of Middle States' member institutions
- The Students of Middle States' member institutions
- The Parents of Students of Middle States' member institutions
- The Alumni of Middle States' member institutions
- Congress
- The National Advisory Committee on Accreditation and Institutional Eligibility
- The Department of Education
- The Voting Public

Some second-tier principals are generally latent, such as the voting public, but might, if sufficiently provoked, organize and use their influence on first-tier principals. Therefore, even if an agent is primarily concerned with only its first-tier principals, the potential involvement of these latent principals may influence its decisions. In cases such as those described by Mattli and Büthe, in which government authority has been delegated to a private agent, the voting public will always act a second-tier principal, whether active or latent.

### ***Internal Divisions***

As noted previously, the principal-agent theory was originally developed to describe behavior occurring at the individual level rather than the organizational. At the organizational level, complete homogeneity of preferences and determinants is extremely unlikely. In the case discussed in the following section, Congress was ultimately used to block attempts by the Department of Education to regulate higher education via accreditors. Both Congress and the Department of Education belong to a single principal: the federal government. Further, an agent may choose to ally itself with one political party over another. This may occur if the agent shares a general ideology with one of the political parties, but an alliance may also occur for purely pragmatic reasons, as when the Republican's "Contract with America" proved useful to the higher education community in pushing back legislation that had been passed in the 1992 Reauthorization of the Higher Education Act, discussed below.

Although it is sometimes useful to simplify and to generalize groups, it is important to recall Frey's observation:

Collectivities, often called "groups," have generally been distinguished along two main dimensions: shared characteristics (interests, attitudes, resources, social background factors, stratificational positions, etc.) and organization or behavioral cohesion (acting in concert). The initial problem has been that of deciding upon the analytic roles to be given to these two types of features. A common confusion has been to assume that the first implies the second. Thus, for example, women, students, farmers, the rich or poor, and intellectuals have often been assumed to be cohesive, unitary political actors because they have a shared characteristic.

Shared characteristics do not necessarily imply behavioral coordination; potentials and probabilities at best are suggested and must be specifically explored to justify the assertion of a true group actor.<sup>230</sup>

The existence of internal divisions within principals and agents poses a serious challenge to Mattli and Büthe's application of principal-agent theory. This issue will be further discussed in Chapter six.

### *Viability of Authority*

Finally, the Baruch College and Westminster Theological Seminary cases demonstrate that the tightness of competing principal-agent relationships may depend on factors other than those posited by Mattli and Büthe. Earlier, it was noted that the decision that was finally made by the Middle States Commission, to reassess their diversity standards and to reaccredit the two schools, immediately followed two pivotal events: 1) The publication of a letter written by Secretary Alexander to Martin Trow, expressing an interest in exploring alternatives to the Federal government's use of the regional accrediting bodies and; 2) The recommendation of the Department of Education's staff that the Secretary extend Middle States' authorization for one year, "rather than the customary five," to allow for "further review" of the cultural diversity standard.<sup>231</sup>

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<sup>230</sup> Frey, "The Problem of Actor Designation," 142.

<sup>231</sup> Weiss, "Ruling is Delayed on Status of School-Accrediting Unit."

The Department of Education does not, however, provide regional accreditation commissions with financial assistance or with access to specialized expertise. It does, however, delegate its authority, which is a form of power, to the regionals through its designation of those accreditation commissions as the gate-keepers of federal funds. These two cases, then, are examples of an agent responding to the tightness of one of its principal-agent relationships, but that tightness was not related to financial viability or operational viability, as defined by Mattli and Büthe. Rather, there was an element of tightness that will be referred to here as *viability of authority*.

*Viability of authority* is used here as a broadly-defined term that refers to the power, whether explicit or implicit, to which an agent has access as a result of the delegation of authority from its principal. In the case of accreditation, schools must be accredited by one of the commissions in order to receive federal funding. The delegation of authority from the federal government to the regional accreditation commissions clearly bestows tremendous power upon the commissions.

The decisions made by the leadership of the Middle States Commission in the Baruch case pose several challenges to the multiple-principals theory described by Mattli and Büthe. This dissertation will return to these issues in the following chapter, where they will be used as part of a larger analysis of the applicability of the multiple-principals theory to the accreditation of higher education in the United States.

#### IV. The Great Divide: 1990s - 2007

Tensions between the federal government and the regional accreditation commissions escalated in the early 1990s, as Congress considered the renewal of the Higher Education Act. One of the primary issues being addressed by the 1992 HEA Amendments was the high default rates on government loans; “by FY91, Stafford loan defaults had risen to an estimated \$3.6 billion a year, more than half of the annual program costs and an increase of nearly \$2.5 billion since 1986.”<sup>232</sup> These high default rates, combined with a \$350 billion dollar budget deficit, led Congress to seriously reconsider the structure of student loans and grants.<sup>233</sup> The 1992 Reauthorization of the Higher Education Act mandated the creation of State Postsecondary Review Entities (SPREs), which were intended to monitor and report on schools that had unusually high default rates. The higher education community resisted strongly, concerned that this was only the first step of a larger shift toward increased federal government regulation.<sup>234</sup> Judith Eaton, president of the Council for Higher Education Accreditation (CHEA), later stated that, “The 1992 reauthorization of HEA represented one of the most successful efforts to date on the part of the federal government to influence higher education through its recognition-based controls on accreditation.”<sup>235</sup>

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<sup>232</sup> Susan B. Hannah, “The Higher Education Act of 1992.”

<sup>233</sup> Prisco, “Federal Policies and Higher Education in the United States,” 6.

<sup>234</sup> Robert Glidden, “Accreditation at a Crossroads,” Educational Record, Fall 1996. Published by American Council on Education (Special Annual Meeting Issue).

<http://www.chea.org/Research/crossroads.cfm>

<sup>235</sup> Judith Eaton, “Is Accreditation Accountable? The Continuing Conversation between Accreditation and the Federal Government,” CHEA Monograph Series 2003, no. 1. Council for Higher Education Accreditation. <http://www.cta.ca.gov/educator-prep/review/WG-2004-8-17/Purpose-8.pdf>

The legislation attempted to force accrediting agencies to monitor their members' compliance with federal student-aid rules. Regional accreditors felt that this would conflict with their role as peers who assist institutions in self-improvement and planning; further, there was some question of whether or not they had the necessary resources to perform the new functions that Congress had mandated. That point was made rather succinctly by Courts Oulahan, a lawyer representing the Middle States Association of Colleges and Schools, who was quoted in the *The Chronicle* as stating, "We don't have the facilities or the know-how to do what the Education Department does.... We're not an investigative agency. We're an educational agency. Are we going to have to hire a whole troop of auditors?"<sup>236</sup>

However, condemnation of the legislation was not unanimous. Kenneth Perrin, then-president of the Council on Postsecondary Accreditation (COPA), was quoted in the *Chronicle of Higher Education* as stating that he was "extremely pleased" with the bill. "We are going to have to do business slightly differently in the future, but that's O.K."<sup>237</sup> Perrin noted that the final bill was far superior to earlier versions, some of which had proposed that the accreditation associations be completely excluded from the student aid system. Leaders of the regionals were furious with Perrin for his apparent complacency and it was only a few months after his statement that COPA, having failed to unite its members during a time of crisis, voted to dissolve itself.<sup>238</sup>

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<sup>236</sup> "Reauthorization Act Says Accreditors Must Monitor Campuses' Compliance with Rules on Student Aid," *Chronicle of Higher Education*, August 5, 1992.

<sup>237</sup> Ibid.

<sup>238</sup> Ralph A. Wolff, "The Challenges Facing Accreditation," *Chronicle of Higher Education*, June 9, 1993.

The conflict between accreditors and the federal government did not end with the passage of the 1992 Reauthorization of the Higher Education Act; there was still the question of how, precisely, the accreditors were expected to implement their new orders. An early draft of a proposal from the Education Department, released in August, 1993, provided very specific instructions regarding how the accreditors should evaluate the institutions, leading to the accusation by Stephen S. Weiner, head of the college division of the Western Association of Schools and Colleges, that the federal government was “micro-managing” accreditation.<sup>239</sup>

The draft mandated that the accreditors engage in unannounced visits to schools and it provided very specific criteria for evaluation. Accreditors were expected to “look at the length of programs and their cost in relation to the subject taught” and to “create standards to determine minimum and maximum lengths for certain vocational-education programs and their appropriate cost.”<sup>240</sup>

The regionals argued that the federal government was attempting to transform them into unpaid regulatory agencies. James T. Rogers, then head of the college division of the Southern Association of Colleges and Schools, sent a highly critical memorandum to the Education Department, warning that:

If final regulations follow the pattern in this latest draft, the Department of Education will have co-opted, in very profound ways, members of the private, voluntary, accrediting community to serve as enforcement agencies for the department... This

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<sup>239</sup> Courtney Leatherman, “Anger over Accrediting Regulations,” *Chronicle of Higher Education*, August 4, 1993.

<sup>240</sup> *Ibid.*

is an extremely disturbing abdication of the department's responsibility to police its own operation.<sup>241</sup>

In January, 1994, several leaders of the higher-education associations, including the heads of the regionals, gathered in Tucson, Arizona to discuss their options. It was decided that the best way to counter the efforts of the Education Department would be to accept the need for change but to assume a more proactive stance in the design and implementation of reforms. The regionals ultimately agreed on several principles, including a need to align their standards with one another in order to achieve greater consistency. They also agreed to focus more strongly on student learning.<sup>242</sup>

An article in the *Chronicle of Higher Education*, dated February 9, 1994, reflected the concern, held by many of the regionals' member institutions at that time, that the commissions were on the defense. The writer of the article, Courtney Leatherman, portrayed the Tucson meeting as a desperate attempt by the regional accreditation agencies to ensure their survival:

Realizing that their role in regulating higher education is on the line, college accreditors plan to make dramatic changes in the way they do business... Their desperation stems from a fear that accreditors are becoming "lackeys" of the federal government, which has begun dictating the way the agencies examine colleges.<sup>243</sup>

The depiction was largely unfair; several of the regionals had, in fact, begun taking steps toward a stronger emphasis on student learning and clearer standards of

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<sup>241</sup> Ibid.

<sup>242</sup> Courtney Leatherman, "Accreditors Fight Back," *Chronicle of Higher Education*, February 9, 1994. <http://chronicle.com/che-data/articles.dir/articles-40.dir/issue-23.dir/23a02101.htm>

<sup>243</sup> Ibid.

accreditation several years before the federal government had started pressuring them to do so. The Western Association had commissioned and released a report one month before the Tucson meeting, emphasizing that their accreditors must focus on creating a “culture of evidence” rather than relying on traditional self-studies. The North Central Association had also recently revised its handbook, developing a new emphasis on “measuring the quality of teaching and learning.” Finally, the Southern Association had announced in their previous annual report that accreditors needed “to place greater emphasis on student achievement.” The annual report had also called for public disclosure of accrediting decisions.<sup>244</sup>

Ultimately, Congress was persuaded to greatly reduce the requirements that had been placed upon accreditors by the 1992 Reauthorization of the Higher Education Act. Legislation passed in May, 1994, also limited the authority of the State Postsecondary Review Entities (SPREs) to review colleges. These changes were a response to criticisms by hundreds of college presidents who felt that, by dictating standards to accreditors, the federal government was infringing on the independence of colleges.<sup>245</sup> A few years later, the SPREs were completely dismantled by an incoming Republican Congress that was eager to limit the expansion of the federal government.

An article published in the *Chronicle of Higher Education* on Jan 6, 1993, “How Aggressive Should Accrediting Agencies Be?” is indicative of the mounting criticism

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<sup>244</sup> Ibid.

<sup>245</sup> Scott Jaschik, “A Modest Retreat on Accrediting,” *Chronicle of Higher Education*, May 4, 1994. <http://chronicle.com/che-data/articles.dir/articles-40.dir/issue-35.dir/35a03101.htm>

faced by the regional accreditation commissions throughout the 1990s for their alleged failure to fulfill their gate-keeping role. The article presented the results of a recent study, conducted by the *Chronicle*, that had found that “47 colleges -- just 1.6 per cent of those accredited by the six regional groups -- were affected by public sanctions in 1991 and 1992.”<sup>246</sup> The article further noted that, of those 47 colleges, at least half of them were sanctioned for financial problems and not because of questions of academic quality.

The article indicated that college officials were also dissatisfied with the performance of the regionals, stating that, “[S]ome college officials believe that if nothing else, the small number of sanctioned colleges shows that accreditors are too lenient.”<sup>247</sup> Numerous other negative assessments of the regionals were presented, including the comment that, “To some critics, accreditors are “bean counters” who look to easy methods of evaluating a college -- by counting dollars and books.”<sup>248</sup>

Regional accreditors won a major victory, however, with the 1998 Reauthorization of the Higher Education Act. As noted above, the new legislation repealed SPRE before it had truly begun. Further, the new, detailed standards that had been imposed upon accreditation organizations in the 1992 Reauthorization were largely undone by the 1998 Reauthorization. A letter from the Vice President of CHEA, Gregory Fusco, to Judith Eaton dated October 7, 1998, announced that federal requirements on accreditation commissions would be “more flexible and less administrative” as a result of

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<sup>246</sup> Courtney Leatherman, “How Aggressive Should Accrediting Agencies Be?” *Chronicle of Higher Education*. Jan 6, 1993.

<sup>247</sup> Ibid.

<sup>248</sup> Ibid.

these changes. “Institutions and site teams,” he proclaimed, “can restore greater attention to educational quality and program improvements.”<sup>249</sup>

Fusco concluded on the highly optimistic note that, “The higher education community has come a long way in re-establishing the confidence of the Congress in the value of quality assurance through voluntary accreditation. HEA 98 demonstrates that we have turned the corner.”<sup>250</sup> Unfortunately for Fusco, CHEA, and all of the regional accreditation commissions, their success with Congress did not extend to the Executive Branch.

U.S. Secretary of Education Margaret Spellings used the occasion of the Reauthorization of the Higher Education Act to convene a National Commission on the Cost of Higher Education. The commission ultimately produced a report that surprised no one with its negative findings. The report, *Straight Talk about College Costs and Prices*, was dismissed by some members of Congress as being hyperbolic, but it helped to establish a sense of growing crisis regarding higher education.<sup>251</sup> Throughout the next several years, the rising costs of higher education would be cited repeatedly as evidence that colleges and universities were reckless in their spending and that the federal government needed to step in and take hold of the situation.<sup>252</sup>

Then, on September 19, 2005, Spellings announced the formation of the Commission on the Future of Higher Education. “The Commission was charged with completing a report with actionable recommendations focusing on four areas of higher

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<sup>249</sup> Gregory Fusco, “HEA 98 – Summary of Accreditation Provisions.” October 7, 1998. Posted on CHEA web-site. [http://www.chea.org/Government/HEA/98\\_10Summary.cfm](http://www.chea.org/Government/HEA/98_10Summary.cfm)

<sup>250</sup> Ibid.

<sup>251</sup> Prisco, “Federal Policies and Higher Education in the United States,” 8.

<sup>252</sup> Alexander, “The Changing Face of Accountability,” 418.

education: access, affordability, accountability and quality.”<sup>253</sup> The result of the Spellings commission’s report was extremely critical of accreditors, as had been generally expected. In fact, the original language was so harsh that the writers of the report were asked, and eventually persuaded, to go back and rewrite certain phrases more diplomatically.<sup>254</sup> The panel’s final report derided the current accreditation system “as having ‘significant shortcomings,’ including stifling innovation, paying short shrift to student outcomes, and being secretive. And that was after criticism from earlier drafts, including a proposal to completely overhaul the system, had been softened.”<sup>255</sup>

Among the most controversial of the commission’s recommendations were the proposed requirements that public institutions of higher education be required to measure their students’ learning through the use of standardized tests and that colleges be directed to “make aggregate summary results of all postsecondary learning measures ... publicly available in a consumer-friendly form.”<sup>256</sup>

The next action taken against the accreditation agencies occurred on December 5 of 2006 when, in an unprecedented move, NACIQI refused to extend recognition of the American Academy for Liberal Education (AALE), a rather small agency that accredits some liberal arts colleges and universities. “The panel took the harsh step of essentially recommending a freeze on the AALE’s ability to accredit new institutions until its

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<sup>253</sup> “Commission on the Future of Higher Education.” *The National Council of Teachers of English*.  
<http://www.ncte.org/about/issues/featured/124395.htm>

<sup>254</sup> Doug Lederman, “A Stinging First Draft.” *Inside Higher Ed*. June 27, 2006.  
<http://www.insidehighered.com/news/2006/06/27/commission>

<sup>255</sup> Doug Lederman, “Regulatory Activism?” *Inside Higher Ed*. August 21, 2006.  
<http://insidehighered.com/news/2006/08/21/regs>

<sup>256</sup> Lederman. “A Stinging First Draft.”

petition for renewal is revisited at the next meeting of the National Advisory Committee on Institutional Quality and Integrity, in June.”<sup>257</sup>

This action was quite unexpected, particularly because the AALE had been assured beforehand by the Department of Education (DOE) staff that there were no major problems and that “the group was in compliance in regards to assessing student outcomes.”<sup>258</sup> The AALE was not given any indication that there might be a problem until a week before they were scheduled to stand before the committee. Additionally, only a day before the AALE was refused recognition, NACIQI had granted recognition to a regional accrediting commission, the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC), which had been no different from the AALE in terms of its compliance with federal guidelines.

It quickly became apparent that Secretary Spellings and the members of NACIQI, lacking the authority to impose changes directly upon colleges and universities, were using their power over accreditors to force those changes through the accreditation process.<sup>259</sup> In particular, Secretary Spellings and NACIQI wanted to “require accreditors to establish standards on what students should learn and then measure the extent to which individual colleges meet those standards” and to “tell colleges they could no longer refuse to accept credits earned at another institution solely because the sending institution did not have regional accreditation.”<sup>260</sup>

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<sup>257</sup> Elizabeth Redden. “The Heat is Turned Up.”

<sup>258</sup> Ibid.

<sup>259</sup> Doug Lederman, “Another Front on Accreditation” *Inside Higher Ed*, January 17, 2007.

<sup>260</sup> Burton Bollag, “Education Department and Accreditors Get to the Heart of Their Differences at Rule-Making Meeting,” *Chronicle of Higher Education*, March 27, 2000.

<http://chronicle.com/temp/email2.php?id=jXBMcRTX4NX8nDwwWTYmpwDr9fkzfK8>

Their attempt at using the accreditation system to impose new standards on colleges and universities was in many ways reminiscent of the 1991 Middle States controversy. In both cases, an attempt was made to use the private authority held by accreditation agencies to impose new, highly controversial criteria upon higher education institutions. In both cases, too, it was unclear under which circumstances the federal government was permitted and/or expected to refuse recognition of accreditation agencies. The primary difference between the two cases, of course, was that in the Middle States case it had been the accreditation commission itself that had applied its power, delegated to it by the federal government, to impose criteria. In the Spellings case, however, it was an agency of the federal government that was attempting to use the power delegated to accreditation agencies as a means of circumventing Congress.

Secretary Spellings' strategy was clever, but advocates of higher education and the Council for Higher Education Accreditation (CHEA) were able to draw enough attention to the conflict to enlist the support of several U.S. senators. Congress pushed back and, on July 24, 2007, it appeared that Secretary Spellings and her allies would be thwarted, as the U.S. Senate voted unanimously to approve S. 1642. This version of the Higher Education Act (HEA) would have left it to the individual institutions to develop their own criteria for measuring student achievement.<sup>261</sup>

Until this point, the accreditation commissions and their membership organizations had appeared to be on the same side of this conflict; neither group wanted the Department of Education to impose standards on them. A barely noticed rift had

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<sup>261</sup> "Higher Education Reauthorization: A Senate Bill Introduced and Passed," CHEA Update, No. 39 (July 25, 2007).

formed between the two groups, however, and on November 14, 2007, the apparent victory of the higher education community against Secretary Spellings began to unravel. An article posted by *Inside Higher Education* on the following day reported the following:

Late Wednesday evening after the hearing room had partially cleared out... Representative Robert Andrews (D-N.J.)—acting at the urging of regional and national accreditors, who reportedly felt that the bill’s language threatened to undermine their authority—introduced an amendment to strip the language that empowered each college to define student learning for itself... With virtually no discussion, and a promise to bring forward replacement language in the coming days, Miller and the committee’s other leaders adopted Andrews’s amendment without dissent.

College leaders, who had fought the Education Department’s push, said they were blindsided by the Andrews amendment. They were furious, saying the shift would open the door to federal officials renewing their effort to... force colleges to measure and report more quantitative data about their success in educating students.<sup>262</sup>

The article quoted Becky Timmons, assistant vice president for government relations at the American Council on Education, as stating, “I’m shocked at the stupidity of the accreditors in opening up an issue that had been settled in a positive way.”<sup>263</sup>

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<sup>262</sup> Doug Lederman, “Warning on Tuition, Shift on Accreditation,” *Inside Higher Ed*, November 15, 2007. <http://insidehighered.com/layout/set/print/news/2007/11/15/hea>.

<sup>263</sup> *Ibid.*

*The Chronicle of Higher Education* also reported on the last-minute insertion of the Andrews amendment, noting that “[t]he change in the bill was supported by regional accreditors but fiercely opposed by college lobbyists, who had not been notified that Mr. Andrews planned to offer the amendment.”<sup>264</sup> Becky Timmons was quoted in *The Chronicle*’s article as well:

“Accreditors ambushed colleges and universities with the Andrews amendment last night, which unravels months of hard work to get language into the Higher Education Act acknowledging the right of institutions to establish their own student-learning-outcome measures,” said Becky Timmons, assistant vice president for government relations at the American Council on Education.<sup>265</sup>

On the following day, the College Opportunity and Affordability Act of 2007 (H.R. 4137) was unanimously approved, with the Andrews Amendment intact, by the House Education and Labor Committee. Within hours, a newsletter was released by the Council on Federal Relations (CFR) of the Association of American Universities (AAU), an association of research universities whose members include Columbia University, Cornell University, Duke University, Harvard University, The Johns Hopkins University, Massachusetts Institute of Technology and Princeton University.<sup>266</sup> The letter removed whatever doubt may have remained that the nation’s leading colleges and universities were highly displeased with the accreditation commissions for having prompted the

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<sup>264</sup> “House Education Committee Approves Sweeping Higher-Education Bill,” *Chronicle of Higher Education*, November 15, 2007.

<http://chronicle.com/news/article/3442/house-education-committee-approves-sweeping-higher-education-bill>

<sup>265</sup> Ibid.

<sup>266</sup> “AAU Fact Sheet,” Association of American Universities Web-site. <http://www.aau.edu/aau/aaufact.cfm>

insertion of the Andrews Amendment into the bill, stating that its passage “opens the door to alternatives that are likely to be unsatisfactory or harmful to the ability of institutions to continue to set their own standards of student achievement based on their institutional mission.”<sup>267</sup>

David Ward, president of the American Council on Education (ACE) had a similar response. In his weekly letter to presidents of colleges and universities, *President to President*, he explained that the Senate bill that had been passed a month earlier had explicitly stated “that the institution is responsible for establishing the institution’s mission and the ways in which student achievement is to be determined.” He noted that the House bill had “included language virtually identical to that of the Senate bill” until the inclusion of the Andrews Amendment.<sup>268</sup> Finally, Ward expressed his frustration with the accreditors:

Accreditors, however, convinced Rep. Andrews to strike the words “as established by the institution” from the House bill. This change means that the responsibility for determining student success in relation to the institution's mission is, once again, ambiguous... If the language had not been altered, both versions would have contained an identical provision and the issue would have been “nonconferenceable.”

The accreditors... made no effort to discuss their concerns with me or my colleagues before they acted and gave no indication that they were seeking to change a legislative provision that is very important to institutions. Successful and effective

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<sup>267</sup> “CFR Weekly Wrap-Up”, Association of American Universities Web-Site, November 16, 2007. [http://www.aau.edu/publications/WR\\_11-16-2007.pdf](http://www.aau.edu/publications/WR_11-16-2007.pdf)

<sup>268</sup> David Ward, *President to President* 8, no. 46. American Council on Education. November 12-16, 2007. <http://www.acenet.edu/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=24881>

advocacy depends on clear, open communication—especially on issues of such fundamental importance as accreditation. I am disappointed that we did not have that courtesy in this case.<sup>269</sup>

An article posted on November 19, 2007, reported the conflict between “college leaders” and “accrediting officials.” This article, like the others, emphasized that the college leaders had been caught unaware by their former allies, stating that:

College lobbyists were caught off-guard by the amendment, which passed by voice vote without opposition, and scrambled to figure out where it had come from. The answer: Accrediting agency officials had initiated it, and had done so without telling officials at the major higher education associations.<sup>270</sup>

The article went on, however, to provide the accreditors’ explanation for their actions:

In interviews Friday, accrediting agency officials said they believed the Senate language, and the provision originally embraced in the House, went too far in giving individual colleges and universities the right to set their own standards for sufficient performance in educating students, and in restricting the ability of accrediting agencies — as the supposed assurer of quality in higher education — to say when a college’s performance fell short.

“The language appeared to us to say that whatever a college says is okay is okay,” said Steven D. Crow, executive director of the Higher Learning Commission

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<sup>269</sup> Ibid.

<sup>270</sup> Doug Lederman, “The Pendulum Swings on Accreditation,” *Inside Higher Ed*, November 19, 2007. <http://www.insidehighered.com/news/2007/11/19/accredit>

of the North Central Association of Colleges and Schools. “It appears to make it impossible for us to have a standard where we can ultimately say, ‘The academic performance here is not sufficient.’”<sup>271</sup>

Crow was then quoted as stating that the Education Department’s recent efforts to dictate procedures for measuring learning outcomes had been “extremely obnoxious” but that the language in the Senate bill and, prior to the inclusion of the Andrews Amendment, in the House bill went too far in the opposite direction.

“The pendulum swung from the department saying, ‘You’re going to have a standard on student achievement, and this is how it’s going to look,’ to one where the institution sets the standard and it’s done in a way that says the accreditor couldn’t say that it wasn’t sufficient,” Crow said. “Our perception is that the language did not give us the ability to weed out poor performers when it comes to learning, and we think our institutions want us to be able to do that.” Crow noted that accrediting groups like his are run by their member colleges and universities, who set the standards for the accrediting associations.<sup>272</sup>

Crow further stated that he had tried previously to discuss his concerns with officials from the higher education associations, but that “essentially the response was, ‘We’re satisfied with it the way it is and don’t want to change it.’” Lobbyists for the higher education associations denied Crow’s assertion, however, insisting that he had

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<sup>271</sup> Ibid.

<sup>272</sup> Ibid.

never attempted to discuss the matter with them and that “contrary to Crow’s assertion, they had not rebuffed efforts to discuss it.”<sup>273</sup>

The article concluded with a series of accusations from a variety of sources that the accreditors had, whether inadvertently or not, “reopened the door to the Education Department to return to the bargaining table to push its approach to measuring student learning, to which the accrediting agencies themselves objected last spring.” An unidentified Congressional aide was quoted as stating that the accreditors “have really opened the barn door wide to the secretary [of Education] getting another shot at what she wants.”<sup>274</sup>

The accreditors’ “ambush” of their membership organizations raises some interesting questions. Historically, the regional accreditation commissions have worked hard at accommodating their membership organizations. Certainly there had been times, as during the Baruch College controversy, that a lack of consensus had existed among the regionals and/or among their members. Generally speaking, however, the regionals exist to serve their members. Indeed, as will be seen in Chapter Six, when asked to identify their primary client, four of the five heads of regional accreditation commissions that were interviewed stated that their primary clients are their membership organizations.

Mattli and Büthe’s theory suggests that the delegation of government authority to a self-regulatory organization leads to a multiple-principals problem in which the agent’s actions is determined by the relative tightness of competing principal-agent

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<sup>273</sup> Ibid.

<sup>274</sup> Ibid.

relationships.<sup>275</sup> This dissertation has argued that the regional accreditation commissions have two primary principals: the federal government and the higher education community. However, the vast majority of colleges and universities opposed the actions taken by the regional accreditation commissions. Further, the fact that the accreditors acted without warning their membership organizations of their intention suggests that they were very much aware that those institutions were not going to support their decision.

If Mattli and Bütthe's theory is correct, and if the principals have been correctly identified, then the most logical conclusion would be that the regionals were, through the inclusion of the Andrews amendment, attempting to accommodate their second principal, the federal government; certainly this was the accusation made by the commissions' furious member institutions. However, there are problems with this interpretation of the actions taken by the regionals.

Perhaps the biggest flaw in the above argument is that it was the accreditors who approached Congressman Andrews and not the other way around. If the leaders of the regional accreditation commissions were truly acting out of a desire to please their second principal, the federal government, it would have been much easier to simply cooperate with Secretary Spellings early on rather than wait until the battle had been won and then go back and restart it. Further, it is difficult to imagine that Crow would have described the Department of Education's previous attempts at regulating accreditation as "extremely obnoxious" in the *Chronicle* interview if his ultimate intention was to please the federal government.

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<sup>275</sup> Mattli and Bütthe, "Accountability in Accounting?"

However, if the regionals were consciously antagonizing both the Department of Education and their own membership organizations, this suggests that the multiple-principals theory may be overlooking some other, crucial variable that helps determine an agent's actions. As part of the research conducted for this dissertation, I interviewed five of the six heads of the regional accreditation commissions. Toward the end of one of those interviews, I asked the respondent if s/he had supported the Andrews Amendment and, when s/he said yes, I asked why. The following is a transcript of the answer I was given.

**Respondent:** It can be summed up in two words: Institutional autonomy.

America has a strong, dynamic and enviable system of institutional autonomy amongst institutions of higher education in this country. It's one of the beauties of our system and it's one of its strengths. However, when you have organizations, such as the regional accrediting commissions, that have to hold institutions accountable, there's sometimes going to be some—maybe conflict is too strong a word, but not necessarily consensus—on just who should be calling the shots... who is the final decision-maker in terms of the effectiveness and performance of the institution....

I just was appalled by that amendment because it would absolutely strip regional accreditation of its ability, capacity, and responsibility of ensuring that institutions are meeting our standards for accreditation and that there is no discrimination amongst the institutions that each commission accredits. So that if George Mason decided to do X, and George Washington University decided to do Y, and University of Maryland decided to do Z, and they're all accredited by Middle States and they're all

adhering to their own standards, then they're no longer adhering to the standards of Middle States. You begin to have a breakdown in the system, you begin to have chaos, and it would preclude the regional accrediting commissions from... fulfill[ing] their responsibility of accountability and quality assurance.

**Interviewer:** But isn't that pretty much the system we've had in place for the past several decades?

**Respondent:** No. Because the regional accrediting commissions have been the ones to impose what the consensus of the membership—the membership as a whole, in each respective region—what the standards and policies should be. But this was shifting the locus of decisionmaking and responsibility from the accrediting commissions to the individual institutions.

...I'm not suggesting they [the institutions of higher education that advocated for the earlier version of the bill] were doing this in a mean-spirited way. But it negated, and it did not give any respect to, the function of the regional accreditors. Which is, we are the ones who, for better or worse, have to hold you accountable.

I'm very passionate about that because I so much believe in decentralization; I also believe very, very strongly in the fact that I want to keep our peer review system alive, so the government doesn't end up doing what they do in so many countries around the world and have the governments review the institutions.

The respondent's answer clearly indicates that a significant factor in the decision to advocate for the Andrews Amendment was ideology.

Ultimately, the accreditors and their membership organizations were able to reach a compromise. Approximately one month after the insertion of the Andrews Amendment into the House's bill, David Ward wrote a piece about the conflict that had developed over the legislation that emphasized the common ground that the two groups shared, stating that:

All along, the accrediting agencies and the higher education associations strongly agreed that it was important to a) limit the secretary's opportunity to impose specific academic standards on agencies or schools; and b) not limit the agencies' ability to take appropriate action against schools that fail to meet their standards. The challenge was to find a way to draft this in statute.<sup>276</sup>

Ward then reported that accreditors and higher education associations had “engaged in extensive and detailed conversations about how to make certain that the final HEA legislation appropriately balanced the public responsibilities of accreditors with the needs of institutions and accrediting associations,” and that, “[a]fter extensive discussions, we—the higher education associations and the regional, national and specialized accreditors—have arrived at a legislative proposal that will accomplish all of these goals.”<sup>277</sup>

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<sup>276</sup> David Ward, American Council on Education's *President to President* 8, no. 50, December 17-21, 2007. <http://www.acenet.edu/AM/Template.cfm?Section=Search&template=/CM/HTMLDisplay.cfm&ContentID=25234>

<sup>277</sup> Ibid.

Ward assured his readers that there had been “great cooperation and good will” between the groups. He concluded by stating that “While I regret the “detour” that we took in an effort to make the language precise and accurate, I think we have arrived at clearer and stronger provisions than we would have otherwise.”<sup>278</sup>

The months following the insertion of the Andrews Amendment have been relatively quiet ones for the regional accreditation associations and their members. The Reauthorization of the Higher Education Act has been an ongoing source of conflict, but Spellings and the Department of Education appear to have backed off and Congress, though warning that changes need to be made, seems content for the moment to let accreditors and the higher education community take the lead in determining the specifics of those changes.

Increasingly, however, accreditors are caught between the conflicting demands of their principals. One of the heads of the regional accreditation commissions who was interviewed for this dissertation ended the interview by stating:

[T]he way I would frame it is that, historically, accreditation always faced the institutions with its back to the public. And it was always—historically—was only known by and served by and supported by and paid for by the institutions of the peer review process. Over the last 20 years there has been increasing call to shift our mission from institutional service to a more public accountability mission. ...[I]n the past ten to 20 years, we have begun to shift our stance from facing the institutions

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<sup>278</sup> Ibid.

with our backs to the public, to standing sideways with one side facing the public and one side facing the institutions....

And that has been an enormous challenge for us because policymakers impose expectations and obligations on us without funding and with little understanding of the tension between compliance and improvement...

[I]t's a dance and we're all trying....

## CHAPTER SIX: FINDINGS

### **Introduction**

This chapter begins with an analysis of the interviews that were conducted with the acting leaders of five of the six regional accreditation commissions: Dr. Barbara E. Brittingham, Dr. Steven Crow, Dr. Sandra Elman, Dr. Belle S. Wheelan, and Dr. Ralph Wolff. All five respondents were asked the same two questions and this section compares their answers and contrasts them with those that one would expect to find if the multiple-principals theory accurately describes the determinants of an agent's decisions. That section is followed by the results of two additional interviews, with Dr. G. Jack Allen and Wendy Payton, which were conducted in order to provide insight into the complex relationships that exist between the regionals and the federal government, the regionals and the public, and the regionals and their membership organizations.

Finally, this chapter gathers the analyses from the previous chapter and places them alongside the findings from the interviews in order to determine which of the hypotheses are supported by the results.

## **Interviews with Leaders of Regional Commissions**

There are eight regional accrediting commissions that are recognized by CHEA<sup>279</sup> but only six of those were considered pertinent for the purposes of this study. The other two, the Commission on Technical and Career Institutions of the New England Association of Schools and Colleges (NEASC-CTCI) and the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges (WASC-ACCJC) were not studied because of their exclusive focus on the accreditation of institutions that lie outside the primary scope of this dissertation.

The six regional accrediting commissions that were considered relevant to this section of the study are listed below:

### **The Middle States Commission on Higher Education of the Middle States Association of Colleges and Schools**

The Middle States Commission on Higher Education is the unit of the Middle States Association of Colleges and Schools that accredits degree-granting colleges and universities in the Middle States region, which includes Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, the U.S. Virgin Islands, and several locations internationally.<sup>280</sup>

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<sup>279</sup> “Regional Accrediting Organizations 2008-2009.” <http://www.chea.org/Directories/regional.asp>

<sup>280</sup> <http://www.msche.org/>

**The Commission on Institutions of Higher Education of the New England  
Association of Schools and Colleges**

Founded in 1885, the New England Association of Schools & Colleges, Inc. (NEASC), is the nation's oldest regional accrediting association.... [Its] mission is the establishment and maintenance of high standards for all levels of education, from pre-K to the doctoral level.<sup>281</sup> The Commission on Institutions of Higher Education (CIHE) of the New England Association of Schools and Colleges is the regional accreditation agency for colleges and universities in the six New England states: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.<sup>282</sup>

**The Higher Learning Commission of the Commission of the North Central  
Association of Colleges and Schools**

The purpose of the North Central Association is to encourage and support cooperative relationships among schools, colleges and universities holding membership in the Association. Regional accreditation in the north central region is done by two

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<sup>281</sup> <http://www.neasc.org/>

<sup>282</sup> <http://cihe.neasc.org/>

Commissions: The Commission on Accreditation and School Improvement (CASI), which accredits elementary and secondary schools as well as non-degree-granting postsecondary schools, and The Higher Learning Commission (HLC), which accredits degree-granting colleges and universities.<sup>283</sup>

### **The Northwest Commission on Colleges and Universities**

The Northwest Commission on Colleges and Universities (NWCCU) is an independent, non-profit membership organization recognized by the U.S. Department of Education and the Council for Higher Education Accreditation (CHEA) as the regional authority on educational quality and institutional effectiveness of higher education institutions in the seven-state Northwest region of Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington. It fulfills its mission by establishing accreditation criteria and evaluation procedures by which institutions are reviewed.

The Commission oversees regional accreditation for 160 institutions. Its decision-making body consists of up to twenty-six Commissioners who represent the public and the diversity of higher education institutions within the Northwest region.<sup>284</sup>

### **The Commission on Colleges of the Southern Association of Colleges and Schools**

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<sup>283</sup> <http://www.northcentralassociation.org/>

<sup>284</sup> <http://www.nwccu.org/>

The Commission on Colleges of the Southern Association of Colleges and Schools is the recognized regional accrediting body in the eleven U.S. Southern states (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia) and in Latin America for those institutions of higher education that award associate, baccalaureate, master's or doctoral degrees.<sup>285</sup>

### **The Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges**

The Western Association of Schools and Colleges (WASC), is recognized as one of six regional associations that accredit public and private schools, colleges, and universities in the United States. The Western region covers institutions in California and Hawaii, the territories of Guam, American Samoa, Federated States of Micronesia, Republic of Palau, Commonwealth of the Northern Marianas Islands, the Pacific Basin, and East Asia, and areas of the Pacific and East Asia where American/International schools or colleges may apply to it for service.<sup>286</sup> The Accrediting Commission for Senior Colleges and Universities is responsible for evaluating the quality and effectiveness of colleges and universities offering the

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<sup>285</sup> <http://www.sacscoc.org/>

<sup>286</sup> <http://www.wascweb.org/>

baccalaureate degree and above in California, Hawaii, Guam and the Pacific Basin.<sup>287</sup>

The leaders of each of the six regional accrediting commissions listed above were sent an email<sup>288</sup> requesting permission for a 12 minute telephone interview. Of the six leaders who were asked, five agreed to set up a time to answer my questions. The five participants were:

- Dr. Barbara E. Brittingham, President/Director of the Commission on Institutions of Higher Education of the New England Association of Schools and Colleges
- Dr. Steven Crow, Executive Director of the North Central Association of Colleges of Colleges and Schools
- Dr. Sandra Elman, Executive Director of the Northwest Commission on Colleges & Universities
- Dr. Belle S. Wheelan, President/Director of the Southern Association of Colleges and Schools: Commission on Colleges
- Dr. Ralph Wolff, Executive Director of the Western Association of Schools and Colleges

In each of the five interviews, the following questions were asked:

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<sup>287</sup> <http://www.wascenior.org/wasc/>

<sup>288</sup> See Appendix 1

1.

A) In considering the history of the regional accreditation agencies from 1952 to the present, what would you say have been some of the most significant shifts in what the regionals do and how they do it?

B) For each of those shifts, what were the external forces pushing accreditation to change? Which stakeholders were the regionals attempting to satisfy?

2.

Who do you see as being the primary “client” or “customer” of your organization?

Has that changed over the past several years?

The questions were designed to lead the respondents to cite specific examples of changes in policies by the regional commissions, indicating which changes the respondents felt to be the most significant. Once those policy shifts had been clearly identified by the respondents, the questions were then intended to determine which stakeholder the accreditors had been trying to accommodate.

The wording of the first question was left open, however, to avoid guiding respondents toward certain answers. This open-endedness made it possible for the respondents to cite changes that were not directly attributable to either decision-makers within the regional accreditation commissions or their principals. Many, in fact, cited historical shifts in the context within which accreditation has occurred, such as the advent of new technology or the growth of the adult learning sector.

A conscious decision was also made to leave the conversation somewhat loose. In each of the interviews, all of the planned questions were eventually asked, but digressions were not only permitted but even encouraged. Raymond Gorden, author of Basic Interviewing Skills, discusses the advantages and disadvantages of using open-ended questions. One disadvantage of this type of interview question is that it does not lend itself easily to coding and so does not facilitate the development of a quick statistical summary of the results of the interviews. Also, narrow questions tend to discourage the subject of the interview from digressions that may be considered irrelevant by the interviewer.<sup>289</sup>

Gorden notes, however, that open ended questions and a looser style of interviewing can be very useful in the exploratory phase of the interview. During the exploratory phase, the interviewer may want to be careful to avoid imposing a set of answers or a predetermined path of association upon the respondent. For that reason, Gorden advocates the use of open-ended questions toward the beginning of the interview and the use of more narrow questions later in the interviewing process.<sup>290</sup> In this particular case, however, the subjects had only been asked for twelve minutes of their time. This limitation was deliberately chosen to ensure a high response rate. The obvious disadvantage, however, was that there was insufficient time during the interview to follow all of Gorden's prescribed interviewing strategies.

The first question asked the respondent to identify the major shifts in what the accreditors do and how they do it from 1952 to the present. The answers that were given

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<sup>289</sup> Raymond Gorden, *Basic Interviewing Skills*, (Itasca, IL: F.E. Peacock Publishers) 1992: 37-38.

<sup>290</sup> *Ibid.*, 34-35.

by the five respondents can be divided into three broad categories: A) The Relationship between Accreditors and the Federal Government; B) The Reach and Scope of the Accreditation System, and; C) The Methodology of Accreditation. Each of these categories will be explained and examples will be given.

A) In considering the history of the regional accreditation agencies from 1952 to the present, what would you say have been some of the most significant shifts in what the regionals do and how they do it?

All five respondents directly referred to the changes in the relationship between regional accrediting commission and the federal government as one of the major shifts in what the regionals do and how they do it, although there was some variation in terms of which specific changes they considered to be the most significant. The fact that every single respondent cited this relationship as being one of the most significant sources of change in what the regionals do and how they do it would appear to support the assumption, made earlier, that the federal government is one of the primary principals of the regional accreditation commissions.

The following quotes capture the range of responses in this category:

**Respondent A:** [One of the most significant shifts in what the regionals do and how they do it has been] the close workings, the close ties to the federal government. And

accommodating accreditation to fit federal expectations of federal needs. That's clearly a big one.

It was a fairly easy responsibility up until about the late 80s, when the federal government started expecting more accountability on our part, more evidence that students were actually learning and that trend followed [through] the 90s and into this first decade of this century. Trying to be the kind of... gatekeepers that we had been, even as the federal government ratcheted up what it was accreditors had to do to be recognized as Title IV gatekeepers.

**Interviewer:** How were they able to ratchet it up?

**Respondent A:** They just changed the laws and the rules.

**Respondent B:** [One of the most significant shifts in what the regionals do and how they do it has been] how the recognition process has put certain requirements on things that accreditors do or structures on how they do it. And so that would be, to me, certainly at or near the top of the list.

**Respondent C:** I think one of the changes is that we've partnered with the Department of Education to be able to verify quality so that they feel comfortable paying, through the GI Bill initially, and then through the financial federal aid program now totally, spending that money.

**Respondent D:** I would say that from 1952 to, say, 1970, the big shift in accreditation was that it was recognized by the US Department of Education. Therefore, it took on a major new role that made it much more visible and consequential.

**Respondent D:** One of the biggest trends over the past 25 years has been the increasing regulation of accreditation by the Department of Education. The triad of state, accreditation agencies, and federal government. Literally, we were equal partners. Now there's one 500 lb. gorilla, that's the US Department of Education, you know, the Spellings Commission and Margaret Spellings, who tried to promote an increasing directional role for the Department of Ed in regulating accreditors. And even though that has been pushed back, I would say overall that and student learning outcomes are the two most significant trends in the last 40 years.

**Respondent E:** One [of the most significant shifts in what the regionals do and how they do it] has been that we have been increasingly recognized by the U.S. Department of Education... Our gatekeeping function, which is associated with that, has increased and we have become more involved and more relied upon, both by the US Department of Education and the public, to fulfill our accountability function.

The second category of responses to the first question focused on changes that had occurred in the reach and scope of the accreditation system. Three of the five

respondents cited the increasingly important societal role played by the accreditation system.

**Respondent D:** I would say that from 1952 to, say, 1970... [accreditation] took on a major new role that made it much more visible and consequential. In the decade of the 50s to the mid-60s, accreditation, to my knowledge, [it] was not as consequential.

**Respondent E:** Our gate-keeping function... has increased and we have become more involved and more relied upon, both by the US Department of Education and the public, to fulfill our accountability function. So, in an age of accountability, which probably began somewhere in the 70s, more so than in the 50s and the 60s, our accountability, responsibility, and our function has increased dramatically.

**Respondent B:** I think the goal of public assurance of quality, while I think to some extent was always there, I think that has become more prominent and probably in about equal balance right now with the improvement function.

Four of the five respondents also discussed the increase in the diversity as well as the number of institutions that the regional commissions are accrediting.

**Respondent C:** [We have] phased in technical colleges, we've phased in historically black colleges and universities, we've phased in community colleges...

**Respondent D:** In the 60s... there was a huge growth in institutions, particularly public institutions. Accreditation had to adapt, had to develop systems. It took it quite some time. I'm not even sure we're even there, yet, to deal with massified education. The explosion of the community college movement, the growth in the size of the number of universities. And accreditation had to accommodate those changes.

**Respondent D:** Come into the 70s, you have the development of highly innovative institutions.... You have the adult learning that begins to take hold. Accreditation had to adapt. In the late 70s and early 80s, was the beginning of off-campus programs. Although there had been some [previously], they began to explode.... And accreditation had to develop standards for off-campus programs.

**Respondent A:** The movement of higher education across the ocean. Since we've internationalized, and it's a challenge to adapt accreditation and figure out how we're going to deal with that. And last but not least is Distance Ed. The whole impact of technology on the way education is conceived and delivered.

**Respondent E:** Our higher education environment now has a plethora of institutions that are for-profit, some of which are accredited and some of which are not.

The third broad category of significant shifts in what the regionals do and how they do it that was described by the respondents centered around the methodology of accreditation. Four of the five respondents gave answers that fit into this category, which includes the shift from broad goals to the use of specific standards, the introduction of the periodic review, and an increasing emphasis on student learning outcomes.

**Respondent D:** [I]f you were to look back historically at any of the regions, accreditation standards didn't exist in the 60s and the 70s. There were these six broad statements. Six or five. Some had five, some had six, some had seven. Does the institution have a clearly stated mission, does the institution have admissions policies that consist with the mission, does it have financial resources enabling them to support their mission and is it reasonably achieving their mission, and a couple of other questions. Very broad questions. You could drive a truck through them.

**Respondent D:** We and the other regions... developed standards. Developed actual standards.... We had had a set of formal standards, nine standards that weren't just these broad principles and so there was a shift from, or, if you will, an emergence of mission-centered accreditation, which North Central carried forward until just a few years ago. And it still is very heavily mission driven....

**Respondent D:** We had 9 standards, 268 substandards. But you know, we really began to become much more articulate... what were the standards that review across institutions. I would say the development of standards was a major shift.

**Respondent A:** The most significant shift is the periodic review program for institutions. That didn't come into play until the 60s. The decennial visits.

**Interviewer:** What did they do before that?

**Respondent A:** Before that, somehow folks just applied to get in and they maybe sent someone out but they never revisited people or asked them what's really changed. And then maybe they would set up, for example, if they started off with a masters degree maybe they would send someone out to look at it. But there was no decennial cycle until the 60s.

**Respondent C:** We've always had, well, for the past 30 years, anyway, we've had an emphasis on student learning outcomes in general education courses.... We continue to do it; we have now... expanded it to identify student learning outcomes in all academic programs. Not just general education.

**Respondent D:** In the mid to late 80s, Lamar Alexander, the Secretary of Education, introduced the concept of outcomes. Tennessee pioneered and others developed a whole notion of outcomes based learning. And SACS was the first to develop standards on outcomes. We copied those standards... and they were called

institutional effectiveness standards. And they were incorporated into the criteria for recognition by the Secretary of Education.

**Respondent E:** [The accreditation process has] changed in terms of the emphasis on assessing student learning outcomes.... It's changed in terms of enabling institutions to engage in self-examination.

Although most of the responses fit neatly into a single category, there were some exceptions. For example, Respondent D answered that “the most recent trend is our attention on graduation [rates]” and then also discussed the recent emphasis on transparency, stating that “...now the big issue is that accreditation is so opaque, it's not well understood within the higher education institutions. But it also is not well understood by the public.”

The recent emphases on graduation rates and on transparency appear, at first glance, to be changes in the methodology of accreditation but that is not the case. The issue of transparency concerns the evaluation of the accreditation process by others, not the methodology of evaluation employed by the accreditors.

The use of graduation rates as a factor in the assessments conducted by accreditation commissions might constitute a change in methodology, except that the respondent was not talking about something that accreditors had started doing but, rather, something that the Spellings Commission was now demanding of accreditors. Respondent D followed up his/her initial comments about graduation rates and

transparency by adding that “[T]he Spellings Commission called for the transformation of accreditation, either eliminate it or make it more relevant to outcomes-based learning, to student learning, comparative results, and making results much more transparent.” For that reason, one could arguably place the respondent’s comments about graduation rates and transparency under *The Relationship between Accreditors and the Federal Government*, but the answer also referred to the dissatisfaction of “the higher education institutions” and “the public” with the accreditation process. Therefore, the comment does not lend itself neatly to placement within one category. Again, this is one of the inherent disadvantages of the use of open-ended questions.

**Respondent D:** The most recent trend is our attention on graduation [rates].... There are two recent trends in the mid-2000s. One is completion of graduation, that some schools have an absolutely abysmal record and some are fabulous. And the second issue is transparency. So, now the big issue is that accreditation is so opaque, it’s not well understood within the higher education institutions. But it also is not well understood by the public. And the Spellings Commission called for the transformation of accreditation, either eliminate it or make it more relevant to outcomes-based learning, to student learning, comparative results, and making results much more transparent.

B) For each of those shifts, what were the external forces pushing accreditation to change? Which stakeholders were the regionals attempting to satisfy?

The follow-up to the first question was intended to direct the respondent toward identifying a specific stakeholder or “external force” that were the underlying reason for the changes that the regional accreditation commissions had made in their policies. The underlying purpose of this question was to ascertain whether or not the two most significant principals for the accreditation agencies had been correctly identified. Additionally, this question was intended to establish a pattern, if one existed, regarding which of the principals the accreditors were most concerned about accommodating at different periods.

The most commonly cited causes of major shifts in accreditation were changes in the larger context within which accreditation had occurred. Examples of this category, referred to as *contextual changes* later in this chapter, include advancements in technology and the development of new types of institutions of higher education. These answers do not fit neatly into the multiple-principals hypotheses; rather, they suggest that much of the change that occurs in an agency is simply a function of adapting to new circumstances and is not directly related to the tightness of the agency’s relationships with its principals.

**Respondent B:** Technology has enabled, in many aspects of higher education and certainly of accreditation, to do things in a more complex way than was true before....

The advent of all those things means that it's just much easier to look at more different aspects of institutions, to communicate among the team members before, to get better information before people go to campus. It has enabled a more in-depth look at certain things.... It certainly has enabled both a broader and a deeper look at various aspects and various dimensions of institutions. And it's also enabled a more complex and thorough discussion of the standards.

**Respondent D:** Well, first of all, the institutions themselves. As institutions became more innovative, it's hard to believe it, but there was a time when the adult learner was not at all respected, that any time anyone did anything to serve the adult learner, it was considered a, uh, lower quality. Now you have this whole non-traditional explosion of what we'll call the non-traditional learners in the 70s. So accreditation had to deal with geographical expansion, external degree programs....

**Respondent A:** The movement of higher education across the ocean. Since we've internationalized, and it's a challenge to adjust accreditation and figure out how we're going to deal with that. And last but not least is Distance Ed. The whole impact of technology on the way education is conceived and delivered.

One interesting finding that resulted from this question was the way that the government and the general public were sometimes used interchangeably. Further, "the government" sometimes meant the federal government while, at others, it referred to

federal, state, and local governments. This ambiguity raises questions about the process of identifying a principal, as will be discussed below. Toward avoiding misinterpretation of the respondents' answers, an effort was made throughout the interviews to frequently paraphrase back what the respondent said.

Although the complexity of the answers listed below makes categorization more difficult, it does have the advantage of providing a more accurate picture of the decisionmaking process than a multiple-choice approach to the question would have provided. If this study had involved a large number of respondents, the data generated by this approach would have been indecipherable. In this particular case, however, there were only five respondents and so it was possible to allow each of them to answer without any limits or guidelines.

**Interviewer:** For each of the shifts that you described, what were the external forces pushing accreditation to change? Which stakeholders were the regionals attempting to satisfy?

**Respondent E:** First and foremost: the public. I mean, we uphold the public interest. However, there is no one public, per se. And no one represents the public, per se. So one could begin to engage in some deductive reasoning and say, "Who constitutes the public?" Well, the public, in part, is the business and industry sectors, the students, obviously, alumni, boards of trustees, state governments, which would mean legislators, and Congress, and the US Department of Education. There are multiple stakeholders.

**Respondent B:** For public assurance of quality? Well, I think most immediately last year I think it was the people in Washington.

**Respondent D:** Outcomes assessment did not come from the institutions. They came primarily from federal regulations [and] the beginning of the assessment movement at the state level. Tennessee, New Jersey and other states began... to require assessment. Even to this day, I would say there is no institutional momentum requiring or pushing the edge of student learning outcomes.

And the Spellings Commission called for the transformation of accreditation; either eliminate it or make it more relevant to outcomes-based learning, to student learning, comparative results, and making results much more transparent.

**Respondent A:** But, Congress, every time they redo the Higher Education Act, revisits the rules about accreditation. And they have increasingly raised the ante on what their expectations of accreditation might be. You couple that, then, with the regulatory environment of the Department (of Education), and sometimes that, depending on who's running the Department or what the latest public pressure might be within the Department, the interpretation of what the law means through regulations is the second thing in which the relationship gets re-shaped.

Finally, two of the responses rejected the suggestion implicit in the question that the commissions' decisions were an attempt to satisfy a particular stakeholder or a response from a specific external force. Instead, they suggested that ideology and a sense of responsibility played a significant role in the decisionmaking process. This was an interesting finding inasmuch as the original hypotheses had not anticipated that possibility.

**Interviewer:** Do you have any idea what prompted them to make that change?

**Respondent C:** You mean other than that being the right thing to do?

**Interviewer:** Well, was that the main reason?

**Respondent C:** I would like to think so....

**Respondent E:** It's a little bit of a different way of looking at things. I tend to have a public policy perspective. So, if you would say to me, "What do you see as your most important role?" and I would say, "To uphold the integrity of a tradition because we protect the public interest." So I've always come at it... as protectors of the public interest.

2.

Who do you see as being the primary “client” or “customer” of your organization?

Has that changed over the past several years?

Whereas both parts of the first question focused on historical shifts from 1952 to the present, the second question focused more specifically on the present. Respondents were asked to identify their primary “client” or “customer;” if the hypotheses were correct, it was expected that they would give one of two answers: the federal government or the higher education community.

The answers to this question pointed out several weaknesses in my identification of the principals. One unexpected finding was that respondents were much more inclined to think of “the public,” rather than the federal government, as a client of their organizations. When pressed, two respondents then acknowledged that the federal government was one element of the public, but it did not appear to be the primary one.

Another point that was clarified by the responses to this question was that my use of the terms “the higher education community” and “institutions of higher education” to describe the first principal was inaccurate. Overwhelmingly, respondents referred specifically to “membership organizations,” rather than to a broader community of higher education. This is not simply a matter of semantics; there is a significant difference between responding to the wishes of a broad profession and responding specifically to the demands of an organization’s own members.

The complete texts of the respondents' answers to this question are included below:

**Respondent A:** In the 1950s, our primary client was other colleges and universities.... Now, quite honestly, parents and employers aren't too interested in accreditation other than as a basic threshold. Whether that's occurred or not occurred. The ones who really spend the most attention looking at us and what we're doing are public policymakers.

They're trying to decide whether we should continue, and can continue, the role that we've played over the past 60 years as being recognized as the primary quality assurers, not simply for the sake of other colleges and universities, but for the sake of public policy. And that's probably one of the biggest challenges right now and that is because we are organizations that were created by colleges, in service to colleges, whether colleges really want us to be servicing modern public policymaking needs although that's where the pressure is.

**Interviewer:** When you say public policymakers, are you talking about the government?

**Respondent A:** I am speaking specifically of state government and I am speaking of federal government.

**Respondent B:** I would say that our primary client is the membership organizations, first and foremost. While I think there have been a lot of things that bring the interests

of the public, if you consider the people in Washington as representative of the public, that bring them to the fore, I would still say, first and foremost we're a membership organization.

**Respondent C:** We are a membership organization and so I think primarily the stakeholders are our members, which are the institutions themselves. Each of them comes in with pressure from their states and from their local communities and at some point from the Feds as well.

**Interviewer:** But who do you see as being primary client or customer?

**Respondent C:** Members.

**Interviewer:** And has that changed at all over the past several years?

**Respondent C:** I don't think so. But our members are institutions which serve students, so it's really students who benefit from our institutions being members. I don't know how you can separate those two.

**Respondent D:** The way I would frame it is, metaphorically, that historically accreditation always faced the institutions with its back to the public. And it was always, historically, was only known by and served by and supported by and paid for by the institutions of the peer review process. Over the last 20 years there has been increasing call to shift our mission from institutional to a more public accountability mission. The way I describe it is that in the past ten to twenty years, we have begun to

shift our stance from facing the institutions with our backs to the public, to standing sideways with one side facing the public and one side facing the institutions.

So, I would say that currently our customers are institutions. Beneficiaries, however, our stakeholders, however, are broader than our customers. And our stakeholders include students, I believe, and members of the public and policy-makers. And that has been an enormous challenge for us because policy-makers impose expectation and obligations on us without funding and with little understanding of the tension between compliance and improvement.

**Interviewer:** Let me make sure I'm understanding you correctly. Does the government equal the public?

**Respondent D:** Policymakers could include the government. But it could also include people who write studies, the Commission on the Future of Higher Ed, [Voice trails to suggest that this is only the beginning of a substantial list.]

So, there's a broader policy environment than just the government. I don't consider the government in any way our customer, but it's definitely one of our stakeholders.

**Interviewer:** Who is the primary client or customer? Has that changed over the past several years?

**Respondent E:** In terms of –quote- the client or the customer, there I would say the institutions and the students. I don't think in terms of customers or clients but, I guess if you wanted to use that terminology, that's how I would answer.

## **Additional Interviews**

In addition to the five interviews described above, two additional interviews provided insight into the relationship between the regionals and the federal government, the regionals and the public, and the regionals and their membership organizations. These interviews were with Dr. G. Jack Allen, Vice President of the Commission on Colleges of the Southern Association of Colleges and Schools (SACS), and Wendy Payton, Assistant Provost for Academic Affairs for George Mason University. The nature of these interviews was quite different from those conducted with the regional leaders; the format was much looser and I was permitted between thirty to forty minutes with each of them, as opposed to the self-imposed twelve minute limitation I'd had with the heads of the regionals. Further, the interview with Wendy Payton was conducted in person, rather than being held over the telephone.

Dr. Allen, in addition to being the Vice President of the Commission on Colleges, is also a historian of accreditation and has worked in the field for almost 30 years. He was able to provide an historical perspective that illuminated many of the changes that the regionals have gone through since their development in the late 19<sup>th</sup> century.

When asked to identify the most significant shifts in what SACS does and how it operates, Dr. Allen initially focused on methodological changes. As was the case with many of the previous respondents, Dr. Allen did not indicate that the shifts in methodology were an attempt to accommodate either of the principals that had been

identified in the hypotheses. Rather, he felt that they were responses to changes in the larger context within which accreditation had occurred.

**Dr. Allen:** I think the biggest trend in our particular regional association has been to look more at outcomes of education. This started probably in the early 1980s. And we have a whole set of structural requirements. Faculty, library and all of this. And I think that because of the concern with the quality of students that were coming out of secondary school, those who were graduating from college, there were all kinds of charges that they couldn't read and write, and do math, and this kind of thing, and I think that partially had us move to a further emphasis on the outcomes of education rather than just the structural requirements. We had already had statements in there

And I think there was much more emphasis. Particularly with us. I think we were probably the first of the regionals to really go into this area. In the mid 1980s. And to ask that in addition to these things that we always think are part of a collegiate education, like you have to have library books, you have to have qualified faculty, you have to have an appropriate curriculum, that somehow the institutions need to move to a more effective assessment of quality of the students who graduate.

**Interviewer:** So, initially it wasn't pressure from the government?

**Dr. Allen:** No, it really wasn't. I think that changed a little bit later. But I think that that was in the mill because there were all kinds of studies in the early 1980s about the quality of students that were coming out. Could they read, could they write, could they do these certain things. Both at the high school level and the collegiate level.

And so, it was a mixture of things. It was concern by the colleges, it was concern by

the state governments, and probably some concern at the national level as well. But not any direct pressure at that point.

**Interviewer:** So, when did that start to change?

**Dr. Allen:** I would say that when we adopted our first standards that really spoke to student outcomes, asking institutions to directly assess those, develop goals and, for programs, etc., that was in the mid-1980s. Probably 1985.

**Interviewer:** When did the government get more forceful on that issue?

**Dr. Allen:** Probably the 1990s, if you're talking about the Department of Education, at the national level.

Another interesting point that emerged from the interview with Dr. Allen was a statement that he made regarding the relationship that exists between the federal government and the regionals. Throughout this dissertation, the federal government and the regional associations' member institutions have been treated as two distinct and separate principals. Dr. Allen, however, did not see the federal government as being a principal to the accreditation commissions. Rather, his responses to my questions suggest that the relationship is far more complex than that. In his view, the federal government could almost be considered a principal of the institutions of higher education, which are then a principal of the accreditation commissions. This is a very different perspective on the relationships that exist among these three entities.

**Dr. Allen:** [W]hen the money started to flow for GI benefits... as I recall, they [the federal government] were going to leave it up to the VA and the states to do that [determine which institutions were eligible for funding through the GI Bill]. And that

didn't work out very well. And so they discontinued that policy and generally rested it with recognized accreditation associations.

But they didn't have a policy for really determining who those were going to be. And so, that worked pretty well for us, for a while, and others, because there were certain ones that were obviously recognized. But then, later on, they began to develop a lot of recognition standards for us. And... what they were essentially doing is accrediting the accreditors.

**Interviewer:** Why does an accreditor need to be accredited by the government?

**Dr. Allen:** They don't have to be. And, in fact, right now the Southern Association of Colleges and Schools can say "We're not going to comply with those things."

**Interviewer:** So, why don't they?

**Dr. Allen:** In large part, I think it's because a lot of our institutions rely on us for a sort of a certification that allows them to get government money and they don't want to see it transferred to the federal government. They would rather have us than they would a bunch of federal accreditors.

The Department of Education—you know, if it's constitutional, though in the past it hasn't been—it could actually go into accreditation, I suppose, but I don't think that's the wishes of our institutions that are accredited. They would rather have a private organization like us composed of peers accredit them, rather than going through a government type of approval process. So, they don't particularly like the situation now, where the Department of Education has increasingly tried to regulate us. In other words, they don't want to give this up.

**Interviewer:** So you're saying that the federal government doesn't have a hold on the regionals, but they do on the schools that are accredited by the regionals?

**Dr. Allen:** Yes. In essence, what the Department of Education does, is they set their own recognition criteria for us and they say "You need to assure this, this, and this and on a certain schedule this, this, and this." And so we have to pass that requirement along to our institutions otherwise they [the Department of Education] won't recognize us. And they will turn to some other method of doing it. Whether it's the states or whether it's the director of the Department of Education. Which I'm not sure *they* want to do.

This alternative perspective, that the government is a principal of the institutions and that those institutions are the principal of the accreditation commissions was echoed in a comment made by Wendy Payton during her interview. Ms. Payton is the Assistant Provost for Academic Affairs at George Mason University; she also serves as the co-chair for the Compliance Committee for the 2011 Reaffirmation of Accreditation effort. Additionally, she explained that she has an ongoing role "of helping the university assure its continued accreditation by examining academic and administrative activities to see how they fit within the compliance structure." Ms. Payton was interviewed because of her extensive experience with the accreditation process and, more specifically, to provide the perspective of someone who works at one of the member institutions.

Early in the interview, when discussing the Department of Education's recent emphasis on the accountability of higher education institutions, Ms. Payton commented:

And they [the Department of Education] don't talk directly to us [George Mason University and other institutions]; they talk to us through our accreditors. So, they started asking their accreditors those questions, saying "You must start finding out this information." When that pressure came to bear on the part of the accrediting bodies, that starts trickling down. So they [the accrediting bodies] started to say, "We want to know."

Again, this supports the comment made earlier by Dr. Allen that it is the member institutions that pressure accreditors to comply with the demands of the federal government. This does not, however, fit neatly with some of the statements that were made by the five heads of the regional commissions. Those respondents made several comments that indicated a more direct principal-agent relationship between regional accreditors and the federal government.

**Respondent D:** One of the biggest trends over the past 25 years has been the increasing regulation of accreditation by the Department of Education....

**Respondent A:** ...[T]he close workings, the close ties to the federal government. And accommodating accreditation to fit federal expectations of federal needs. That's clearly a big one... [T]he federal government ratcheted up what it was accreditors had to do to be recognized as Title IV gatekeepers.

**Respondent B:** [T]he recognition process has put certain requirements on things that accreditors do or structures on how they do it. And so that would be, to me, certainly at or near the top of the list.

This seeming discrepancy is perhaps indicative of the complex relationship that exists among the accreditation commissions, their member institutions, and the Department of Education. Dr. Allen and Ms. Payton are correct in stating that the Department of Education talks to the schools through their accreditors and that the schools, generally speaking, want the regional accreditation commissions to comply with the requirements set by the federal government so that they can continue to be recognized and so that the federal government will not replace the current accreditation system with one of its own making. It is also true, however, that the regional accreditation commissions have their own reasons for wanting the current system to continue and, therefore, for wanting to accommodate the federal government.

It is correct, therefore, to state that the regionals have, as two of their primary principals, their member institutions and the federal government. It is also correct, however, to state that the federal government is a principal of the member institutions.

### **Analysis of the Findings**

This dissertation began with the following hypotheses, which were adapted from Mattli and Bütte's multiple-principals theory:

**Hypothesis 1:** In the long term, the delegation of government authority to the regional accreditation commissions that began in 1952 has led to a multiple-principals problem in which the commissions' actions have been determined by:

- The relative tightness of competing principal-agent relationships. That tightness has been a function of the relative importance of each principal for the accreditation commissions' financial viability
- The relative tightness of competing principal-agent relationships. That tightness has been a function of the relative importance of each principal for the accreditation commissions' operational viability
- The relative tightness of competing principal-agent relationships. That tightness has been a function of exogenous changes in the macro-political climate
- The relative tightness of competing principal-agent relationships. That tightness has been a function of variables other than the relative importance of each principal for the accreditation commissions' financial viability, the relative importance of each principal for the accreditation commissions' financial viability operational viability, or exogenous changes in the macro-political climate

**Hypothesis 2:** In the long term, the delegation of government authority to the regional accreditation commissions has led to a multiple-principals problem, but the competing principal-agent relationships that have resulted from that problem have not been a significant determinant of the commissions' actions.

It was determined in Chapter Five that the use of accreditation by the federal government began in 1952 and that federal reliance on accreditors increased with the passage of the 1958 National Defense Education Act (NDEA). This legislation stated that in order for a school to be eligible to receive federal funds, it must be accredited by a nationally recognized accrediting body.<sup>291</sup> Until that point, accreditation had been a purely voluntary undertaking; with the passage of the NDEA, however, it became mandatory.

It was further established that, by the early 1960s, regional accreditation associations had become the agents of a second principal: the federal government. In the short-term, the delegation of government authority to the regionals had minimal impact on them. In essence, they were simply being asked to continue what they had been doing all along. No attempt was made by the federal government to exert any influence over the higher education sector until the creation of the Accreditation and Institutional Eligibility Staff (AIES) in 1968. The purpose of the AIES was “to administer criteria and procedures for approving accrediting organizations, list them, and determine preliminary eligibility of institutions.”<sup>292</sup>

This was determined to be a turning point in the relationship between the federal government and the accreditation agencies. Before 1968, accreditation agencies had been more or less able to serve both the higher education community and the federal government simultaneously; the purposes for which those two principals were using the

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<sup>291</sup> Ibid. 245-247.

<sup>292</sup> Trivett, *Accreditation and Institutional Eligibility*, 3.

accreditation system were not identical, but there was sufficient overlap to avoid any serious problems. That began to change, however, with the government's attempt at regulating accreditation via the AIES

It is difficult to determine the extent to which the regionals initially felt obligated to respond to the demands of the federal government. There was relatively little change in the way that the accreditation commissions operated and those change which did occur, such as the gradual emphasis away from quantifiable standards and toward learning outcomes, have been attributed to a variety of causes. In large part, the heads of the regionals who were interviewed above have indicated that those changes were not prompted by pressure from either of their principals but, rather, was a response to changing circumstances. Growing technology led to the development of Distance Education, higher education became increasingly internationalized, the number of adult learners increased dramatically, community colleges grew in importance, and the societal role of higher education changed substantially. As one respondent stated, "Accreditation had to adapt."

A related explanation that has been given for the regionals' actions during this period, from the 1960s to the early 1990s, is that they felt a social obligation to address public needs as the consequences of accreditation grew. One respondent, when asked to identify which stakeholders the regionals have been attempting to satisfy, responded, "First and foremost: the public. I mean, we uphold the public interest." Another, asked why one of the regionals had made a particular decision, answered that it had been "the right thing to do."

In the period leading up to the early 1990s, the accreditors had two principals but it is also important to note that neither of those principals was threatening to fundamentally alter the relationship. There was no serious threat to accreditors until U.S. Secretary of Education Lamar Alexander, furious with the actions taken by the Middle States Association, made it known that he was seriously considering alternatives to the federal reliance on accreditation. Additionally, high rates of student loan defaults led to demands by Congress for increased accountability and, with the passage of the 1992 Reauthorization of the Higher Education Act, to legislation that led Stephen S. Weiner, head of the college division of the Western Association of Schools and Colleges, to accuse the federal government of “micro-managing” accreditation.<sup>293</sup>

This is one point that Mattli and Buthe appear to have overlooked in their multiple-principals theory: the tightness of principal-agent relationships are largely irrelevant as determinants of an agent’s actions if no threat to that relationship exists. If the principal has no feasible alternative to the agent, then the tightness of the principal-agent relationship is largely irrelevant. Therefore, in addition to the tightness of a relationship, one must also consider the co-dependency of the agent and the principal and, related to that, the existence of alternatives for each party. True, it would have been possible for the federal government to cease their delegation of authority to the accreditation associations, but it would have been extremely costly for them to do so. It was not until there was a sense that the accreditors had completely failed them that the federal government began to seriously consider other options.

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<sup>293</sup> “Anger over Accrediting Regulations,” August 4, 1993.

The Baruch case suggested several alternative determinants of an agent's actions, which were discussed in detail in Chapter Five. Those alternatives included:

- Individual Self-Interest
- Miscommunication between Agent and Principal
- Ideology
- Second-Tier Principals
- Internal Divisions within Principals
- Internal divisions within the Agent
- Delegated Viability

The events following the resolution of the Baruch case provide an excellent example of the dilemma facing an agent who is caught between two principals with contradictory goals. In this case, the federal government wanted to use accreditors as a tool with which to regulate the association's members, while the members wanted to use the accreditors as a means of prevent government regulation. As the situation escalated, with the publication of the National Commission on the Cost of Higher Education's report, *Straight Talk about College Costs and Prices*, the creation of the Spellings Commission, and the refusal of Spellings to extend recognition of the American Academy for Liberal Education, the regionals increasingly found themselves being blamed by both sides for failing to fulfill their responsibilities. This culminated in the passage of the Andrews Amendment, which led to accusations by leaders in the higher education community that the accreditation associations had "ambushed" them.

This event, in which the regionals deliberately acted against the wishes of their member institutions, is particularly useful for the testing of the multiple-principal hypotheses. This was a case of the regionals clearly defying their first principal. Certainly, if the hypotheses are correct, one would expect the evidence to show that this action was a response to shifts in the tightness of their principal-agent relationships and, more specifically, to the ongoing threat by the second principal, the federal government, to sever its ties with them. As noted above, however, this does not appear to have been the case. The insertion of the Andrews Amendment was instigated by the accreditors and not by the government. Further, one of the regional heads was quoted as stating that his support of the Andrews Amendment did not imply agreement with the Department of Education's recent efforts to dictate procedures for measuring learning outcomes, which he called "extremely obnoxious."<sup>294</sup> Surely if the intention had been to improve relations with the regionals' second principal, the federal government, that statement would not have been included.

Every indication supports the contention that the insertion of the Andrews Amendment was a result of ideology rather than an attempt at balancing principal-agent relationships. Certainly this was the explanation that was given by the regional leader who stated:

I just was appalled by that amendment [which was negated by the Andrews Amendment] because it would absolutely strip regional accreditation of its ability, capacity, and responsibility of ensuring that institutions are meeting our standards for

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<sup>294</sup> Doug Lederman, "The Pendulum Swings on Accreditation," *Inside Higher Ed*, November 19, 2007.

accreditation... I'm very passionate about that because I so much believe in decentralization; I also believe very, very strongly in the fact that I want to keep our peer review system alive....

Ultimately, the accreditation case-study does not provide much support for the first hypothesis; there is little direct evidence of financial viability acting as a determinant of the regionals' actions. For one, the federal government does not directly provide money to the regional associations. Financial viability exists in this case in an indirect manner; the money comes from the associations' members and the members are required by the federal government to belong to the associations if they want to be eligible to receive federal funding.

This is not to suggest that financial viability should be discounted as a factor. Although the dependency of the regionals on the federal government for their funding is indirect, an argument could certainly be made that the circuitous nature of that financial viability does not diminish its importance to the regionals and that it is, therefore, no less a determinant of their actions. No study has conclusively established the percentage of institutions that would end their membership with the regional associations if that membership were not necessary in order to be eligible for federal funding, but it seems reasonable to assume that the number of paying members would decrease significantly.

Rather, the problem with the use of financial viability as an element of tightness in this particular case is the issue of measurement. In order to establish the degree to which financial viability acted as a determinant of the regional associations' actions, it

would first be necessary to establish if that financial viability has increased, decreased, or essentially remained the same since that time. It is not immediately clear how to do that. Is the degree of financial viability a function of the membership fees charged to the regionals' members? If so, how does one adjust for the uncertainty concerning which members would remain and which would leave if the federal government no longer used accreditation to determine eligibility?

In other words, there is certainly a valid argument to be made that financial viability has acted as a significant determinant for accreditation associations, but the extent to which that is true remains uncertain. None of the subjects interviewed for this dissertation specifically referred to the money that their organizations receive as a result of the government authority that has been delegated to them. This does not necessarily indicate that money is irrelevant to the regional associations, but it does limit discussion of financial viability to pure speculation.

Operational viability, which refers to the agent's need for specialized expertise, appears to be entirely irrelevant to the case of accreditation, as noted above. The federal government does not provide the accreditation associations with specialized expertise; if anything, it is the agent that provides expertise to its principals.

The third hypothesis based on Mattli and Buthe's multiple-principals theory is that the "macro-political" climate, defined as the "cycles of broad public attitudes toward regulatory matters,"<sup>295</sup> are a determinant of the agent's actions. There is some indication that the macro-political climate influenced both the federal government and

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<sup>295</sup> Mattli and Bütke, "Accountability in Accounting?", 399.

the regionals; certainly the insistence for greater accountability by Congress in 1992 and by Spellings in 2005 roughly corresponds with a broader, societal movement. And, too, the decision by the Middle States leadership to enforce diversity standards, though not related to a public attitude toward regulatory matters, has been attributed by some to changing cultural values. While testifying before the National Advisory Committee on Accreditation and Institutional Eligibility, Patricia McGuire, President of Trinity College and a member of the Middle States Commission, stated:

[T]he accrediting process should reflect the values of higher education that all of us are aspiring to... it's not just an academic policy or an accrediting policy--it is the public policy of this nation since 1954 to try to eliminate segregation in places of public accommodation... Middle States' standard on diversity is responsive to the public policy of this nation....<sup>296</sup>

Similarly, the following excerpt from an interview<sup>297</sup> conducted with Dr. Samuel T. Logan, then president of Westminster Theological Seminary, suggests that the actions taken by the Middle States Commission on Higher Education might have been heavily influenced by the macro-political climate, very broadly defined:

**Logan:** ...[W]hat has happened... is that the two regional associations have created some arbitrary guidelines which, in their judgment, automatically and universally measure the acceptability of the learning environment.

**Iannone:** And they are deriving these guidelines from the contemporary

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<sup>296</sup> Patricia McGuire, President of Trinity College and a member of the Middle States Commission, before the Department of Education's National Advisory Committee on Accreditation and Institutional Eligibility on November 13, 1990. p. 556

<sup>297</sup> Logan and Iannone, "God, Man, and Middle States."

*Zeitgeist?*

**Logan:** That's the best guess I've got.

If one defines the term *macro-political climate* so broadly that it encompasses “the contemporary *Zeitgeist*” and changing societal attitudes toward diversity, then perhaps one could argue that it is a significant determinant of an agent’s actions. However, such a loose interpretation of the term renders it largely useless for analytical purposes. Macro-political climate as defined by Mattli and Büthe is very likely an important factor in cases concerning self-regulating industries, but its relevance to professions is less clear.

There were two alternative hypotheses in addition to those which were based on Mattli and Büthe’s multiple-principals theory. The first alternative hypothesis was that, while Mattli and Büthe were correct in stating that the agent’s actions are determined by the relative tightness of its relationships with its principals, they overlooked other significant variables which affect that tightness. That alternative hypothesis stated that:

This tightness is a function of some variable other than the relative importance of each principal for the agent’s financial viability, the relative importance of each principal for the agent’s financial viability operational viability, or exogenous changes in the macro-political climate relevant to the principal-agent relationships.

The evidence discussed above strongly supports this fourth hypothesis. Additional variables affecting the tightness of principal-agent relationships that have been identified include:

- Viability of Authority

- Degree of Co-Dependency between Agent and Principal
- Second-Tier Principals
- Internal Divisions within Principals
- Internal Divisions within the Agent

An additional variable that does not affect the tightness of the principal-agent relationship but which may influence the effects of that tightness would be miscommunication between the principal and the agent.

The final alternative was the null hypothesis, which stated that although Mattli and Büthe may have been correct in observing that the delegation of government authority to self-regulatory organizations leads to multiple-principals problems, the competing principal-agent relationships that result from that problem are not a significant determinant of the agent's actions. The evidence does not support a complete refutation of the significance of the competing principal-agent relationships as a determinant of an agent's action. It does, however, suggest the existence of variables in addition to the principal-agent relationships that may directly influence the agent. These include:

- Contextual changes
- Individual self-interest
- Ideology

Ideology appears to have been a particularly significant determinant of the actions taken by the regional accreditation associations. Perhaps this finding is specific to professions, as opposed to industries; further research will need to be conducted in this area.

It is worth noting, too, that the confusion of scale that has resulted from the application of principal-agent theory to organizations is reflected in the determinants that were found. Ideology is often found on the scale of the individual, although one could certainly argue that some organizations have their own group-ideology. Individual self-interest occurs, by definition, on the scale of the individual. The contextual changes that were described by the respondents, however, occurred on a societal level. These included advancements in technology, the rise of adult education, the growing diversity of higher education institutions, and other national, or even global, trends.

This diversity of scale is not necessarily a problem; we are all influenced by variables occurring on a variety of scales. It is important, however, that one remain cognizant of the scale at which a phenomenon is occurring, particularly when one is designing policy.

## CHAPTER SEVEN: CONCLUSION

The following factors have been found to be significant determinants of the actions taken by the accreditation commissions:

- Ideology
- Contextual Changes
- Viability of Authority
- Degree of Co-Dependency between Agent and Principal
- Second-Tier Principals
- Internal Divisions within Principals
- Internal Divisions within the Agent
- Miscommunication between Principal and Agent
- Individual Self-Interest
- [Indirect] Financial Viability

Although some of these factors may be more prominent within self-regulating professions than in self-regulating industries, many of them can be found in both types of cases. Mattli and Bütte's multiple-principals theory was originally intended to describe the consequences of the delegation of government authority to a private agent; the example they chose was the use by the federal government of accounting standards established by a private organization. In the case that they described, there were internal

divisions within both principals: the federal government and the accounting industry. There was a latent second-tier principal, the voting public, which threatened to become active after a highly publicized accounting scandal. Contextual change occurred due to improving technology and the internationalization of accounting standards, and these changes had a significant effect on the decisions made by the agent. Viability of Authority was an important factor; both the agent and its first principal, the accounting industry, benefitted from the government's delegation of authority to the self-regulatory organization.

This study has found that the multiple-principals theory developed by Mattli and Büthe is not entirely successful at explaining the actions of an agent faced with two principals. It is, however, a starting point. The accreditation case-study illustrates a few of the limitations of their theory but it also demonstrates the potential usefulness of principal-agent theory to analyze situations in which government authority has been delegated to a private, self-regulatory organization. Further case studies will undoubtedly reveal additional determinants of an agent's actions which have not yet been identified. Perhaps, too, such studies will redeem those aspects of Mattli and Büthe's theory that have been found inapplicable to the accreditation case.

Self-regulation addresses many of the same problems as government regulation; it can be used to help solve collective action problems, to promote inter-operability among firms, to monitor quality, and to limit externalities. As noted in Chapter Two, self-regulation is becoming an increasingly popular alternative to government regulation for

several reasons, among them the perceived inefficiency of government regulatory agencies, bureaucrats' lack of technical expertise, cost, and civil service rules and procedural requirements which can sometimes hinder government agencies from adapting quickly to new circumstances. Governments, in the United States and around the world, are finding it significantly less resource-intensive to adopt the standards, rules, licensing requirements, and other outputs of privately run, self-regulatory bodies for their own purposes rather than starting from scratch. Additionally, it is argued that most governments are suffering from regulatory overload.<sup>298</sup> The reliance on self-regulation, then, is seen as releasing governments from an unmanageable burden.

From the perspective of the general public, however, there are numerous potential disadvantages to governments' growing reliance on privately run, self-regulatory organizations. There is no guarantee that the interests of the self-regulatory bodies and those of the general public will neatly coincide; if they do not, self-regulating organizations should be expected to pursue their own best interests. In such cases, self-regulation may result in collusion, higher prices, and higher barriers of entry for new entrants. Another potential problem with self-regulation is that standards set by self-regulating industries, or professions, may be weak and/or poorly monitored. Further, self-regulation can result in a lack of transparency and accountability.<sup>299</sup>

The literature provides no simple answers to the question of whether government regulation or self-regulation is more effective. The answer depends largely on the nature

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<sup>298</sup> Gunningham and Rees, "Industry Self-Regulation," 363.

<sup>299</sup> *Ibid.*, 366-370.

of the industry or profession that is being regulated, the content of the regulation, and the existence of reliable oversight and enforcement mechanisms.

This dissertation has used the case of accreditation to explore the long term consequences of the delegation of government authority to regional accreditation associations. It is only a first step, however. Every case is unique and although there is undoubtedly value in identifying broad patterns and defining categories, in-depth case studies are necessary to challenge generalizations and to reveal critical variables that may have gone overlooked; the distinction between self-regulating professions and self-regulating industries is only one such example. Application of a modified form of Mattli and Büthe's theory to different types of professions and industries may yield additional insights into the optimal mix of self- and government regulation.

Thus far, the use of private, self-regulatory organizations by governments around the world has occurred without a comprehensive strategy and with limited awareness of the potential dangers. When private actors are empowered to create or interpret public policy, whether on a national or a global scale, there is a need for public debate about why these particular individuals are being authorized to do so and how they will be held accountable. It is hoped that the case described in this paper will assist in the eventual development of a comprehensive approach for determining those circumstances under which self-regulation is most likely to succeed.

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