



THE ANTECEDENTS OF THE U.S. BORDER PATROL

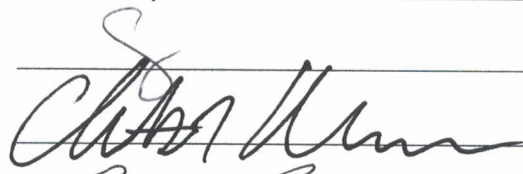
by

Alan Philip Capps
A Dissertation
Submitted to the
Graduate Faculty
of
George Mason University
in Partial Fulfillment of
The Requirements for the Degree
of
Doctor of Philosophy
History

Committee:

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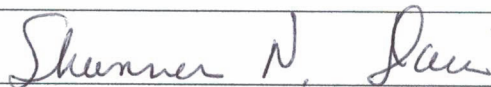
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Spring Semester 2018
George Mason University
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A Dissertation submitted in partial fulfillment of the requirements for the degree of
Doctor of Philosophy at George Mason University

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DEDICATION

This is dedicated to my wife Joanna without whom, quite simply, none of this would have been possible. It is also dedicated to the memory of my father Arthur, a passionate devotee of the study of history. Finally, to the four-legged members of my listening gallery, past and present, Sam, Ben, Tess, Beans, Guy, Buffalo, Charles, Chips, Pie, Toby, Eddie, and Lion. They have listened attentively as every word, phrase and sentence was read aloud time and again, and never complained. No one could ask for a more appreciative audience.

“It is an accepted fact of progress that by carefully reassessing the current values that have emerged from past rearrangements of circumstances the whole potential of future opportunities not only become very clear but strictly obtainable with that fulfilling sense of accomplishment.” Arthur Capps, 1919-1996

ACKNOWLEDGEMENTS

Anyone who undertakes to research and writes a dissertation does so with the knowledge that it also presents a once in a lifetime opportunity to offer heartfelt thanks to everyone — past and present — who through even the smallest contribution has made possible the outcome. In the words of William Shakespeare from *Twelfth Night*, therefore, “I can no other answer make but thanks, and thanks, and ever thanks” to the following people.

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Each of the other members of my committee contributed enormously to this project, in two cases before they were even members of my committee. My time spent with Alison Landsberg reading about and discussing the history and policies of immigration in the United States allowed me to develop an even keener sense and awareness of the complexities involved in the topic. Alison also has a unique ability to ask the right question at precisely the right time, often catching you off guard. This taught me not only how to balance a macro picture with micro details, but how to explain something and convey an answer with clarity and precision. Chris Hamner has left me with any number of insights, but without question, the most important in my view, his cautionary observation about footnotes. In his words, finding mistakes in footnotes is like a clock striking thirteen. If errors exist in footnotes, the odds are there are mistakes in the text. Taking time to get the footnotes and references spot-on is as critical and demanding as writing the manuscript. A vital lesson and observation that I continue to pass on to students. Katherine Benton-Cohen was one of the first academics I encountered with a focus on an aspect of American borderlands, specifically the Arizona borderlands and the historical creation of racial boundaries. I learned a tremendous amount from her insights, research, and observations. Katherine was also amongst the first to encourage me to write about the border patrol when I first broached the subject as a possible topic for a dissertation.

A special mention has to go to Professor Rosie Zagarrri for her encouragement and support in undertaking this project. Rosie's most significant contribution, however, can be summed in the words ‘narrow it down’ followed by ‘narrow it down again.’ My original

idea for my dissertation related to the amorphous topic of homeland security and was way too large and unmanageable. With her words ringing in my ears and written on outlines, Rosie helped me immeasurably by making me attain the one critical asset of focus. Also, Dr. Suzanne Smith, the first professor at George Mason with whom I discussed getting back into a history graduate program many years ago, encouraged me from the outset and for that, I am eternally grateful. Emily Gibson, the Graduate Coordinator of the Department of History, guided me through all the paperwork and logistics for which I am eternally grateful.

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My undergraduate education at the University of Sussex in England presented me the opportunity to learn from, and study under a group of professors to whom I owe an equal amount of thanks and gratitude. Foremost amongst them Marcus Cunliffe, many of whose books I acquired when he left for the United States permanently and still treasure, and who I eventually caught up with once again at George Washington University. Colin Brooks, Rupert Wilkinson, Vivian Hart and Steve Burman helped me and guided me along my undergraduate path in American history.

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various career paths, Doug Brinkley, Dan Brusstar, John Heffernan, Dan Stoll, and Larry Thomas.

From my graduate days at George Washington University, professors James Lebovic and Benjamin Cooling were pivotal figures in so many ways. Likewise, Richard Rycroft whose graduate course entitled Bureaucratic Politics began my fascination with how bureaucracies are created, function, sometimes fail, but remain a constant in all our lives. Also Richard Thornton, a historian, mentor, and good friend, among whose skills were to make his graduate students always look at the big picture and understand the power of linkage.

Outside the academic world, there are a group of friends who, over the years have listened to me talk about the Border Patrol, offered their valuable insights and suggestions and have done everything to encourage me in the pursuit of this project. Mark Philips, a fellow graduate student at George Mason and a true friend, always found the time to listen to me expounding on the topic and offered his keen evaluation and insight. Dr. Peter Roman, Colonel Randy Larsen, Colonel Dave McIntyre, Dr. Ruth David, Dr. Derek Leebaert, and Dr. Asha George, all contributed through advice, comments, and suggestions.

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Finally and most importantly, to my wife of 34 years, Joanna, thank you. Quite simply without her unwavering support and encouragement none of this would have been possible. I don't know whether I can ever pay back in full the debt of gratitude I owe her, but I look forward to doing everything in my power to do so.

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ABSTRACT

THE ANTECEDENTS OF THE U.S. BORDER PATROL

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George Mason University, 2018

Dissertation Director: Dr. Zachery Schrag

This dissertation examines the antecedents of the U.S. Border Patrol. By reviewing the period 1812-1940, I consider the alternatives the U.S. Congress could have but did not embrace, concerning the establishment of a border patrol force. In doing so, I clarify the process by which the antecedents reveal the developmental evolution of a federal agency designed to enforce the comprehensive rule of federal law not just specific areas of federal law, a concept that for many critics implied a national police force.

Among the alternatives studied in this dissertation are the employment of the U.S. Marshals service, initially the only constitutionally empowered agency to enforce federal laws, and the early reliance on questionable state and local militias along the northern border with Canada. Additional alternatives I examine include the volatile and independent-minded Texas Rangers along the majority of the southern border with Mexico, and the early role of the federal army when called upon to assist in the enforcement of federal laws along both borders.

Even full jurisdictional control of immigration policies by the federal government in the 1880s, resulting in a series of increasingly restrictive federal immigration laws through the end of World War One, failed to warrant the establishment of dedicated land border force to enforce immigration restrictions. Only after the passage of the Johnson-Reed Act of 1924 were monies appropriated to expand the nascent ad hoc force within the Bureau of Immigration into a Border Patrol with the sole objective of enforcing immigration laws. Through congressional debates, federal reports, executive actions, and witness testimonies, I detail the subsequent protracted bureaucratic struggle between the Departments of Labor and Treasury in the late 1920's and early 1930s over the proposed consolidation of agencies and enforcement powers into one unified U.S Border Patrol.

INTRODUCTION

President George W. Bush signed P.L. 107-296 on November 25, 2002, establishing the Department of Homeland Security effective January 24, 2003.¹ In doing so, the federal government undertook the most significant governmental reorganization since 1947. A total of 22 component agencies from across the federal government merged into the new department. Among the component agencies transferred, the United States Border Patrol moved from the Department of Justice to the Department of Homeland Security.

The transfer marked the end of a sixty-two-year organizational relationship for the U.S. Border Patrol with the Department of Justice. It also represented the second transfer for the agency resulting from national security concerns. On May 22, 1940, under President Franklin Roosevelt's Reorganization Plan No. 5, the Bureau of Immigration and Naturalization, which included the Border Patrol, transferred from the Department of Labor to the Department of Justice, ending a 16-year tenure that followed its evolution from an ad hoc entity to a federally funded government agency in 1924.²

¹ *Homeland Security Act of 2002*. Public Law 107-296, 107th Cong., (November 25, 2002).

² Message from the President of the United States. May 22, 1940, Reorganization Plan No. V, 76th Cong., sess., III Doc. # 784 (Washington, D.C.: Government Printing Office, 1940).

The Border Patrol commenced its operational life not as the result of a specific piece of legislation creating an agency, but through simple appropriations language inserted into an appropriations bill for the Department of Labor for Fiscal Year 1925.³ The Bureau of Immigration and Naturalization was appropriated \$4.5 million “for the enforcement of laws regulating the immigration of aliens into the United States.” From the total appropriated, one million dollars “shall be expended for additional land-border patrol of which \$100,000 shall be immediately available.”⁴ In 1924, the border patrol became the twelfth agency, and the Department of Labor the fourth federal department, charged in one way or another with the prevention of illegal entry into the United States of persons or things, operating along the country’s land borders and the maritime ports of entry.

The number and often overlapping responsibilities of these 12 federal enforcement agencies reflected, up to that point, a history of ad hoc responses to a particular enforcement problem along the country’s land borders. The ad hoc responses took place against the combined backdrop of the gradually expanding federal jurisdiction during the 19th Century and early 20th Century and, a staggering, rapid cumulative growth in the length of the northern and southern land borders. On January 1, 1854, the northern and southern borders of the United States were a combined 5,900-plus miles, increasing a further 1,500-plus miles in 1867 with the purchase of Alaska from Russia. Two years before the completion of the transcontinental railroad, and a union that consisted of only

³ *Appropriations, Estimates, Etc. Statements for the 68th Congress First Session*, (Washington, D.C.: Government Printing Office, 1924) Title IV Department of Labor.

⁴ *Ibid.*, 241.

37 states, the federal government in Washington, D.C. had authority and responsibility for, over 7,400 miles of land borders.⁵

This development of another ad hoc enforcement agency presents a crucial question to historians: What were the historical antecedents of the U.S. Border Patrol? Before 1924 what alternatives did the U.S. Congress have but did not embrace, concerning the establishment of land border patrol force to police 7,400 miles of border? Why did the U.S. Congress only finally appropriate funding for a border patrol in 1924? What were the arguments and motives behind the Department of Treasury's intense lobbying campaign during the second half of the decade of the 1920s to convince Congress to merge this nascent ad hoc force in the Department of Labor into another, newly designated, U.S. Border Patrol force under the leadership of the Treasury? Why did the campaign fail? How do the antecedents of the Border Patrol fit into the broader historiographical debate on the nature of the growth and reach of the federal government in the late 19th Century and early 20th Century?

Two additional areas of research, central to this dissertation, must also be examined. First, the issue of shared international borders and the permeability of those borders. Peter Andreas argues the borders of the United States have always been "highly porous," and, as such, American history viewed "through the lens of smuggling sheds

⁵ Aaron L. Shalowitz, *Shore and Sea Boundaries* Vo. 2 (Washington, D.C.: Department of Commerce, Coast and Geodetic Survey, 1964), Pub. 10-1. In 1867, the United States government also exercised control over 11,700 miles of coastline.

new light on the dynamics of borders, foreign relations, government expansion, economic development, and societal transformation.”⁶

The second issue is the history and nature of the fragmented structure of law enforcement when overlaid with expanding federal jurisdiction in the 19th Century. A firmly held and historical suspicion of concentrated central government power, especially in the area of law enforcement, led Alexander Hamilton to reassure the states in *Federalist Paper* No. 17 that the federal government would not usurp state sovereignty, and that law enforcement would be the responsibility of the states. To Hamilton, “regulation of the mere domestic police of a State appears to me to hold out slender allurements to ambition.” Hamilton viewed any “attempt to exercise those powers would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government.”⁷

Commerce, finance, negotiation, and war, however, were "objects, in the first instance, to be lodged in the national depository," according to Hamilton.⁸ Accordingly, the Department of the Treasury had substantial powers—it collected taxes, managed the public debt, ran the national bank, conducted land surveys, and purchased military supplies. Regulating commerce, a constitutional right of the federal government, therefore, “provided a key mechanism for expanding its [federal government] police

⁶ Peter Andreas, *Smuggler Nation How Illicit Trade Made America* (New York: Oxford University Press, 2013), 3.

⁷ Alexander Hamilton, *Federalist* No.17, in *The Federalist Papers*, ed. Clinton Rossiter (New York: New American Library, 1961), 113-117.

⁸ *Ibid.*

powers.”⁹ The establishment in 1789 within the Department of the Treasury of the Customs Service, administering fifty-nine customs districts in eleven states, and operating its revenue cutters with the objective of the regulation and policing of trade, conferred substantial additional power on the department.¹⁰ Except for United States Marshals, Customs administrators were often the only local representatives of the national government throughout the states.

The United States Marshal Service, established under the Judiciary Act of 1789, assigned the marshals two responsibilities: “to attend the federal courts” sitting in their judicial districts and “to execute all lawful precepts issued under the authority of the United States.” U.S. Marshals also had one power that customs officials, revenueurs, and postal inspectors were not conferred until the twentieth century, the authority to arrest anyone breaking the law.¹¹

During the nineteenth century, the United States embarked on a nation-building campaign through an amalgamation of delineating the country’s northern and southern borders, and through an expansion of control over the territories in between. This expansion happened during a period characterized as an era that witnessed very little collaboration between national and state governments. The two levels of government were seen as distinct entities providing separate services. Edwin S. Corwin called this

⁹ Andreas, *Smuggler Nation*, 7.

¹⁰ Ch.5 Stat.1, 1st Cong., sess., 1 July 31, 1789. Only eleven states had ratified the Constitution when the legislation was signed into law.

¹¹ Ch. 20 Stat. 1, 1st Cong., sess., 1 September 24, 1789

governing structure “dual federalism,” a model limiting the powers of the national government to those strictly enumerated in the Constitution.¹²

William Novak, in his “The Myth of the “Weak” American State,” argued the nineteenth century had also been viewed as “a usually benign tale of legal-political self-abnegation, emphasizing constitutional restraints such as federalism, checks and balances, the separation of powers, limited government, the rule of law, and laissez-faire.”¹³ The reality, however, presents a different picture according to Novak. The American state "is and always has been more powerful, capacious, tenacious, interventionist and redistributive," than was previously recognized in earlier accounts of American history.¹⁴

The last 20 years have witnessed what Novak terms a "burgeoning historical revision" to the extent that historians have been discussing issues surrounding the growth of the American state in the post Civil War era into the early 20th Century. This revision has been "built on the contributions of an impressive number of senior scholars" in

¹² Corwin first employed the term “dual federalism” in an article published in the *Cornell Law Review* in 1933. Edwin S. Corwin, “Congress’ Powers to Prohibit Commerce: A Crucial Constitutional Issue,” *Cornell Law Review*, vol. 18, issue 4, June 1933, 477-506, 481. Several disputes over the nature of the nature of federalism were resolved in a number of landmark Supreme Court decisions in the antebellum period. The majority focused on issues of property rights, the power to regulate commerce, the idea of “national supremacy,” individual legal rights and the ability of a citizen of one state to sue a citizen of another state.

¹³ William J. Novak, “The Myth of the “Weak” American State,” *American Historical Review*, vol. 113, no. 3, June 2008, 752-772.

¹⁴ *Ibid.*, 755.

addition to the "new energy and insights thrust into State studies, a revision that has taken on a life and agenda of its own among a somewhat more junior group of scholars."¹⁵

Stephen Skowronek's groundbreaking 1982 work, *Building a New American State: The Expansion of National Administrative Capabilities, 1877-1920*, advanced the thesis that the American State possessed two main dimensions: a court system that fostered economic development, and a party system that embodied the ideal of popular sovereignty.¹⁶ The thesis challenged, in the words of Richard John, the "prevailing rigid orthodoxy" that the United States in the 19th Century was not a state comparable to the nation-state of Europe particularly in areas such as centralized enforcement of national laws.¹⁷

Theda Skocpol, a historical sociologist, along with Peter Evan and Dietrich Rueschemeyer, added their significant contribution with *Bringing the State Back In*, published in 1985. Skocpol's introductory essay laid out the central thesis of the book "states conceived as organizations claiming control over territories and people may formulate and pursue goals that are not simply reflective of the demands or interests of social groups, classes or society."¹⁸

Subsequent academic works continue to reflect a desire to better understand such topics as the role of public finance, public health, and the debates over the employment of

¹⁵ Ibid.

¹⁶ Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capabilities, 1877-1920* (Cambridge: Cambridge University Press, 1982)

¹⁷ Richard R. John, (Ed.), *Ruling Passions: Political Economy in Nineteenth-Century America* (University Park: Pennsylvania State University Press, 2006).

¹⁸ Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985).

the U.S. military both internally and externally. The establishment of new federal departments in areas such as agriculture, commerce, labor, and justice, has led to research and publications examining the administration and enforcement of federal laws. Richard Bense's *Yankee Leviathan: Origins of the Central State Authority, 1859-1877*, argued, "the American state emerged from the wreckage of the Civil War," with "the extremely weak antebellum state assuming fundamental attributes of territorial and governmental sovereignty."¹⁹

Works by Ronald Johnson and Gary Libecap, on the growth of the federal civil service, Richard John on the history of the American postal system, Brian Balogh on the imposition of national rules to ensure orderly development, and William Novak on the growth of federal laws and regulations in the United States in the nineteenth century, all focus on the argument that the needs of an expanding post-Civil War American economy and nation. The requirement is for greater efficiency in areas such as the collection of customs duties and tariffs, delivering the mail, and the national enforcement of new federal regulations.²⁰

One of the new areas of federal regulations emerging in the last two decades of the nineteenth century focused on immigration into the United States. This focus has evolved in the late twentieth century and early twenty-first century into a subset of

¹⁹ Richard F. Bense, *Yankee Leviathan: The Origins of Central State Authority in American, 1859-1877* (Cambridge: Cambridge University Press, 1990).

²⁰ Ronald N. Johnson and Gary D. Libecap, *The Federal Civil Service and the Problem of Bureaucracy: The Economics and Politics of Institutional Change* (Chicago: University of Chicago Press, 1994); Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge: Harvard University Press, 1995); William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996).

scholarship within the scholarship on the emerging American state. Examining areas such as the enforcement of state and local laws, enforcement procedures by the federal courts, and the establishment and work of federal administrative agencies such as the Immigration and Naturalization Service, has made possible a more nuanced view of the historical development of immigration regulations, and the role immigration law has contributed to the growth of the federal government's administrative and enforcement powers.²¹

The focus on enforcement, rather than solely on immigration legislation itself, represents yet another step towards addressing a number of broader issues such as the role of government in American society. Kelly Lytle Hernández's *Miga! The History of the U.S. Border Patrol* examines the history of the agency from the standpoint of the social composition of the employees from the mid-1920s through to the present-day. Rachel St. John's *Line in the Sand* examines the transformation of the western U.S.-Mexico border and how a line drawn on a map evolved into a densely regulated dividing line between the two countries. S. Deborah Kang's *The INS on the Line Making*

²¹ Keith Fitzgerald, *The Face of the Nation: Immigration, the State, and the National Identity* (Stanford: Stanford University Press, 1996); Kevin R. Johnson, "Race and Immigration Law and Enforcement: A Response to Is There a Plenary Power Doctrine?" *Georgetown Immigration Law Journal* 14:2 (Winter 2000): 289-305; Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2003); Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004); Lucy Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995).

Immigration Law on the US-Mexico Boundary, 1917-1954 examines how the agency defined itself not only as a law enforcement agency but also as a lawmaking body.²²

This dissertation examines the antecedents of the U.S. Border Patrol. By reviewing the period 1812-1940, I consider the alternatives the U.S. Congress could have but did not embrace, concerning the establishment of a border patrol force. In doing so, I clarify the process by which the antecedents reveal the developmental evolution of a federal agency designed to enforce the comprehensive rule of federal law not specific areas of federal law, a concept that for many critics implied a national police force. Among the alternatives studied in this dissertation are the employment of the U.S. Marshals service, initially the only constitutionally empowered agency to enforce federal laws, and the early reliance on questionable state and local militias in northern border states. Additionally, the volatile and independent-minded Texas Rangers along the majority of the southern border, and the early role of the federal army when called upon to assist in the enforcement of federal laws.

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²² Kelly Lytle Hernández, *Miga! The History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010); Rachel St. John, *Line in the Sand A History of the Western U.S.-Mexico Border* (Princeton: Princeton University Press, 2011); S. Deborah Kang, *The INS on the Line Making Immigration Law on the US-Mexico Border, 1917-1954* (New York: Oxford University Press, 2017).

the Bureau of Immigration into a Border Patrol with the sole objective of enforcing immigration laws. Through congressional debates, federal reports, executive actions, and witness testimonies, I detail the subsequent protracted bureaucratic struggle between the Departments of Labor and Treasury in the late 1920's and early 1930s over the proposed consolidation of agencies and enforcement powers into one unified U.S Border Patrol.

This dissertation reflects on the little-known antecedents of the U.S. Border Patrol and contributes to a more concise understanding of its evolution from an interdepartmental agency responsible for one area of federal law into a federal law enforcement agency.

Chapter Summaries

To examine the antecedents of the U.S. Border Patrol, this dissertation is separated into six thematic chapters. The first chapter discusses the northern border during the period from the conclusion of the War of 1812-14 through the ratification of the 1842 Webster-Ashburton Treaty and the impact of the 1846 Oregon Treaty that results in a 4,000-mile long northern border. The federal government has virtually no representation at the local level, and the permeability of the border significantly hampers the ability of the federal government to maintain control during the late 1830s. The eventual diplomatic settlement of many outstanding border-related issues between London and Washington allows the federal government to vacillate to the point of taking no action on any permanent civil enforcement agency.

The second chapter turns to the southern border and a far more volatile situation involving Texas and covering the period from the establishment of the first American

settlements through to the eve of the American Civil War. A much more aggressive Texas challenges the federal government on issues of border enforcement. The early appearance of an organization known as the Texas Rangers employing their particular brand of law enforcement both along the border with Mexico, and within Texas, provides for an interesting dynamic. Within two years of the ratification of the Oregon Treaty taking the northern border to the Pacific coast, as a result of the Mexican-American War, the United States adds 1.5 million squares miles of land and assumes control of southern border stretching for 1,900 miles.

The northern border on the eve of the American Civil War through the late 1880s is the subject of the third chapter. The northern border is viewed as a "war in anticipation" when the Civil War erupts. A small raid into Vermont by Confederate agents in later 1864, briefly threatens the tenuous stability of the border, but London is keen to avoid a broader conflict. But the United States does introduce passports for people coming across the U.S.-Canadian border. The increasing appreciation on the part of Ottawa that it must defend and enforce its sovereignty prompts the Canadian government to initiate steps to institute a civilian law enforcement agency to police their side of the border.

The fourth chapter explores the challenges of the southern border at the end of the American Civil War. The southern border remains convulsed by cross-border raids going in both directions by Native Americans, Mexicans, and Americans. The Texas state legislature demands a stronger federal presence along the southern border while complaining about the presence of federal troops as a result of Reconstruction policies.

Commissions from both Mexico and the United States examine the rapidly downward spiraling border troubles, and each lays the blame squarely on the other. The ending of Reconstruction coincides with new efforts to reduce the size and appropriations for the U.S. Army. The Texas Rangers come into their own once again along the border as the U.S. Army is not only cut but its abilities to go to the assistance of civilian law enforcement is curtailed through the passage of the Posse Comitatus law.

The fifth chapter turns to the disconnect beginning to emerge along both borders as increasingly restrictive legislation aimed at immigrants is enacted by the U.S. Congress in the last two decades of the nineteenth-century but there remains no dedicated civilian force to police the land borders. A small group of U.S. Customs inspectors commences riding along stretches of the southern border trying to apprehend Chinese immigrants from entering the United States. They are rapidly overwhelmed.

The idea of a dedicated mounted civil force to police both borders is suggested but fails to gain any traction with the Congress. The Department of the Treasury argues against its Customs Collectors having to enforce immigration laws in addition to their duties.

The assumption of authority over immigration policy by the federal government witnesses additional restrictive legislation but still no enforcement capabilities. Heads of the new Bureau of Immigration within the Treasury Department such as Terence Powderly and Frank Sargent also become advocates of a dedicated land border enforcement agency. The Congress still fails to act. Along the northern border, the Canadian government begins to enact restrictive legislation and creates a specialized

border agency. On the southern border, Mexico continues to struggle to enforce its laws along the border. Governor Colquitt of Texas proposes both an expansion of the Texas Rangers and federal funding to allow the Rangers to guard the border and enforce laws. Chaos ensues when revolution breaks out in Mexico threatening what little stability existed along the southern border.

Finally, the dissertation ends with additional restrictive legislation passed by the U.S. Congress. There is an almost nonchalant acceptance by the Congress that additional appropriations should be provided to the Department of Labor to enhance what little enforcement capability exists within the Bureau of Immigration. The result is a bureaucratic struggle ensues between the Department of Labor and the Treasury Department over the proposal for a newly designated federal land border patrol with enforcement powers for all federal laws.

The legislation passed the House of Representatives, but the U.S. Senate failed to take up the bill, and it expires at the end of the third session of 71st Congress. The Department of Labor holds on to the Border Patrol but only for a short period. In 1940, with war brewing in Europe, President Roosevelt orders the Bureau of Immigration and the Border Patrol transferred to the Department of Justice, where it finally gains the sobriquet, the U.S. Border Patrol and the narrative closes.

CHAPTER ONE

On November 30, 1782, British and American commissioners signed the Preliminary Articles of the Treaty of Paris ending the Revolutionary War.¹ There followed a dinner, organized by Benjamin Franklin and held at his house in Passy, for all the HUnited States with “gigantic boundaries on the south and west and north which determined its coming power and influence.”²

The “gigantic boundaries,” in particular the northern boundary, would remain a source of constant diplomatic friction, and occasionally saber-rattling between the United States and Great Britain until the early twentieth century. The demand for the whole scale incorporation of all Canada into the United States on the part of those who favored territorial annexation reverberated throughout most of the nineteenth century.³

Additionally, interpretative disputes promoted by interested groups, but also arising, in

¹ The treaty came in three distinct stages. The Preliminary Articles of Peace were signed between American and British commissioners on November 30, 1782, and were ratified by both countries on April 15 and August 6, 1783, respectively. Fighting continued until Britain signed separate preliminaries of peace with France and Spain on January 20, 1783, on which date a final armistice between American and British forces came into effect. The definitive peace between the two countries and all other parties was signed in Paris on September 3, 1783, and ratified by both in early 1784.

² Justin Winsor, ed., *Narrative and Critical History of America*, Boston: Houghton and Mifflin, & Co., 1888) V. 7, 150.

³ Benjamin Franklin had proposed to Lord Shelburne that London agreed to the incorporation of Canada into the new republic. Lord Shelburne politely turned down the request. For more on the negotiations, see C.R. Ritcheson, “The Earl of Shelburne and Peace with America, 1782-1783: Vision and Reality,” *The International History Review*, Vo. 5 No. 3 (August 1983), 322-345.

essence, from the loose wording of Article II of the Treaty which itself derived more from the lack of geographic knowledge than to “linguistic evasions of diplomacy,” contributed to the abrasive relationship.⁴

A third element is examined, in this chapter. How did the United States propose to police these new “gigantic boundaries,” particularly the least well-surveyed and defined northern border with British Canada especially when juxtaposed against the impacts of geographic distance and isolation combined with constitutional ambiguity within the Constitution? How was a nascent federal government, geographically situated hundreds of miles from any of the “gigantic boundaries,” to impose its authority on remote areas of the country operating, as it was, with a Constitution that neglected to provide any stipulation for a regional administrative structure extending across the nation?

The Uncertain Northern Border

Emmerich de Vattel observed in his *Law of Nations*, published in 1758, “To prevent every subject of discord, every occasion of quarrel, the limits of territories ought to be marked with clearness and precision.”⁵ Defining boundaries with “clearness and precision” using natural geographic features is problematic at best. In the case of the northern border between the United States and British Canada, a rather striking example of the danger attached to the drafting of frontier agreements dependent upon old and imperfect small-scale maps, and in the absence of complete topographical data, became

⁴ H.C. Allen, *Great Britain and the United States A History of Anglo-American Relations, 1783-1952* (London: Odhams Press, 1954), 257.

⁵ M.D. Vattel, *The Laws of Nations* (Philadelphia: P.H. Nicklin and T. Johnson, 1829), 230.

readily apparent. In the words of Dr. Johnson, “It is almost as easy to divide the Atlantic Ocean by a line, as clearly ascertain the limits of those uncultivated, uninhabitable, unmeasured regions.”⁶

Equally challenging for the nascent federal government, the issue of enforcing federal laws and defending American sovereignty along the length of the new northern border traversing the “uncultivated, uninhabitable, unmeasured regions” juxtaposed against issues concerning state sovereignty and the supremacy of federal authority. The federal government was virtually powerless to enforce federal laws or to defend the country’s sovereignty. The fear of a maintaining a large standing army remained palpable in the new republic. The consequence of which is a federal army whose manpower levels are maintained deliberately low with the understanding that the militia system will provide the necessary reinforcements as required. The U.S. Marshals Service, the only federal enforcement authority, whose duties were “to execute all lawful precepts directed to him, and issued under the authority of the United States,” were few in number, served four-year terms and were “removable from office at pleasure.”

“And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared that the following are and shall be their boundaries,…” comprised the opening lines of Article Two of the 1783 Treaty of Paris. There followed a description of known bodies of water such as Lake Erie, navigable rivers such as the Mississippi, and natural features such as

⁶ Arthur Murphy, ed, *The Works of Samuel Johnson* (London: W. Sharpe and Son, 1824) Vol. II, 285-86.

mountain ranges. All were used to define the geographic boundaries of the United States concerning British Canada.⁷

Under Article Two the U.S.-Canadian boundary commenced "from the northwest angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source of Saint Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the St. Lawrence, from those which fall into the Atlantic Ocean, to the northwestern head of the Connecticut River, thence down along the middle of that river to the forty-fifth degree of north latitude." Astronomers could locate the forty-fifth degree of northern latitude. But two St. Croix Rivers meandered through the territories; "the Highlands" was, in fact, a bewildering landmass with no clear watershed. It would not allow for the drawing of the prescribed line of the northwest angle, and the source of the Connecticut River was a complete mystery.

The lack of any clear demarcation of the international boundary had immediate ramifications. The British did not evacuate several forts on the American side of the border until 1796 as a result of Jay's Treaty of 1794.⁸ The British also maintained active military contact with Native American tribes south of the boundary up to and well beyond the 1812-14 War, a connection often viewed as "incitement" by Americans. In the

⁷ A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875, *Journals of the Continental Congress*, Vol. 26, C.22-29, 22.

⁸ The Treaty of Amity, Commerce, and Navigation, November 19, 1794. The British had made clear that they were quite ready to evacuate the forts located on American territory once American forces arrive to take them over. However, London was not prepared to yield any of the principles regarding neutral rights and impressment. The realization on the part of John Jay that London would not, or could not concede more and his acceptance of the fact made the treaty possible. H.C. Allen, *Great Britain, and the United States*, 287.

thirty years after 1783 local communities on both sides of the undefined border also continued to interact with each other in much the same manner as they had when they had existed as one legal entity within the British Empire after the 1763 Treaty of Paris. The primary difference now was the growth of two-way smuggling across the new delineated yet undefined boundary.

The lack of any real federal presence in the form of law enforcement officers placed the onus of implementation of federal statutes against smuggling on state and local officials. They, however, "winked at the trade," and quickly learned to "protect themselves from abuse and to pad their incomes with payoffs by colluding in the smuggling trade." Any federal officials who did manage to reach the region found non-cooperation by local officials to be the *modus operandi*.⁹

The Treaty of Ghent ending the 1812-14 War included an article calling for the appointment of Anglo-American commissioners whose objective would be finally delineating the Canadian-United States border in the Maine region. The same general lack of geographic knowledge remained as an obstacle. Cornelius Van Ness, one of the appointed American boundary commissioners, sought to enlist the assistance of Andrew Ellicott, an American with extensive experience in cartographic and topographical work

⁹ George Ulmer, a native of the Maine area, was given command of a militia unit at the outbreak of the War of 1812. In March of 1813, his unit seized a considerable cargo of smuggled goods. The local customs collector promptly relieved Ulmer of the confiscated property. In April Ulmer was then arrested by the local sheriff on spurious charges purportedly relating to outstanding debts. While in prison Ulmer wrote, "I hate to fight Americans, [but] we have not other real enemies on this frontier." Alan Taylor, "Centering Peripheries: Locating Maine's History," *Maine History* 39:1 (Spring 2000) 2-15, 7.

"so that great accuracy should be attained, but...so as to gain to both governments entire confidence in its accuracy."¹⁰

Over a period of four years, the commissioners argued over geographic definitions, local demographics and historical precedents regarding borders. At stake from a local Maine perspective, and from an American strategic perspective, were vast forests of timber, the key to the continued economic underpinnings of New England lumber and shipping industries. From an American standpoint, this translated into driving as hard a bargain as was possible with London. In the minds of some politicians in Washington, negotiations set against a backdrop of the lingering possibility of ultimately enticing British North American colonies to join the United States would negate the requirement for a border.

The admission of Maine into the Union in 1820 further complicated matters. It exacerbated a contentious state versus federal government dynamic that remained extant for the next two decades. The eventual resolution of the demarcation of Maine's northern border and, therefore, a segment of the nation's northern border, incorporated for the first time third-party international arbitration. However, the result of the arbitration highlighted once again the lack of collaboration between the national and state governments.

¹⁰ Andrew Ellicott was Professor of Mathematics at the United States Military Academy, West Point when he received the request for help from Van Ness. He assumed the title of Chief Surveyor and worked on delineating the Canada- United States border for two years before he died of a stroke in August 1820. Box 6, Reel 2, Andrew Ellicott Papers, Manuscript Division, Library of Congress, Washington, D.C.

William King, the state's first elected governor, exemplified the dynamic. In his first "state of the state" address in June 1820, Governor King declared "there was no state in this union, whose inland frontier is more exposed...as Maine." Likewise, King made clear to the American agent of the Anglo-American Commission Maine's interest in the border region under the fifth article of the Treaty of Ghent. The British agent took note of King's stance and noted, "the new state would follow boundary matters with greater interest than either Massachusetts or the U.S federal government."¹¹

Governor Enoch Lincoln went further. In 1827 he directly questioned the actions and policies of President J.Q. Adams regarding the efforts to seek a boundary solution favorable to Maine. He asked, "whether she [Maine] ought to be silent and passive before a mandate of the executive of the United States." Governor Lincoln also threatened to disregard any future decisions taken by the Adams administration. He wrote, "the imperious call of duty shall summon her to occupy her inheritance," a "summons" that included the overt threat of deployment of the state militia to enforce and protect Maine's

¹¹ Francis M. Carroll, *A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842* (Toronto: University of Toronto Press, 2003), 198. Ironically, within a year President Monroe appointed Governor King as a member of the commission to implement the 1819 Adams-Onis Treaty. The terms of the treaty included Spain yielding Florida to the United States and establishing a boundary between the United States and Spanish Mexico. The United States agreed to assume the claims of American citizens against Spain up to a maximum of \$5 million. During 1821-24 the commission, which included King, William Wirt, and Daniel Webster, adjudicated on hundreds of claims. An additional benefit of the 1819 treaty was keeping the United States from becoming embroiled in issues surrounding the Mexican struggle for independence from Spain. Harry Gratwick, *Hidden History of Maine* (Charleston: The History Press, 2010), 69. King was also a successful merchant businessman in Maine. Despite being the head of a local militia force, he had supplied the British military in neighboring Canada with provisions in exchange for blankets that he then sold to American military at a profit. Peter Andreas, *Smuggler Nation How Illicit Trade Made America* (New York: Oxford University Press, 2013), 86-87.

interpretation of the border with the Canadian provinces as opposed to that of the Federal government.¹²

Governor Lincoln's public speeches and implied threats aimed at federal government policies caused consternation and frustration within the Adams administration. But nothing irritated President Adams more than the manner in which Governor Lincoln would issue threats and then seek protection of the federal government and federal forces as insurance should his actions in regards the border trigger a response from the British. He "denies the right of the general government to cede any part of a sovereign and independent state, and dwells much upon the right of the state to call upon the general government for protection — protesting at the same time against compromise at the expense of the state."¹³

¹² Letter from Gov. Enoch Lincoln to Secretary of State Henry Clay, April 18, 1827. *The Papers of Henry Clay, Secretary of State*, vol. 6, Mary W.W.M. Hargreaves and James Hopkins, Eds., (Lexington: University of Kentucky Press, 1981), 459-460.

In the summer of 1827, the situation was complicated further following the arrest by British authorities of an American living in the disputed Madawaska territory which had refused to submit to British authority. A Maine-based land agent, Charles S. Davis, was dispatched to New Brunswick on a fact-finding mission. His report supposedly corroborated settlers' stories of "British atrocities," and as a result only added to growing cacophony of voices in the state legislature demanding that the state should act with or without the support of the federal government.

¹³ John Quincy Adams Diary: An Electronic Archive. Boston, Mass: Massachusetts Historical Society. <http://www.masshistorg/jqdiaries> Diary 37 11 Nov. 1825-24 June 1828, 183, 348. Ironically, in 1823 then-Secretary of State J. Q. Adams had written to Maine's Governor Albion K. Parris assuring him that "The Government of the United States will conclude no arrangement of it [the boundary] which might be dissatisfactory [sic] to the state of Maine." Adams even asked whether the state of Maine had a view as to "any compromise of the respective claims of the two Countries, which might be satisfactory to the People of the State." Quoted in J. Chris Arndt, "Maine in the Northeastern Boundary Controversy: States' Rights in Antebellum New England," *The New England Quarterly*, 62:2 (June 1989), 205-223.

The failure on the part of the commissioners to hammer out a compromise over the border resulted in the entire issue going to arbitration. The arbitration marked the first time a boundary dispute involving American boundaries had been sent for adjudication by a third party. The decision, handed down in January 1831, awarded the majority of the disputed territory to the state of Maine.¹⁴ Maine's state legislature promptly rejected the settlement. The assembly demanded all the disputed territory. The Jackson administration apparently believed that it had finally amicably resolved the border issue only to find itself almost immediately embroiled in an escalating political war of words with the state of Maine.

Despite the increasingly heated rhetoric on the part of state newspapers, and even from the governor, expediency dictated the state of Maine stepping back from a full-scale breach with the Jackson administration. This action came at a time when the lack of collaboration between the national and state governments under the concept of dual federalism was showing itself in one of the occasional tense periods over the nature of the union and the doctrine of nullification and state sovereignty.¹⁵

In his 'modified' reply to Governor Lincoln Secretary of State, Clay exercised his diplomatic abilities. "I abstain from a particular notice of many of the topics of your Excellency, not the least want of respect for your Excellency, but from a persuasion that discussion of them is without utility." Letter to Governor Lincoln, May 7, 1827. *The Papers of Henry Clay, Secretary of State*, vol. 6, 522-24.

¹⁴ The decision issued on January 10, 1831, granted 7,908 square miles to the United States and 4,119 square miles to Great Britain. The full text of the resolution reached Washington, D.C. on March 16. Two days later Secretary of State Martin Van Buren sent a copy to governor and legislature of Maine.

¹⁵ Between 1819 and 1832 the Doctrine of Implied Powers and the "necessary and proper" clause of Article I of the Constitution had been tested under *McCulloch v. Maryland*. Federal regulation of Interstate Commerce had been examined in *Gibbons v. Ogden*. John C. Calhoun's rationale for a nullification doctrine, published as the *South*

Arguably the Jackson administration's stance on the evolving nullification crisis in South Carolina sent the most unambiguous message to Maine; force would be met with force. While continuing to maintain that state of Maine had every right to "protect their limited sovereignty from violation, and have a constitutional right to require of that government a performance of all the obligations intended for the protection and benefit of each separate State of the Union," Maine's governor quietly agreed to a U.S. Senate proffered compromise.¹⁶

Ironically, the U.S. Senate then proceeded to reject the arbitration settlement. Senators Clay and Webster, determined opponents of the Jackson administration, led the move to dismiss the agreement. The result was a call to immediately reopen negotiations with Great Britain.

Both President Jackson's secretaries of state tried and failed to bring about a successful conclusion to the resumed negotiations. An agreed-upon legal demarcation of the border remained unresolved. No real federal presence existed anywhere along the northern border. Smugglers were the significant beneficiaries; they continued their lucrative cross-border trade. The lack of a federal presence initially also contributed to 'the shift in the focus of attention from the central state to communities as active agents

Carolina Exposition, argued against the imposition of laws passed by Congress and culminated in South Carolina's Nullification Ordinance and, in between, the Webster/Hayne debate on the Doctrine of Nullification in relation to the issue of state sovereignty with regard to a Congressionally passed tariff.

¹⁶ The understanding required that Maine surrender all of its claims on disputed territories and accept the border demarcation. In exchange, the state would receive the proceeds from the sale of federal lands in the state of Michigan. The final sum of which was anticipated to be more than \$1.25 million. For more on the issue as part of the 1832 presidential election see J. Chris Arndt, "Maine in the Northeastern Boundary Controversy," *The New England Quarterly*, 62:2 (June 1989), 205-223.

in history.¹⁷ The attitudes of militia units towards any federal presence when it did appear also reflected a similar view. Additionally, on the Canadian side of the border, a strong sense of regional identity developed among the townships by the late 1830s ‘that was quite distinct from that on the other side of the border.’¹⁸

Land speculation was rife until the speculative bubble burst in 1836 partially as a result of the financial crisis brought on by the termination of the Bank of the United States. And yet, many in Maine continued to view the abundant timberlands of the disputed Aroostook Valley as one possible means to offset the impact of the economic downturn. The arrest by British authorities of a state official from Maine for trespass in the disputed territories provided succor to those who demanded a boundary settlement that incorporated the Aroostook Valley within American boundaries, or more specifically the borders of Maine. However, the new Van Buren administration would quickly discover the simmering discontent over the Aroostook Valley masked an even more significant threat along the northern border that had definite potential for dragging the United States into another war with Great Britain.

On October 23, 1837, 5,000 *Les Patriotes* assembled at St. Charles, south of Montreal, Lower Canada, to protest against London's political control openly. All such gatherings were illegal, and arrest warrants issued for the leaders of the protest. Within a month the British Army had engaged with *Patriotes* forces killing 56 at St. Charles. On December 14, a force of 1,500 British regulars overwhelmed a *Patriotes* force of 800 at

¹⁷ J. I. Little, *Loyalties in Conflict: A Canadian Borderland in War and Rebellion, 1812-1840* (Toronto: University of Toronto Press, 2008), 5.

¹⁸ *Ibid.*, 56.

Saint-Eustache west of Montreal, driving most of them towards and over the border with the United States. The British actions were widely reported in American newspapers and “awakened the Spirit of ’76 in the Border States, and primed Americans to support the Upper Canada rebels.”¹⁹

Apart from the paucity of federal resources along the northern border, the Van Buren administration had no way to control or, more importantly, actively counter the spread of erroneous reports and propaganda that served to stir up and encourage local reactions against the British. Daniel Dunbar Heustis, a merchant from Watertown, New York,²⁰ wrote in his memoirs, “Accounts of massacres of patriotic republicans by the troops of Queen Victoria soon flew to the United States, and were received with mingled feelings of indignation and horror. Public meetings were immediately held in many of the town and cities of the American states bordering on the Canadas, [sic] at which the highest enthusiasm was manifested in favor of the Patriot cause; money, provisions, ammunition, and clothing were collected, and committees appointed to distribute these supplies to the best advantage.”²¹

¹⁹ Shaun J. McLaughlin, “The Patriot-War: Attempts by Canadian Rebels and American Citizen Allies to Establish a Republic,” *Australasian Canadian Studies* 2011, 29:1-2, 5-26,7.

²⁰ George Rudé, “HEUSTIS, DANIEL D,” in *Dictionary of Canadian Biography*, vol. 7, the University of Toronto/Université Laval, 2003–, accessed October 15, 2017, http://www.biographi.ca/en/bio/heustis_daniel_d_7E.html.

²¹ Daniel D. Heustis, *Narrative of the Adventures and Sufferings of Captain Daniel D. Heustis* (Boston: Silas W, Wilder & Co., 1848), 22-23. Heustis would accept a commission as a Captain in the Patriot forces violating the 1818 Neutrality Act. He would be arrested eventually on the American side of the border and charged with violating the Neutrality Act but was freed along with many others.

Analogies with 1776 were quickly offered up. Revolutionary slogans became the catchphrases of choice among many Americans resident along the northern border. Memories of British military actions along the border during the War of 1812-14, such as the burning of Buffalo, also fueled support for the Patriot cause. Compounding the problems for the Van Buren administration the agitation spread beyond the immediate border region²² and “there more than a few men of high social standing in the ranks, making it all the more difficult for federal officials to suppress the movement.”²³ Buffalo quickly evolved into a center of Patriot support. However “leading towns such as Burlington, Albany, Cleveland and Detroit, [and] smaller centers along the Great Lakes saw vast crowds gather with sympathetic ears to hear the latest news of the Patriot activities and freely subscribed money, clothing, food, and weapons. Politicians, ministers, and prominent upper-class citizens, along with mechanics, and farmers, all rallied to the Patriot cause without hesitation.”²⁴ The surging enthusiasm for the Patriot cause led to “plans to eliminate British influence in North America being developed along both sides of the border from Lake Champlain to Lake Michigan.”²⁵

The Van Buren administration at this point retained the support of much, but not all, of the general press. Newspapers such as the *Daily National Intelligencer*, the *New*

²² *The United States Gazette* in early December reported support for the Patriots “as far south as Philadelphia and even Kentucky from whence a company of fifty well-armed and able-bodied men was reported to have been marching North to Detroit to join others assembling there.” Quoted in Shaun J. McLaughlin, “*The Patriot-War*,” 15

²³ Andrew Bonthius, “The Patriot War of 1837-1838: Locofocoism With a Gun?” *Labour/Le Travail*, 52 (Fall 2003) 9-43, 15-16.

²⁴ Oscar A. Kinchen, *The Rise and Fall of the Patriot Hunters* (New York: Bookman Associates, 1956), 17, 20-21

²⁵ Howard Jones, *To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843* (Chapel Hill: University of North Carolina Press, 1977), 21.

York Evening Star and the *Journal of Commerce* all signaled a general consensus with editorials arguing “whatever the justification for the rebellion might be, the rebellion itself would soon be quelled by the British,” and “that Canadians must fight their own battles” and “we shall not depart from our neutrality in this contest, or have our Government compromised by any act or measure which may sustain or aid this family quarrel.”²⁶

The Albany Argus, the official newspaper of the Van Buren Democrats in New York, took a more nuanced stance reflecting the mood in the general border regions. N.S. Benton, the District Attorney of New York, requested Edwin Croswell, the editor of the *Argus*, use his newspaper to implore his readers to obey the country’s federal neutrality laws with regards support of the Canadian Patriotes. Croswell's response could hardly have been less supportive. He told Benton "the truth is that the popular feeling—the democratic feeling particularly—is all with the suffering patriots." He then offered his own opinion. "For one I believe their quarrel just, and I am unwilling to afford or to appear to afford unnecessary facilities for the prosecution of supposed offenders. On the contrary, I shall not regret to see them afforded all legal air." Croswell informed Benton "unless the infraction of the law were open and palpable, no jury in this country would be found that would convict."²⁷

President Van Buren and key members of his cabinet rapidly came to the realization the impact of the uprisings in Lower Canada and subsequently in Upper Canada would

²⁶ Albert B. Corey, *The Crisis of 1830-1842 in Canadian-American Relations* (New Haven: Yale University Press, 1941), 27-28.

²⁷ Lillian F. Gates, *After the Rebellion: The Later Years of William Lyon Mackenzie* (Toronto: Dundurn Press, 1988), 20-21.

present a significant challenge for federal authorities trying to assert or reassert control. It became clear very quickly that the uprisings "affected the whole of the settled frontier of the United States west of Maine."²⁸ If a vocal and charismatic individual appeared on the American side of the border, acting as some form of catalyst for support of the rebellion, it would compound the president's difficulties. The president did not have long to wait.

William Lyon Mackenzie arrived in Buffalo on December 12, 1837. He had fled across the border from Upper Canada following an aborted attempt to seize Toronto. The effort had been an abject failure at Montgomery's Tavern outside Toronto with over 200 rebel officers and men pursued by British-led loyalist militia over the border into the United States.

Mackenzie found himself well received in Buffalo. The Crown had placed a price on his head. Arrest warrants had been issued for him north of the border, all of which served to add to both his notoriety and popular local appeal as a rebel with a cause.²⁹ Mackenzie's presence in Buffalo "affected the whole of the settled frontier of the United States west of Maine."³⁰

Once British authorities learned of Mackenzie's arrival in Buffalo, Sir Francis Bond Head, Lieutenant-General of Upper Canada, requested his immediate return to Canadian territory. Governor William Marcy of New York, a close friend of President

²⁸ Corey, *The Crisis*, 28.

²⁹ The British offered a 1,000-pounds reward for the capture of Mackenzie. He was described as "a short man, wears a sandy colored wig, has small twinkling eyes that can look no man in the face – he is about five feet 4 or 5 in height." Quoted in Patrick Richard Carstens and Timothy L. Sanford, *The Republic of Canada – Almost* (Bloomington: Xlibris Corp., 2013), 99.

³⁰ Corey, *The Crisis*, 28.

Van Buren, refused to comply with the request. He cited "the offense charged against [him], being incidents of the revolt, were merged in the higher crime imputed to him of treason—a political offense, excepted by our laws from those for which fugitives can be surrendered by the Executive."³¹

Mackenzie immediately set about trying to organize some form of counter-attack back across the border, this time, he hoped, with substantial American support in the way of men and weapons. Civic leaders in Buffalo quickly organized a mass meeting to hear Mackenzie. An estimated 3,000 people turned up. Mackenzie "explained the causes of the revolt, and argued that Canada was suffering all those evils which caused the thirteen Colonies, now become the United States, to throw off their allegiance to England." He astutely reminded the residents of Buffalo how the British had burned the town during the War of 1812 and predicted a similar fate if those living along the border did not take the offensive.³²

President Van Buren now confronted an effective orator urging the crowds forward. On December 13, 1837, inspired by Mackenzie's fiery rhetoric, a combined force of

³¹ Ibid., 171. William Marcy would be a key figure in both northern and southern border issues. A member of the Bucktails faction of the Democratic-Republican Party led by Van Buren, he served in numerous positions with the state of New York. Marcy represented New York in the U.S. Senate for two years before being elected governor in 1833. He served three terms as governor before being defeated in late 1838 by William Seward, the Whig candidate. He served as President Polk's Secretary of War throughout his administration overseeing the Mexican-American War. He served as President Pierce's Secretary of State and in that position negotiated the Gadsden Purchase from Mexico in 1853 and led the successful negotiations for a Canadian reciprocity treaty in 1854.

³² McLaughlin, *The Patriot War*, 9. The crowd was reputedly the largest in the history of Buffalo. Mackenzie himself was no stranger to the United States. In 1829, he had traveled to Washington, D.C. for the inauguration of President Jackson, a man he much admired as both leader and politician.

Canadians and Americans, the backbone of a newly formed Patriot Army, surged towards the border with the objective of seizing Navy Island in the middle of the Niagara River but on the Canadian side of the border. Once Mackenzie was ensconced on Navy Island he proclaimed the establishment of the Republic of Canada with the fervent hope that not only would residents of Buffalo and other American border towns rally to his call. Mackenzie also hoped the Van Buren administration would be pressured by public opinion to answer the pleas for assistance and even extend recognition of the newly proclaimed republic.

To do so, of course, would commit the Van Buren administration to crossing the Rubicon and inevitably bring about war, once again, with England. Additionally, there were ominous signs that supporters of the Patriots cause were beginning to use the events the previous year in Texas and the outcome against Mexico as a *cause célèbre* to rally Americans in general but particularly in the northern border regions against the British.

Secretary of State John Forsyth, at the behest of President Van Buren, ordered Nathaniel Benton, U.S. attorney for the northern district of New York, to the state's border region. The goal was a fact-finding mission and to "exercise due vigilance to prevent the recurrence of criminal acts." Benton, in turn, requested Nathaniel Garro, US Marshal for the northern district of New York, to accompany him to Buffalo. Apart from gaining first-hand knowledge and intelligence for the administration as to the state of affairs along the border, Benton and Garro were ordered to arrest anyone who had violated federal law, specifically the neutrality laws.

How a small group of federal officials was supposed to move into an increasingly volatile and precarious situation, lacking any real local support, and enforce federal law, speaks to the overall disconnect from the standpoint of the federal government with the complexities of the border region they were confronting. On December 28, 1837, Garrow described a “frontier in a state of commotion.” He detailed “some 200 or 300 men, mostly from the district of the country adjoining this frontier and from this side of the Niagara, had congregated upon Navy Island (Upper Canada), and were there in arms, with Rensselaer van Rensselaer of Albany, at their head as commander in chief." In the opinion of both Benton and Garrow, the activities and support of the Patriot cause were too widespread and too popular to permit the civil authorities to deal with them effectively.³³ Garrow went on to inform the president that the force "received the constant accession of men, munitions of war, provisions, etc. from persons residing within the States." Garrow noted that the presence of Mackenzie had served to inflame the local population. He concluded “if the Government deem it their duty to prevent supplies being furnished from this side to the army on the island, and also the augmentation of their forces from among the citizens of the States, then an armed force stationed along upon the line of the Niagara will be absolutely necessary to its accomplishment.”³⁴

³³ Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878* (Washington, D.C.: Center of Military History, 1988), 112.

³⁴ *A Compilation of the Messages and Papers of the Presidents* (Vol. III, Part 2: Martin Van Buren) James D. Richardson, Editor, (Washington, D.C.: Government Printing Office, 1902).

Garrow's observations and conclusions placed the Van Buren administration in a major policy dilemma. First, there was no federal 'armed force' of any size available to dispatch to the region to accomplish the objectives laid out by Garrow. Second, reliance on the state and local militias potentially brought with it another set of problems. Thirdly, the presence of a figure such as Mackenzie required an individual of stature and presence to be sent to the region to counter Mackenzie's bravado and audacity. Given the underlying distrust of federal government officials, President Van Buren's choices, arguably, were narrowed to the possible selection of a senior American military official, possibly retired, who would command sufficient gravitas amongst the local population to at least prevent any missteps that could result in war with Great Britain. Finally, the issue of time, or lack thereof, could prove to be pivotal and fatal if either Americans crossed the border into Canadian sovereign territory, or British and Canadian forces clashed with members of the Patriot Army and, instead of forcing them back across the international border onto American territory, themselves crossed the border onto American sovereign territory in 'hot pursuit.'

On December 29, 1837, time ran out. The steamboats crossing the Niagara River and operating out of Fort Schlosser harbor in New York directly across from Navy Island undoubtedly facilitated the "constant accession" Garrow had referenced. On December 29, a small force of Royal Navy sailors led by a Royal Navy officer crossed from the Canadian mainland to Navy Island with the tactical objective of destroying the primary resupply vessel the American-owned steamboat *Caroline*. Upon finding the *Caroline* not at anchor off Navy Island but still at anchor at Fort Schlosser in New York, the force

crossed the international border and proceeded to destroy the vessel in American territorial waters. An American citizen died in the course of the raid.

The Van Buren administration had all but lost control of events assuming that they were able to exercise any modicum of influence in the first place. The British actions elicited immediate demands from that section of the border population openly supporting the Canadian rebels for swift retaliation. Mackenzie immediately and adroitly stoked the fires. The District Attorney for Eire County, H.W. Rogers, who was cooperating with Benton and Garrow, wrote to President Van Buren on December 30 “the whole frontier is in commotion, and I fear it will be difficult to restrain our citizens from avenging by a resort to arms this flagrant invasion of our territory. Everything that can be done will be by the public authorities to prevent so injudicious a movement.”³⁵

The Challenge of Enforcing the Neutrality Law for a General without an Army

“Even to observe neutrality, you must have a strong government.” Alexander Hamilton

The Van Buren administration confronted a serious and, arguably, defining moment in its response to the rapidly escalating trouble along the northern border. This section examines how the Van Buren administration endeavored to enforce federal neutrality laws along the northern border with British Canada while confronted with mounting local opposition to both the federal government and the imposition of federal laws. In the words of Alexander Hamilton in his *Federalist Paper No. 70* with regards the imposition of federal law in both states and local regions: “Men often oppose a thing

³⁵ Ibid.

merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike.”³⁶ General Winfield Scott’s presidential directive to bring order to a northern border lacking any dedicated federal civil law enforcement capability of sufficient size, accentuated the polemical debate with regards the size and mission of the standing federal army versus a state-based militia system.

The issue of neutrality and the ability of the federal government to enforce the country's neutrality laws has played a prominent role in the shaping of American foreign policy.³⁷ The Genêt affair during the spring of 1793 provided the initial test of lines of authority during the second Washington administration. The case also involved a challenge to federal power in foreign affairs from the governor of the state of South Carolina, William Moultrie.³⁸

President Washington formally issued a Proclamation of Neutrality on April 22, 1793.³⁹ However, the impact of the Genêt affair forced the Washington administration to

³⁶ Alexander Hamilton, *Federalist* No. 70, in *The Federalist Papers*, ed. Clinton Rossiter (New York: New American Library, 1961), 421-28.

³⁷ Jules Lobel “Rise and Decline of the Neutrality Act: Sovereignty and Congressional War Powers in United States Foreign Policy,” *The Harvard International Law Journal*, 1 (72) 1983, 1-71, 1.

³⁸ On April 8, 1793, Edmond Genêt arrived in Charleston, South Carolina to take up the position of French Minister to the United States. The Girondin faction, then governing Revolutionary France, dispatched Genêt with a series of duties including advocating for those sections of the 1778 Franco-American Treaty allowing for attacks on British merchant shipping with ships using American ports. South Carolina's Governor, William Moultrie, supported Genêt in his efforts in direct contradiction of the President Washington's foreign policy objectives with regards following the path of neutrality. The Washington administration ordered Governor Moultrie to put an end to his open support of Genêt's actions. The Federalist press denounced the governor. Rumors abounded of impending impeachment.

³⁹ The Proclamation stated: Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, on the one part, and France

formulate a consistent policy on the issue of neutrality. The Cabinet agreed to and accepted a set of rules regarding policies of neutrality on August 3, 1793. These rules were formalized on June 4, 1794, with the passage of The Neutrality Act.⁴⁰

The legislation, taking its lead from the impact of the actions of ‘Citizen Genêt’, made it illegal for American citizens to enlist in or to be actively recruited for foreign military service. The arming of foreign vessels or privateers was also prohibited, as was the dispatch of military expeditions against the territory of a state at peace with the United States. The Act did not explicitly prevent American citizens from expatriating themselves to a new country nor stop them from bearing arms in the wars of their new country such as Canada or Mexico. Under Section Eight of the Act the Chief Executive was empowered “to employ such part of the land and naval forces or of the militia thereof, as shall be necessary to compel any foreign ship or vessel to depart the United States in all cases in which by the law of the nations or treaties of the United States, they ought not to remain in the United States.”⁴¹

The potential employment of state militias in the application of the federal neutrality law by the federal government represented another aspect of the concept of dual federalism characteristic of the *antebellum* era. Transference of militia power held

on the other, and the duty and interest of the United States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent powers: I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those powers respectively; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition. *American State Papers, Foreign Relations* Vol. 1, 3rd Cong., 1st sess., 140.

⁴⁰ An act of June 5, 1794, ch. 50, 1 Stat. 381, 383-384 (1794). Initially, the legislation was earmarked as a temporary measure.

⁴¹ *Ibid.*

by the States to Federal control had been a major concern on the part of various Antifederalist delegates during the constitutional debates. Despite objections from delegates such as Luther Martin of Maryland and Richard Henry Lee of Virginia and John Smiley of Pennsylvania,⁴² under Article, I Section 8, clause 15 of the Constitution – the Militia Clause – the United States Congress was granted the power "to provide for calling forth the Militia to execute the Laws of the Union, suppress insurrections and repel Invasions." Article I Section 8, Clause 16 extended to the Congress "the power for organizing, arming and disciplining the Militia, and for governing such part of them as may be employed in the Service of the United States..."⁴³ Under Article II, section 2, clause 1 "The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States;..."⁴⁴

In April 1818 the US Congress had passed a revised Neutrality Act against the backdrop of the growing Spanish American revolutions and the commensurate American

⁴² Luther Martin wrote, "As it now stands, the Congress will have the power, if they please, to march the whole militia of Maryland to the remotest part of the union, and keep them in service as long as they think proper, without being in any respect dependent upon the government of Maryland for this unlimited exercise of power over its citizens." The Founders' Constitution Volume 3, Article I, § VIII, cl. 16, Document 8 http://press-pubs.uchicago.edu/founders/documents/a1_8_16s8.html The University of Chicago Press. Richard Henry Lee wrote in his *Letters from the Federal Farmer to the Republican*; individual liberties would be undermined by the creation of a select militia that [would] answer to all the purposes of an army." He concluded, "the Constitution ought to secure a genuine and guard against a select militia by providing that the militia shall always be kept well organized, armed, and disciplined, and include, according to the past and general usage of the states, all men capable of bearing arms." *R. Lee, Letters from the Federal Farmer to the Republican* Walter Bennett, Sr., ed., (Birmingham: University of Alabama Press, 2002), 124.

⁴³ U.S. Constitution, art. I, sec. 8, cl.15 & cl. 16.

⁴⁴ U.S. Constitution, art II, sec. 2, cl. I.

duties as a neutral power. The legislation designed to close legal loopholes in existing neutrality legislation, codified into a single act all previous laws and extended the ability and powers of the executive to proactively prevent and curtail both privateering emanating from American ports and potential filibustering.⁴⁵ The new legislation also expanded the powers of the executive by expressly authorizing the employment of state militias and the regular armed forces in the enforcement of US neutrality laws. The president was also authorized to call upon district attorneys, U.S. marshals and states' attorney general's to likewise assist in law enforcement.⁴⁶

Despite its passage into law in 1818, the legislation had not been without its critics in the Congress most notably Senator Henry Clay. The general principle of proactive preventative measures contained within the new law was viewed as being more than the standard required of a neutral. Senator Clay had already opposed plans put forward by President Monroe's Secretary of State John Q. Adams to authorize a military expedition to break up the privateering bases located at Amelia Island – on the border between Florida and Georgia - and on Galveston Island on the coast of Texas. Equally, the proposal that collectors of customs – federal officials - being granted the authority to detain vessels at their discretion, was viewed by opponents as an unwarranted extension of governmental powers.

⁴⁵ Originally enacted as a temporary measure, the statute was continued in force by an Act of March 2, 1797, and finally made permanent by the Act of April 24, 1800. An act of March 2, 1797, ch. 5 (1 Stat. 497); Act of April 24, 1800, ch. 35 (2 Stat. 54); revised March 3, 1817, ch. 58 (3 Stat. 370).

⁴⁶ An act of April 20, 1818, ch. 88 (3 Stat 447).

The 1818 Neutrality Act undoubtedly endowed the executive with the legal authority to take proactive measures to ensure American neutrality. However, in 1836 a disturbing precedent had been established. President Jackson had ordered district attorneys to prosecute any Americans found in violation of the 1818 Neutrality Act seeking to aid Texans in their struggle against Mexico. But his "executive order was disregarded."

Even more flagrant were the actions of General Edmund Gaines. In 1836 he was placed in command of the Southwest Military District with orders to enforce the 1818 Neutrality Act. Denied permission by Secretary of War Lewis Cass to move his troops across the border, ostensibly to quell frontier raids by parties of local Native Americans, Gaines argued that his instructions lacked precision. He also felt that he possessed the authority to invade Texas. In June 1836, against the express orders of the Secretary of War Gaines crossed the border with federal forces and occupied the Mexican town of Nacogdoches.⁴⁷

Events along the Canadian border now started to expose the overall shortcomings of a federal force endeavoring to maintain manpower levels sufficient to meet operational requirements in a steadily expanding country. Secretary of War Lewis Cass's last report came in the spring of 1836, a year before the onset of the rebellion in Canada. Cass wrote that he considered "the present military force of the US insufficient to garrison the fortifications of the seaboard and at the same time give protection to the inhabitants of the states and territories bordering on the Indian frontier." His call for expansion of the US

⁴⁷ Robert V, Remini, *Andrew Jackson* (New York: Harper, 1999), 357.

army to meet the growing challenges fell on deaf ears for reasons of proposed expense, but more significantly the continued underlying philosophical fears associated with any large standing army.⁴⁸

In the summer of 1837, General Winfield Scott assumed command of the Eastern Division of the US Army, an administrative zone that included the Canadian border. General Scott was only too well aware of the paucity of federal forces then stationed along the border with Canada. He was also only too aware that the desired outcome of Secretary Cass's call, one that he fervently supported, could be years in the making and, indeed, might not even result in a positive result. General Scott began immediately undertook to lobby the new Secretary of War Joel Poinsett to carry on with the calls of Secretary Cass for expansion.

Secretary Poinsett had already received a letter from General Alexander Macomb, Commanding General of the Army, advocating expansion to meet increasing strategic and tactical operational demands.⁴⁹ Citing the then state of affairs with regards overall numbers, General Macomb opined that further operations would be impossible “without calling up the militia,” a move in Macomb’s view would incur “heavy expenditures, and

⁴⁸ *American State Papers, Legislative and Executive of the United States Congress First and Second Sessions of the 24th Congress, Military Affairs*, Vol. VI (Washington, DC: Gales, and Seaton, 1861), 157-58.

⁴⁹ Secretary Poinsett had also inherited a longstanding simmering feud between Generals Macomb, Scott and Gaines. In February 1828, President John Quincy Adams had selected Alexander Macomb to replace Major General Jacob Brown as the U.S. Army’s commanding general. The reason for his selection was an ongoing feud between Scott and Gaines, both of whom held the rank of Brigadier General and, both of whom had been maneuvering to secure the appointment. President Adams selected Colonel Macomb, promoting him to Major General and thereby jumping over both Scott and Gaines.

loss of life by disease, and is highly detrimental to the concerns of the individuals.”⁵⁰ As such, reliance on the militia system to provide sufficient manpower to reinforce the regulars was the only viable option, particularly in the border regions.

Scott's own experience with militia forces throughout his long career had not always been amicable. In his memoirs, Scott talked about the courage and tenacity of militia forces that fought alongside regulars but also fulminated against the lack of training and frequent bouts of ill-discipline to the point of losing trust in their abilities as a fighting force. During the Seminole and Creek wars in Florida, he was recalled to Washington from his command in Florida ostensibly because of his questionable tactics, budget outlays far more than those appropriated by the Congress, and a long-running dispute between regular and militia officers over both tactics employed and the overall command structure. There were also distinct overtones of being caught up in disagreement over the actions of General Jackson in the Florida campaign.

General Scott likewise shared General Washington's private view that "to place any dependence on the Militia is, assuredly, resting upon a broken staff."⁵¹ In the case of issues along the northern border, the militia was being asked to perform in a quasi-law

⁵⁰ Robert P. Wettemann, Jr. *Privilege versus Equality: Civil-Military Relations in the Jacksonian Era, 1815-1845* (Westport: Greenwood Publishing Group, 2009), 36.

⁵¹ Letter to the President of the Congress, Heights of Harlem, September 24, 1777. Northern Illinois University, "American Archives. Documents of the American Revolutionary Period, 1774-1776," Northern Illinois University Libraries, <http://amarch.lib.niu.edu/islandora/object/niu-amarch%3A84896> (accessed January 9, 2018). In the letter General Washington noted "men just dragged from the tender scenes of domestic life – unaccustomed to the din of arms – totally unacquainted with any military skill, which followed by a want of confidence in themselves when opposed to troops regularly trained, disciplined, and appointed superior in knowledge and superior in arms, makes them timid and ready to fly from their own shadows."

enforcement role, providing the manpower necessary to complement the significantly undermanned and under-resourced regular army. General Washington's observations of the militia came from the experience of the first year of the Revolutionary War when the professional regular British Army was driving everything before it. Any dependence, however, on significant militia forces to enforce federal laws along the vast swath of international border still came with a considerable commensurate risk of "resting upon a broken staff."⁵²

Scott, like General Washington, however, was also enough of a realist to understand that even though the militia could be considered intolerable because of issues of control and discipline, it was also indispensable, and the nation needed the militia. In Scott's mind what the militia needed was structure and regular training based on regular army manuals based primarily on French military experience.

⁵² General Washington had an interesting perspective on issues regarding the efficiency and dependability of militia forces. His first major military appointment had been from Virginia Governor Robert Dinwiddie in 1753 when he was appointed a major in the Virginia militia, also called the British provincial militia. His experiences in the Ohio country against the French in 1753, and the subsequent ill-fated Braddock expedition in 1755, following his appointment as a lieutenant colonel and senior *aide-de-camp* to General Braddock, allowed Washington to experience the best and worst of the militia system. When he resigned his military command in 1758, it would be another 17 years before he was back in uniform as commander of the new Continental Army, a force that remained heavily dependent on the militia system. For more on General Washington's militia experiences: Joseph Ellis, *His Excellency: George Washington* (New York: Alfred Knopf, 2004); James T. Flexner, *Washington: The Indispensable Man* (Boston: Little Brown & Co., 1974); John Buchanan, *The Road to Valley Forge: How Washington Built the Army that Won the Revolution* (Hoboken: John Wiley & Sons, 2004). In 1794 militia forces from Georgia confronted federal forces over the issue of the removal of Creek and Cherokee tribes. John K. Mahon, "The Defense of George, 1794, *Georgia Historical Quarterly*, Vol. XLIII (June 1959), 138-155. In 1798 militia forces from Virginia had confronted federal forces over issues of enforcement of the Alien and Sedition Acts. Henry Adams, *The Life of Albert Gallatin* (London: J. B. Lippincott & Co., 1879), 211-212.

Scott set out to accomplish that goal with a series of publications and boards. Starting in 1818 with the issuance of General Regulations for the Army also known as Military Institutions, it outlined a complete revision of the procedures of the regular US army. Equally, these General Regulations could be applied to the training and organization of the militia. Scott also served on many military boards during the decade of the 1820s whose goals were the continued improvement in training and organization for both regular and militia forces.

Scott's efforts to inculcate efficiency and structure into the overall militia system designed to mirror to that of the regular forces was not without its obstacles. He had clashed with General Andrew Jackson over issues in Florida. He also fought with President Jackson and the perception on Jackson's part that Scott was trying to create an elite officer corps in both the regular and militia forces. Now in the first months of the new Van Buren administration, Scott was once again placed in a command environment that required him to oversee both regular and militia forces.

In November 1837, just before the outbreak of rebellion in Upper and Lower Canada, Scott had called for the expansion of the regular army with the addition of eight new regiments. Cognizant of the issues the regular army faced with regards numbers and deployments, Scott sought an increase of over 6,000 men and an overall reorganization of the military. In Scott's words, it was to provide against aggression and "to preserve the permanent posts [primarily Canadian] from the gradual waste of time."

The *Adjutant General's Report* of November 1837, issued at the same time as Scott's call for expansion, supported his case for expansion and reorganization. The

report “showed the three traditional locations of garrisons along that border as abandoned.” The report also documented that the bulk of American regular forces previously stationed in the region of the Canadian border “had lately been withdrawn to fight in Florida,” and in 1837 the total enlistment figure for the entire American army was recorded at 7,834.⁵³ Any responsibility for enforcement of the 1818 Neutrality Act in the northern border regions would, by default, initially fall mainly upon state militias, state and local officials, and the few scattered federal law enforcement officers. Such a situation would place inordinate pressure on primarily non-federal forces to enforce federal laws. Federalizing militia units was one avenue open to the Van Buren administration, but a legal transference of authority would not obviate many of the weaknesses espoused by General Washington, and thoroughly appreciated by General Scott. The numbers of federal US Marshals were so few their only recourse was to depend heavily on state and local assets if called upon to enforce federal laws in a broad expanse of territory such as the northern border region. Special federal deputies could be sworn in to assist a Marshal, but their term of service could not exceed one calendar year. The 1794 Whiskey Rebellion remained the legal precedent.⁵⁴

On January 5, 1838, to stamp federal authority on the region, a presidential proclamation was issued. The proclamation warned that all those "who shall compromit

⁵³ *American State Papers: Military Affairs*, Seven Vols. (Washington, D.C. 1832-1862), VII, 587-98.

⁵⁴ In August 1794, Supreme Court Justice James Wilson certified that the Whiskey Rebels were “too powerful to be suppressed by the powers vested in the Marshal of that district.” President Washington called out the state militia, assumed command, and marched against the rebels. U.S. Marshal David Lenox rode with the force as an aide to President Washington.

the neutrality of this Government by interfering in an unlawful manner with the affairs of the neighboring British provinces will render themselves liable to arrest and punishment under the laws of the United States, which will be rigidly enforced." ⁵⁵The question was how and with what resources?

President Van Buren called upon the services of General Winfield Scott. The general, still seething over his inglorious recall from the Florida campaign the previous year, was asked to play the role of a diplomat as much as the president's senior military representative in the region. In his memoirs, General Scott noted that the president told him, "Blood has been shed; you must go with all speed to the Niagara frontier." He also noted, "rhetoric and diplomacy were to be his chief weapons."⁵⁶

The orders given to General Scott by Secretary of War Poinsett were that he was "to repair without delay to the Canadian frontier of the United States and assume military command there." Scott was also authorized to request the governors of New York and Vermont to call out the militia to defend the frontier. The objective: to enforce the federal law where necessary with the caveat "it is important that the troops called into service should be, if possible, exempt from that state of excitement which the late violation of our territory has created." Further, "you will, therefore, impress upon the governors of these border States the propriety of selecting troops from a portion of the State distant from the theater of action."

⁵⁵ Martin van Buren: "Proclamation 45A—Neutrality With Respect to Canadian Affairs," January 5, 1838. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=67317>

⁵⁶ Winfield Scott, *Memoirs of Lieut.-General Scott LLD, Written by Himself*. Two Vols. (New York: Sheldon & Co., Publishers, 1864), 306-307.

General Scott found himself in an awkward position: He was authorized to employ state militias thereby "resting upon the broken staff," but the militia units could not or should not be drawn from the border regions of the northern states. The constraints translated into immediate delays. Militia units had to be summoned and moved from those parts of the states 'distant from the theater of action,' and actions along the border were beginning to dictate events. This, in turn, impacted Scott's potential course of action, one that was already being constrained by communiqués from the Secretary of War.

Reflecting the tenuousness of both the administration's legal position and the lack of federal forces in the border region, Poinsett made it clear to Scott "the Executive possess no legal authority to employ the military force to restrain persons within our jurisdiction...from violating the laws by making incursions into the Canada's." Poinsett, therefore, gave "no instructions on that subject but request that you will use your influence to prevent excesses." It was hoped that he [Scott] "would be able to maintain the peace of that frontier without being called upon to use the force which has been confided to you."⁵⁷

Scott's presence, along with a cadre of capable staff officers, had an almost immediate impact. Adroitly gathering details of the ongoing chaotic situation, Scott's staff officers were able to quickly present both a strategic and tactical picture that included pointing out local and state officials who did not show signs of cooperation with federal officers.

⁵⁷ *A Compilation of the Messages and Papers of the Presidents, Mr. Poinsett to General Scott, Department of War, January 5, 1838.*

Scott immediately fired off correspondence to Secretary Poinsett complaining about the conduct of civil officers of various local and state governments. He urged the immediate removal of the United States marshal for Michigan complaining that he “does as little as possible for law & [sic] order.” Lieutenant-Colonel W.J. Worth, one of Scott’s staff officers, also wrote to Secretary Poinsett, ironically reminiscent of George Ulmer’s views twenty years earlier, complaining about local and state officials when it came to enforcing federal laws in the border region. “Mr. Stilwell’s [Collector of Revenue of Ogdensburg, NY] case is but one of many, very many civil officers along the border from Niagara to Plattsburgh equally criminal of participation & shameful neglect of duty.”⁵⁸

Brigadier General Hugh Brady, commanding the Seventh Military Department, headquartered in Detroit, provided similar accounts of the difficulties he faced trying to enforce federal laws. Stepping delicately into the legal morass of constitutional and judicial authorities, Brady noted that state governors supported the need for both new powers, and clarification of existing legal lines of authority when it came to the border regions. He also complained of the “decidedly untrustworthy nature of the local militia forces.” On more than one occasion General Brady spoke to the necessity for Washington to understand the requirement for more federal manpower in the border region.

More officers and men are required on this part of our frontier. We have a frontier of more than a hundred miles to guard, an arsenal and magazine at different points to protect and for the performance of these duties, I have a force consisting of four officers and ninety recruits, a vast disproportion truly between the duties to be performed and the means available for that purpose.⁵⁹

⁵⁸ "A Private Report of General Winfield Scott's on the Border Situation in 1839." *Canadian Historical Review*, XXI, no. 4 (1940), 407-414, 409.

⁵⁹ Francis Paul Prucha “Reports of General Brady on the Patriot War.” *Canadian Historical Review*, XXXI, no. 1 (1950), 56-68, 64.

The lack of sufficient manpower to control the border region and to enforce federal law did not go unnoticed by the British. Lieutenant Colonel Charles Grey, a British army officer, dispatched to meet privately with President Van Buren in the summer of 1838 with a view towards deescalating the crisis, “came away convinced of the goodwill of the federal government in its efforts to prevent war or any further disturbances between the United States and Canada.” Grey noted the simmering political differences and distrust between federal and state authorities. The level of distrust was sufficient to prompt President Van Buren to tell Grey that it “makes it impossible to call out the Militia with any security—and we know how little power the general Government possess of restraining their People.” The same officer conveyed back to the British Minister in Washington that he “had little faith in the real exertions of the American government...they have not the power. Their whole Army is under 6,000 men, and they are fully employed elsewhere.”⁶⁰

The physical abilities and philosophical arguments with regards projection of federal power anywhere in the steadily expanding United States was laid bare once again with regards the Canadian border. Republican philosophical principles dictated a continued reliance on the militia system that while “politically satisfying, proved to be an administrative and military nightmare.”⁶¹In *The Federalist No. 46*, James Madison

⁶⁰ Francis Paul Prucha. *The Sword of the Republic*, (Lincoln: University of Nebraska Press, 1969), 316-17.

argued any standing professional military force would be offset by "a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves." Antifederalists, already fearful of the degree of control over the militia placed in the hands of the federal government as proposed by the Constitution, were not persuaded by Madison's arguments. For many Antifederalists, the concern focused on the creation of select militia units designed to augment any professional force that could be employed to enforce federal laws and the potential for conflict between militia and regular forces.⁶²

The poor performance of the militia conducting offensive operations in the War of 1812-14 shattered the illusion that militias were both militarily effective and reliable. Arguably, militias fared better in defensive actions, behind defensive and fixed fortifications in places such as Baltimore and New Orleans. The militia system, however, was viewed as being to be inadequate for national defense. In 1815, Gouverneur Morris had written of the "overweening vanity" and the "idle notion, fed by vaunting

⁶¹ Robert Spitzer in his work *The Politics of Gun Control*, citing Daniel Boorstin, described the political dichotomy of the public popularity of the militia versus the military value. " State detachments could not be easily combined into larger fighting units; soldiers could not be relied on to serve for extended periods, and desertions were common; officers were elected, based on popularity rather than on experience or training: discipline and uniformity were almost nonexistent." (New York: Routledge, 2011)

⁶² In 1794 nearly 13,000 militiamen were summoned and deployed to quell the Whiskey Rebellion in Pennsylvania. The success of that operation using militia contrasted with a confrontation between federal and militia forces in Georgia over the removal of Creek and Cherokee tribes, and in 1798 when a standoff ensued between federal and Virginia militia forces over the implementation of the Alien and Sedition Acts.

demagogues," that had led to the belief that militia forces were far safer and trustworthy as opposed to a well-trained regular army. But the militia system still had its defenders.⁶³

And yet, underlying fears of the creation of a large permanent standing army, professionally trained and officered, continued to resonate within large swathes of the federal legislature. But the simmering troubles in the border region with Canada also exposed the growing apprehension among regular senior army officers confronted with apparently ever-expanding missions, but with no corresponding expansion in overall manpower or finance. Added to which, the undue dependence on the state militia system

⁶³ Letter to Moss Kent, January 21, 1815, *The life of Gouverneur Morris: with selections from his correspondence and miscellaneous papers; detailing events in the American Revolution, the French Revolution, and in the political history of the United States*, ed. Jared Sparks (Boston: Gray and Bowen, 1832) Vol. III 1-520, 328. The debate concerning a militia system versus a regular professional force continued throughout the antebellum period. William Sumner, Adjutant General of Massachusetts, responding in 1822 to the annual request for an update on the state's militia, authored a detailed appraisal of the state's militia system. He reflected on the militia system as a whole, and, in his opinion, the weaknesses and strengths of the entire system. The recipient of his 1822 report was Governor John Brooks, who was a veteran of the state's militia. He had led the Reading, MA militia at the Battles of Lexington and Concord, and served throughout the Revolutionary War with the militia. He was part of the militia force, led by General Washington that confronted Shays Rebellion in 1794, and served with the Massachusetts militia in the War of 1812-14. William Sumner concluded that the weaknesses of the militia system as a whole "may be ascribed chiefly, to two causes, of which the failure to train the men is the principle one; but the omission to train the officers is as so much greater, that I think history of its conduct, where it has been unfortunate, will prove that its defects are attributable, more to the want of knowledge, or the best mode of applying the force of their authority to the attainment of their object than to all others." William H. Sumner, *An Inquiry into the Importance of the Militia to a Free Commonwealth* (Boston: Treadwell's Power Press, 1823), 23. Sumner forwarded a copy of his findings to retired President John Adams. In reply, President Adams wrote, "You have proved its importance in a civil, political and moral point of view... Whenever the militia comes to an end or is despised or neglected, I shall consider this union dissolved, and the liberties of North America lost forever." *Ibid.*, 70.

further compounded the problems when it came to potential use for internal law enforcement duties, particularly in relation to Native Americans, or employment along the northern border. Militiamen, "reflecting the attitude of the frontier communities from which they were called, were a dangerous tool for handling Indians and an ineffective tool for restraining whites."⁶⁴ In his comments to General Scott, General Hugh Brady noted, "I have been upwards of thirty-five years in the Military Service of my Country and never before, felt so much the want of a regular force, to aid the Civil authority, in the execution of the laws of the country and the protection of private property."⁶⁵

Two days before the Caroline incident Senator Thomas Hart Benton had introduced a bill proposing an increase in the size of the regular army to over 14,000, a doubling of its size. The legislation had the backing of General Scott and a number of other senior army officers. Partly fuelled by the Caroline incident and the reports reaching Washington from General Scott and his senior officers of the tenuousness of the situation on the Canadian border, the Senate, with minor changes to the language, passed the bill in late January 1838, and sent it to the House.

The House failed to take any action on the bill for almost five months. During that timeframe, General Scott and his senior officers continued to employ both their "rhetoric and diplomacy" to prevent the situation from spiraling out of control along the border. The stream of official correspondence between General Hugh Brady, commander of the

⁶⁴ Prucha goes further arguing the militia "had little sense of justice towards Indians, tended to get trigger happy and [were] unable to distinguish friendly Indians from hostile ones, and in general made it almost impossible to carry on normal war-and-peace measures with the Indians.' Ibid.,320.

⁶⁵ "Reports of General Brady on the Patriot War," *Canadian Historical Review* 31:1, 59.

7th Military Department centered on Detroit, and General Scott during this period, provide a compelling insight into the difficulties confronting senior federal officers on the border.

General Brady wrote of the value of "regular forces" under his command albeit their numbers were "barely sufficient to protect the United States." He considered calling on local militia units to supplement his meager federal force around Detroit. He subsequently withdrew the requisition order almost immediately when it became apparent that reliability and trust had been compromised. Weapons and ammunition, dispatched from the federal arsenal in Detroit intended for militia units, were virtually unguarded almost inviting a scenario whereby they might fall into the wrong hands.

In a letter to General Scott dated February 15, 1838, General Brady reported on his increasing distrust of local militia units and their officers writing, "I ascertained that very many of the militia that had been draughted [*sic*] were friendly to the Patriot cause, so-called, and that at least one of the Captains had openly avowed his determination in the event of a collision between his company and the Patriots, to give them his arms."⁶⁶ Subsequent correspondence noted the apparent ongoing efforts by members of the Patriot force, as would be expected, to deceive federal authorities with regards their movements and objectives. Reading between the lines of the correspondence of General Brady, it becomes readily apparent that he is also wary of being maneuvered into some form of armed confrontation that could serve the wrong goals. Ultimately, deft diplomatic

⁶⁶ Ibid., 61.

management on the part of General Brady and General Scott was sufficient to keep the border quiet, albeit tense, through the spring of 1838.

In the early summer of 1838, the House finally took up the Senate-passed Benton bill "to increase the military establishment of the United States." The debate on the House floor was passionate. Proponents of the expansion pointed to the ongoing dangers and threats along all of the country's frontiers. However, detractors continued to argue that warnings about troubles along the border were overreactions. The danger of war with England and Native Americans was employed merely as scare tactics to bring about an increase in the size of the regular force.

Congressman Isaac Bronson, a Democrat from New York, specifically cited the Canadian border as one being in a state of ferment and where all the civil authorities were incapable of preventing the disturbances. He reinforced his argument for an increase in regular forces on purely economic grounds claiming that regulars were by far more economically viable than militia units or volunteers and, by extension, more trustworthy.⁶⁷

The debate pirouetted between longstanding strategic and tactical arguments, interlaced with passionate arguments focusing on the dialectical philosophical principles of a large standing army. And yet, some congressmen, while voicing their philosophical

⁶⁷ Congressman Bronson, chairman of the House Committee on the Territories, took time to "demonstrate the necessity of the passage of the Army Bill." *The Congressional Globe* recorded that "Mr. B. also went into a mass of minute details contrasting the expenses of militia or volunteers and regular sliders, being a difference of about from four (or perhaps six) to one, without reference to the question of efficiency, and the more indirect loss to the country from taking men suddenly from their ordinary pursuits." *Congressional Globe*, 25th Congress, 2nd Sess. June 26, 1838, 482.

opposition, agreed that the reality of the evolving strategic situation along the northern border demanded some form of increase. Congressman Yell "was as much opposed to a needless increase of the army as anyone, or to an overgrown standing army and would be the first to resist it when it shall be dangerous to the liberties of the country, yet the conditions of the country and the frontiers in particular imperiously demanded it."⁶⁸

The debate once again brought to the forefront the question of employing regular forces to enact the civil law, particularly if those regular forces comprised recent immigrants. Sixty-plus years after the onset of the Revolutionary War opposition to the employment of a professional military force in the enforcement of civil law remained "deeply embedded in the American tradition." Derived from both British precedents and experience within the American colonies, "the use of British troops to enforce oppressive measures," remained "easily transferable to any soldier employed as an instrument of internal control by a central government."⁶⁹

Added to the belief that a standing army in time of peace was "dangerous to the liberties of the people," was the conviction that recently arrived immigrants could well fill the ranks of any professional force. Congressman Horace Everett of Vermont, a Whig, made his position quite clear when he argued that "he was against the employment of a military force on the Northern frontier, for the people were able to protect themselves, and any increase of the army must be made up chiefly from an enlistment of

⁶⁸ *Congressional Globe*, 25th Congress, 2nd session, 483. Many Congressmen, who eventually supported some form of an increase in the regular force, were more caustic in their opposition to increasing the number of regular officers. Increases in the rank and file were deemed less threatening.

⁶⁹ Coakley, *The Role of Federal Military Forces in Domestic Disorders*, 3.

foreigners, and he never hoped to see that day when Irishmen, Englishmen, and other aliens should be organized and armed to keep the citizens of his State in order.”⁷⁰ It also highlighted differences between states with frontiers and international borders and those interior states, and an increasing animosity between individual states driven by state politics that reflected the national divide between Whigs and Democrats.

Democratic Congressman Isaac Fletcher of Vermont took particular affront at the comments from Whig congressman representing Massachusetts and Maine about Vermont’s apparent inability to control their frontier with neighboring Canada. Fletcher noted that “he [Congressman Grennell of MA] wanted to increase the military force and for what? For the purpose of having a military police on the Vermont frontier. Was not this the first time such a doctrine had been raised in this hall?” He continued, “when was it, in the history of this Republican government, that a standing army was asked for the purpose of enforcing the laws of the Union? Why yesterday it fell for the first time from the gentleman from New York [Mr. Bronson]”

Congressman Fletcher continued his verbal assault by arguing “this doctrine was not to be found in the Constitution: that provides directly for the “calling forth of the militia to execute the laws of the Union.” It nowhere, even by implication, provides for the calling of regular troops to aid the magistrate.” Fletcher also called for “a pause on a proposition to raise a standing army to supersede the present civil police of the country, and in its stead establish a military police.”⁷¹

⁷⁰ *Congressional Globe*, 25th Cong., 2nd sess., 484.

⁷¹ Congressman Fletcher also directed his verbal ire towards those he viewed as the perpetrators of the “excitement along the northern border. Was not all peace and

Congressman Bronson, defending his position, argued that he had not “advocated new and alarming propositions, or urging the necessity of keeping an armed government force to execute the civil laws at the point of the bayonet.” Instead, “he had advocated a moderate increase of the army as necessary for the exigency of the time and the proper protection of the frontier. As to the Northern or Canadian border, he had insisted on sending United States troops there, and increasing the army by this bill, to enable the Secretary of War to place a proper force on the frontier.”

The demands from both the Governor of New York for the dispatch of regular forces and from letters from citizens of the state, demanding some form of federal presence necessitated this stance Bronson argued. Bronson quoted a letter from Governor William Marcy to the Secretary of War on June 3, 1838. Governor Marcy wrote, “the inhabitants there are very anxious, if possible, to have some regular troops stationed in that neighborhood; that they would have more reliance on that description of force, than on a detachment of militia residing along the lines.” From a citizen standpoint, Bronson noted the complaints about both illegal actions and a growing sense of lawlessness along the frontier. He did not doubt the ability of the civil courts to prosecute criminal acts, but “although courts and juries may punish offenders, they cannot prevent the commission of offenses. A military force, properly stationed on the northern frontier, might do much to prevent the commission of such crimes as had recently been committed; to repress

tranquility until the barbarous attack upon the steamer *Caroline* when British assassins, ay, assassins, like the stealthy Indian, shielded by darkness, invaded our territory, destroyed our property, murdered our defenseless citizens, and then, for the purpose of obliterating their cowardly and murderous deed, set fire to the ill-fated boat and sent her blazing over the cataract of Niagara? Was this not enough to arouse the citizens of the vicinity?” Ibid.

disturbances, and restore the quiet, and at the same time to preserve our neutrality, and enforce a rigid observance of our treaty stipulations." The simple conclusion for Congressman Bronson was that he would "continue to urge the necessity of a regular military force upon the northern border."⁷²

Finally, after a passionate debate, a severely amended Army Bill was put to the vote on the floor of the House of Representatives on July 2. It passed by a vote of 107 to 77. The Senate agreed to the House amendments on July 4 and on July 5, 1838, President Van Buren signed the bill into law. The only additional unit authorized under the legislation was the formation of the Eighth Infantry Regiment that was specifically assigned the garrisoning of both pre-existing and new frontier posts along the Canadian border. The additional unit represented a small tactical victory for Secretary of War Poinsett and those advocating an expanded force in both numbers and missions.

Secretary Poinsett was not satisfied, however. He may have won a small tactical victory with the passage of the Army Bill, but he was far from earning the strategic victory that sought a complete overhaul of the U.S. military system particularly the militia system. He continued to push the Congress to go further arguing "even under the former very defective system of keeping the regular forces in garrison within the forts along our whole line of frontier, they are insufficient for their defence." Secretary Poinsett proceeded to use the ongoing instability on the Canadian border, the fluid situation along the length and breadth of the western frontier, and the evolving state of

⁷² Ibid.

affairs along the border with Texas, and by default the border with Mexico, as the basis to recommend to President Van Buren the complete overhaul of the militia system.

The objective was to be a militia force of 200,000 men, "so drilled and stationed as to be ready to take their place in the ranks in defence [sic] of the country, whenever called upon to oppose the enemy or repel the invader." The system called for a restructured and reorganized two-tier system designed to supplement the small regular army. But, and this was most important, the new system was not to interfere in any way with individual states' operations of their respective militia system. Poinsett argued, "every precaution has been taken to avoid all interference with the rights of the States, or to lessen their means of defence. [sic]." He also sought to allay the fears of those who remained opposed to any modernized professional force arguing "an army commanded by officers, educated to reverence the laws and cherish the freedom of the country and scattered along an 8,000 mile-long frontier, posed no threat to American democracy."⁷³

Arguably, Poinsett's experience as one of the leaders of the Unionist party in his native South Carolina during the nullification crisis of 1832, and a supporter of President Jackson's threatened use of federal force may well have encouraged his desire to professionalize state militias.⁷⁴ Poinsett's proposed reorganization was designed, in fact, to reinforce the various state militias. An overhaul of the militia system promoting greater

⁷³ Wettemann, *Privilege versus Equality*, 36, n.49.

⁷⁴ Charles Janeway Stillé, *The Life and Services of Joel R. Poinsett: The Confidential Agent in South Carolina of President Jackson During the Nullification Crisis of 1832* (Philadelphia:1888), 60-61.

efficiency and organization ⁷⁵ Poinsett "proposed to divide the United States into eight military districts, and to organize the militia in each district, to have a body of twelve thousand five hundred men in active service, and another of equal number in reserve. This would give an armed militia force of two hundred thousand men..."⁷⁶

Secretary Poinsett, reflecting on the pointed criticisms of General Scott and members of his senior staff stationed along the Canadian border, distinguished the level of training and organization of militias located in and around the vicinity of the principal cities of the United States and those drawn from frontier regions. Militia units from the border areas were, "left by the little instruction they received on such occasions, without discipline, subordination, or knowledge of the use of arms...if called out in mass, would rather prove a burden than an assistance to the army employed in the defence [sic] of the country."

Poinsett viewed the anticipated continued growth of the overall militia system, expected to exceed two million men in the early 1840s, as a problem in and of itself. He noted, again drawing on the observations of General Scott, that with such anticipated numbers the system "must fail for want of means, and leave the country exposed to the terrible disasters which will attend the first burst of war upon its frontiers, if they are to be defended by armed but undisciplined multitudes."

Equally, anticipating the expected congressional ideological opposition to the creation of such a large military force, Poinsett used the proposed overhaul to counter

⁷⁵ United States War Department. *Plan of the Standing Army of 200,000 Men: Submitted to Congress by the Secretary of War, And Recommended by the President of the United States*. Washington, D.C.: Vol. 266, May 26, 1840.

⁷⁶ *Ibid.*, 2.

such claims. Poinsett argued, to adequately defend all the forts on all the country's frontiers would require, in his estimation, "a regular army of fifty thousand men." He went on, "it appears to me that the organization now proposed will prevent the necessity of maintaining large standing armies, even in time of war."⁷⁷

Despite Poinsett's efforts to present a rational organizational, logistical and strategic argument for overhauling the militia system his plan drew intense criticism from both congressional opponents and various influential newspapers. The *Richmond Enquirer* sent an open letter to Secretary Poinsett from the Central Committee of the Democratic Party of Virginia calling him to task for even advocating such a plan, equating the Secretary's proposed militia force with a standing army.

You are charged with the design of establishing a standing army of two hundred thousand men; with proposing a system without precedent in our annals, tyrannical and oppressive in all of its details and without parallel in the history of free Government.⁷⁸

The result of the opposition, which was arguably a foregone conclusion, was the withdrawal of the proposed plan by President Van Buren and the castigating in print of the Secretary of War by the president. Despite having read the plan of his Secretary of War, he promptly disavowed it when congressional and public opposition built during 1840 with the presidential election looming. In answer to a letter dated July 31, 1840, in reply to a letter from John Cary of Elizabeth City in Virginia and published in the *Richmond Enquirer* on August 7, President Van Buren disavowed any support for the Poinsett plan. He wrote: "If I had been charged with the design establishing among you at

⁷⁷ Ibid., 4.

⁷⁸ *The Richmond Enquirer*, May 29, 1840.

public expense, a menagerie of two hundred thousand wild beasts, it would not have surprised me more, not would it, in my judgment, have been one jot more preposterous.”⁷⁹

Defense and the maintenance of law and order along all frontiers and borders were to remain largely under the operational jurisdiction of state militias with all the inherent problems illustrated by events along the Canadian border. Even the newly authorized regiment that had been organized and deployed under the auspices of the 1838 Army Bill was just as quickly withdrawn and redeployed to the western frontier once events along the Canadian border gave signs of calming down and diplomacy, once again, became the modus operandi to finally settle outstanding territorial and boundary disputes with Great Britain.

Conclusion

Secretary Poinsett had gone a ‘bridge too far’ with his reorganization plans for the state militias. President Van Buren’s calculated lack of any public support for the proposed reorganization removed any real chance of the plan moving forward. Likewise, the philosophical objections on the part of many to any large standing regular military force or even a well organized and well-trained militia force were sufficiently strong to prevent any fundamental structural change from taking place. Secretary Poinsett, however, understood only too well the poignancy of the words of the British

⁷⁹ “*The Northern man with Southern Principles*” and “*The Southern Man with Northern Principles*”: A view of the comparative claims of General William Harrison and Martin Van Buren (Washington, D.C.: Peter Force, 1840) C. 10 The Militia and the Standing Army, 34.

Ambassador, Sir Henry Fox, at the height of the troubles with Patriot forces along the northern border. "If the Americans either cannot or will not guard the integrity of their own soil or prevent it becoming an arsenal of outlaws and assassins...they have no right to expect that the soil of the United States will be respected by the destined victims of such unheard-of violence."⁸⁰

Events along the northern border had significantly tested the enforcement and jurisdictional capabilities of the federal government. Just at a point when a rational approach to creating a national enforcement system and structure for the northern border would have been appropriate, diplomacy, an approach favored by both Americans and the British, quickly negated the issue. Despite his hatred of the British, and noting that "the peace of the country was suspended by a thread" when he assumed office on April 6, 1841, President Tyler, in much the same manner as President Van Buren, hoped to secure a long-term peaceful resolution of the northern border. ⁸¹

The new Peel administration in London, inheriting an economic recession, a slump in trade, and a significant budget deficit inherited from the outgoing Melbourne administration, has a similar desire to find an amicable and peaceful long-term solution to issue with the northern border.⁸² The move by the Peel government to appoint Lord

⁸⁰ Howard Jones, *Crucible of Power A History of American Foreign Relations to 1913* (New York: Roman & Littlefield, 2009), 131.

⁸¹ Lyon G. Tyler, *The Letters and Times of the Tylers* (Richmond: Whittet & Shepperson, 1885), 228. Edward Crapol, *John Tyler: The Accidental President* (Durham: University of North Carolina Press, 2009), 89.

⁸² Henry Beckles Wilson, *Friendly Relations, A Narrative of Britain's Ministers and Ambassadors to America, 1791-1930* (London: Lovat Dickson and Thompson, 1934), 147. Interestingly the American Ambassador to London, Andrew Stevenson, a confidant to President Jackson was also viewed as a diplomatic obstacle. Although true to his

Ashburton, as the London's envoy to work Secretary of State Daniel Webster, proved to be an inspired choice.⁸³ Within a year of taking up his appointment, Lord Ashburton had negotiated the Webster-Ashburton Treaty. This resolved all the boundary disputes in the northeast and on Lake Superior. The treaty also made minor technical adjustments to complete the U.S.-Canadian border from the East coast to the Rockies along the 49th parallel.⁸⁴

Senator William Rives, chairman of the Senate Foreign Relations Committee, spoke in favor of ratification of the treaty. He noted without such a settlement "the acts of ill-advised individuals, of small detachments of troops, of subordinates, local authorities,

mentor in supporting his policies he was reprimanded more than once for not being assertive enough on American rights. He was also accused of being an alarmist when it came to the Caroline incident. Testimony to his questionable diplomatic skills was the refusal by President Jackson and President Van Buren to allow him to manage negotiations over the Maine border. Both advocated that the issue could only be resolved in Washington. For more on Ambassador Stevenson's tenure in London see Henry Beckles Wilson's *America's Ambassadors to England, 1785-1928* (London: John Murray, 1928).

⁸³ Lord Ashburton was Alexander Baring of the Baring Bank family. He had an American wife who was the daughter of a former U.S. Senator and had first visited the United States in 1795. He specialized in American commerce and in 1808, against the backdrop of deteriorating Anglo-American relations, had authored a pamphlet urging that the economic prosperity of the United States should be welcomed both economically and politically by Great Britain. Arguably there was also a serious conflict of interest issue. The Baring banking house of London had bailed out William Bingham, one of the biggest investors in land in Maine when he could no longer meet payments on his loans. On a fact-finding mission for his father's banking house to Maine, Alexander Baring met William Bingham's daughter and eventually married her.

⁸⁴ Upon assuming the office of Secretary of State Daniel Webster declared "No difference shall be permitted seriously to endanger the maintenance of peace with England." For his part Lord Ashburton showed an immediate willingness and flexibility not to get trapped into pointless arguments over minutiae. "For my own part what seems most important is that there should be a settlement of some sort, and I do not attach all the importance which some do to the precise terms." Quoted in A.B. Corey, *The Crisis of 1830-1842 In Canadian-American Relations* (New Haven: Yale University Press, 1941), 166.

may, at any moment bring on conflict, in which the two countries would be committed to the stern issues of war against their own deliberate policy and will."⁸⁵ The Webster-Ashburton Treaty passed the U.S. Senate by a majority of 39 to 9.⁸⁶

The ratification of the treaty in August 1842, established the responsibility of the federal government for a northern border stretching from the Atlantic Ocean to the Great Divide of the Rocky Mountains, a distance of over 3,500 miles. Given the paucity of federal forces available to enforce federal laws along the Maine border with British Canadian provinces, the lingering question of, and recent experience with, dependence on state and local militias to enforce federal laws, and apparently no desire on the part of the U.S. Congress to undertake any necessary steps to provide for adequate forces, the task was daunting. And yet, within four years, the distance had increased an additional four hundred-plus miles, all the way to the Pacific Ocean following the ratification of the Oregon Treaty.

In the space of 63 years, the federal government had acquired the responsibility for a northern border stretching a staggering 4,000 miles. Its ability to provide oversight and enforcement was virtually non-existent. Lingering sentiments persisted among some

⁸⁵ Appendix to the Congressional Globe. August, 1842. 27th Cong. 3rd Sess. "The British Treaty – Mr. Rives." U.S. Senate, 59-67.

⁸⁶ "The Webster-Ashburton Treaty," August 9, 1842. *Stats at Large of the USA*. Vol. 8, Treaties Between the United States and Foreign Nations, 1778-1845, p. 572-78. For a general overview of the negotiations that led to the treaty see Francis M. Carroll A Good Wise Measure: The Search for the Canadian-American Boundary, 1783-1842 (Toronto: University of Toronto Press, 2001). For additional information see Corey, Canadian-American Relations, 158-182; Howard Jones. *To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843* (Chapel Hill: University of North Carolina Press, 2011); Wilbur J. Devereux, "The Influence of Slavery on the Webster-Ashburton Treaty," *Journal of Southern History*, 22, no.1, 48-58.

groups on both sides of the border that the Canadian colonies would ultimately be annexed by the United States thereby negating the need for a border or border enforcement and regulations.

Almost immediately, however, indicators of potential problems began to surface. Irish migrants had already discovered that it was cheaper to immigrate to the United States from Ireland via Canada and then just walk across the northern border. Native American tribes did not recognize a white man's treaty that cut across their ancestral territories and threatened their historic migratory patterns. In 1846, the question of how the federal government proposed to enforce its laws along 4,000 miles of northern border disappeared amidst the increasing clamor of the future for the country's southern border.

CHAPTER TWO

During his tenure as Leader of the House of Lords during the premiership of Sir Robert Peel, the Duke of Wellington, speaking on the topic of Canada and the ongoing Webster-Ashburton negotiations had observed, "British territory in North America was all frontier and nothing else." The Duke's observation applied equally to the United States with its continually expanding western frontier, and the corresponding growth in the delineation of the country's northern and southern borders.

The focus of the second chapter is the expansion of the southern border of the United States. Commencing with the initial settlement of American immigrants in first the Spanish, and then the Mexican state of Texas, through the annexation by the United States of the independent Republic of Texas, and finally the Mexican Cession as an outcome of the Mexican-American War. By 1848, the southern border of the United States extended from the headwaters of the Rio Grande to the shores of the Pacific Ocean.

The abilities of the federal government to enforce federal laws along 1,900-plus miles of a southern border were just as anemic and without force as they were along the now 3,900-plus miles of northern border. The federal government still viewed its primary duties with the borders as regulating foreign trade and defending against external invasion, not enforcing state laws against such crimes as trespass and cattle rustling.

From the perspective of the state of Texas and local border communities, relationships with the federal government were, arguably, even more, fractious than their northern counterparts.

A major theme of this chapter will be how the employment of the nascent Texas Rangers by the state government to control the borders of Texas with neighboring Mexico, and the federal territory of New Mexico, and to enforce state laws, will test the relationship between the state of Texas and the federal government. Texas will continue to demand assistance from the federal government but on its terms. The federal government, while seeking to deal with the bellicose nature of Texas, will also find itself challenged to live up to its treaty obligations with Mexico regarding the policing of the southern border. The result will be a similar lack of appreciation of the scale of the problem involved and the logistical assets required to meet the mission along the country's international borders.

Compounding the problems for the federal government in the decade before the Civil War filibusters operating from American territory and going across the southern border, and runaway slaves, making their way north across the border, increased smuggling across both borders will stretch the federal government to its limits. On the eve of the Civil War, the federal government has the responsibility for nearly 6,000 miles of land borders and still no specific means of controlling them.

The Changing Borders of Texas

The evolving southern border between the United States and Spanish Mexico — ultimately the Republic of Mexico — produced similar challenges to those of the northern border: old and imperfect scale maps, the absence of complete topographical data, and sheer geographic distance from the seat of any central government. In Texas the indigenous inhabitants far outnumbered the Spanish initially, then the Mexicans and, in due course, American settlers. This imbalance in the numbers had prompted the Spanish, and then the Mexican authorities, to employ a strategy using groups of indigenous peoples, receptive to various incentives, to act as surrogates on their behalf. The Americans who moved to Texas took matters into their own hands. Their proclivity to police both their settlements and ultimately the borders of an independent Republic of Texas would remain a fundamental mission for the Texas state government even after joining the United States in 1845, setting the stage for an enduring test of wills between the federal government and the state of Texas.

In the area of Texas, Spanish authorities tried to enlist groups such as the Caddos. They had their problems, however, with neighboring Osages and Wichitas. A far greater threat to Spanish and Mexican control, and ultimately American power, were the Comanches and Lipan Apaches who roamed the western part of the region. They were extremely skilled warriors who were determined to retain control of their homelands. As

such they had no appreciation or understanding of lines of demarcation and control, it was "a mark on the map without meaning for locals."¹

Moses Austin, a naturalized Spanish subject, applied for a grant of land in Texas but did not live long enough to witness the outcome. Granted by Spanish authorities in December 1820, it was among the last colonial acts carried out in the chaotic final months of Spanish rule in Mexico. Within nine months Mexico declared its independence from the Spanish. Agustín de Iturbide declared himself emperor. Stephen Austin secured the formal approval from the Mexican authorities to establish his father's settlement in Texas. Arguably, this signaled a continuation of the Spanish buffer-and-immigration policy on the part of Mexico.²

Geographic isolation from federal authorities in Mexico City necessitated a degree of home rule almost from the outset of Austin's colony including in the

¹ Alice L. Baumgartner argues in the article "The Line of Positive Safety" regardless of how and where either Americans or Mexicans eventually delineated limits and definitions of national or interior boundaries, borders, and lines of geographic control, Native American simply did not, nor never would comprehend their meaning in the same manner. Alice Baumgartner, "The Line of Positive Safety: Border and Boundaries in the Rio Grande Valley, 1848-1880." *Journal of American History*. Vol. 101, no. 4 (March 2015) 1106-1122.

² In 1824 with the overthrow of Iturbide and the declaration of the Mexican Republic, a new constitution included an organizational requirement that formally joined Texas with Coahuila to form the Mexican state of Coahuila y Tejas. The tract of land between the Rio Grande and the Nueces River, called Colonia de Nuevo Santander by the Spanish, was renamed Tamaulipas. For a detailed history of the early settlement in these territories and the impact of the influence of American settlers see Rodolfo Acuña, *Occupied America: A History of the Chicanos* (New York: HarperCollins, 1987). On the Comanche, see Pekka Hamalainen's *The Comanche Empire* (New Haven: Yale University Press, 2008). On Stephen Austin see Gregg Cantrell's *Stephen F. Austin: Empresario of Texas* (New Haven: Yale University Press, 1992). On the Spanish role in border regions David J. Weber *The Spanish Frontier in North America* (New Haven: Yale University Press, 1992).

application of law enforcement. American settlers in Texas called upon a historic Spanish precedent known as La Acordada³ This ad hoc force merged into a post-Mexican independence bureaucratic creation called the Jueces de Campo which oversaw the registration of cattle brands, arbitrating in disputes over cattle and land and extended the power of the Crown to carry out law enforcement through local citizens organized as Juez del Campo. It was evident, despite Austin's use of term 'ranger' in an 1823 document, destined to be a never-delivered speech, these men were not the iconic Texas Rangers established in 1835 and reconstituted 1874. The anticipation was that they would carry out a law enforcement mission akin to the historic 'ranger.'⁴

³ The Spanish Crown had agreed to the use of *Jueces de Campo* in 1719 based on the sheer necessity of the geographic expanse of New Spain. It extended the power of the Crown to carry out law enforcement to local citizens and provided for someone to assume the credentials of an alcalde, a civil judge to dispense justice. Unpaid law enforcement officers, known as *Juez del Campo* were individuals who provided their horse, weapons, and provisions, and served for the honor of the Crown patrolled the frontier. Large Spanish landowners were also ordered by the viceroy to provide 'flying companies' of volunteer militia to man the presidios constructed along the northern border. *Jueces de Campo* had an American equivalent of circuit court justices riding the territories implementing federal laws. J.M. Guinn, *History of California, Los Angeles, and the Extended Environs* (Los Angeles: Historic Record Co., 1915), vol. 1, 246-247; S. Garfield and F.A. Snyder, *An Act Concerning Judges of the Plains and Defining their Duties, Compiled Laws of the State of California* Boston, MA: Franklin Printing House, 1853, Chapter CLXVI, 866-868.

⁴ The etymology of ranger is traced back to 15th Century England. It is found on the 1455 Rolls of Parliament during the reign of Henry VI. "*Almaner and singular offices of foresters and raungers of oure said forests.*" In essence, a ranger was a gamekeeper or forest warden who was considered a royal officer and therefore a representative of the Crown. The verb range dates from the early 13th Century meaning to "move over a large area, roam with the purpose of searching or hunting," from Old French ranger. For more on the original foundation of the Texas Rangers see Harold J. Weiss, Jr., "*Flying Forces; The Origins of the Texas Rangers*" paper delivered at the annual meeting of the Texas State Association, Austin, TX, March 7, 1997.

The legal system in Austin's colony codified the responsibilities of individuals in response to criminal acts. Promulgated in January 1824, Article 26 declared,

Should any murder, theft, robbery, or other depredations be committed, it shall be the duty of any person to apprehend the criminal or criminals concerned in it, if in his or their power to do so, and convey him or them to the nearest alcalde, for which purpose they are authorized to use arms. If the criminal or criminals have fled or are in force, information shall be given under oath to the nearest militia officer or alcalde, who shall forthwith raise men and follow the criminal or criminals, and should he or they be overtaken and refuse to surrender or attempt to escape by flight, the officer in command may order his men to fire on and kill said criminal or criminals, he being always responsible for the death or ill-treatment of an innocent person.⁵

On March 3, 1829, Green DeWitt wrote to Stephen Austin describing the impact of attacks undertaken by Native Americans against settlements along the Guadalupe River located west of the Austin settlement. Mexican Army units were in pursuit of many of the alleged raiders, but DeWitt wrote that additional steps had to be taken immediately for the "great security [of] the people of San Antonia and LaBahaia as well as to American Settlements [sic]." He proposed a joint effort to both raise and support a "Company of Rangers, or the public troops" to patrol their frontiers.⁶

It was to be a militia, at least initially, however, responsible for enforcement of the laws when called upon to do so. The militia brought with it all the associated problems found amongst the militia units on the northern border: unreliability, unwillingness when called upon to leave their homesteads, lack of any real training and,

⁵ Official Documents, Laws, Decrees, and Regulations about Austin's Colonies. www.tamu.edu/faculty/ccbn/dewitt/colonyregs.htm

⁶ *DeWitt Colony Papers, Documents, and Correspondence, 1829-1834*, Green DeWitt to Austin, March 3, 1829. <http://www.tamu.edu/faculty/ccbn/dewitt/papers29-34.htm>

despite Austin's admonition against abusing native Americans, a distinctly aggressive attitude towards native Americans that militia leaders either would not or could not control.⁷

Austin made efforts to inculcate a more centralized mission and sense of organization. This effort was driven primarily by the refusal on more than one occasion of the federal government in Mexico City to allocate regular troops for protection and law enforcement. His correspondence with the Mexican official in charge of the region included references to reorganizing the militia into 12 sections with a schedule of rotation with "one section to be sent to the frontier every month, to do duty as spies, or frontier guard." His proposal included keeping "twenty or thirty mounted men continually on the frontier as spies; as well for the preventing of incursions of small parties of Indians, as to give timely notice should they come in force to make a formal attack."⁸

Austin's concerns were with the steadily growing influx of immigrants from the United States into Texas establishing new settlements outside of the original Austin settlement. He endeavored to maintain some orderly process and to work towards some form of a unified approach in the application of militia forces for operations on the

⁷ Article Five of Austin's code stipulated that no colonist "shall ill-treat, or in any manner abuse any Indian or Indians, without just cause, under the penalty of one hundred dollars fine for the first offense and two hundred for the second." Ibid. Eugene Barker wrote, "For several years militia service was fairly burdensome, and from time to time Austin had to subdivide the original districts to permit greater flexibility and local independence in dealing with marauding tribes." Exacting revenge, protecting their own families and the prospect of plunder would all resonate with those who served in militia units. Austin also complained that by 1829 many of the settlers were losing interest in serving or participating in the militia. Eugene C. Barker, "The Government of Austin's Colony, 1821-1831," *Southwestern Historical Quarterly* (Jan. 1918): 223-252, 233.

⁸ The Austin Papers, 1676, 1765-1889. Center for American History. The University of Texas at Austin.

frontier. Until the onset of revolution against Mexico in 1835, it was these militia units that provided what limited law enforcement existed in the colony with the primary objective of guarding against incursions of Native Americans in the west.

Within two months after Austin's call for war against Mexico and independence for Texas, a revolutionary committee was established to oversee various aspects of the rapidly evolving situation. Daniel Parker offered the original idea of creating a corps of Texas Rangers on October 17, 1835. The plan called for three men, who were designated as superintendents, to oversee three groups of Rangers "whose business shall be to range and guard the frontiers." A subsequent resolution provided that "the line of the Rangers be employed, or may be employed to protect our frontier, be extended from the Colorado River to the Cibolo."⁹

From this point forward the Texas Rangers were organizationally split from being considered militia in the sense that they not viewed as reserves or replacements for regular forces. Likewise, they were not regarded as regular army albeit that they answered to the commander-in-chief of the regular army of Texas. But the embryonic force found itself caught between two defining statuses, neither regulars nor militia.

Despite Parker's original plan for the new force, their assignments were menial tasks. The

⁹ Gammel, Hans Peter Mareus Neilsen. *The Laws of Texas, 1822-1897* vol.1, book, 1898; 526-527, Austin, Texas. (texashistory.unt.edu/ark:/67531/metapth5872/: accessed February 7, 2017), University of North Texas Libraries, The Portal to Texas History, texashistory.unt.edu; The ordinance passed on November 24, 1835. The result was the establishment of three companies comprising 56 men with each company officered by a captain and a first and second lieutenant. Enlistment was for one year. Pay was \$1.25 a day for 'pay, rations, clothing and horse service.' Officers were to receive the same pay as dragoon officers in the regular United States Army. Interestingly the Rangers were to be "subject to the orders and direction of the Commander-in-Chief of the Regular Army [of Texas]" Ibid., 924-925.

Ranger force appeared to have spent the duration of the revolutionary period on the western frontier in anticipation of threats emanating from Native American tribes, a threat that never actually evolved. They were also used sparingly as scouts and couriers for the regular forces, finding themselves tasked to return stolen or lost cattle, and act as escorts to settlers entering Texas.

With independence from Mexico, however, Parker anticipated the ranging force evolving into an organization that represented the new Texan government in Austin in the application and enforcement of the laws throughout the Republic of Texas. The anticipation of future conflict with Mexico reinforced the goal of guarding against incursions now from both Native Americans but more strategically from Mexico. They anticipated being asked to continue to act as spies on the border and patrol the frontiers both north and south.

For the short-lived independent Texas Republic the question of where the responsibility lay for guarding the borders against any and all potential incursions and enforcing the laws of the republic, mirrored many of the same issues encountered by the U.S. federal government on the northern border with Canada. Sam Houston's desire not to have a regular standing Texan military force but instead to place greater reliance on a militia system, predicated on financial outlays, also mirrored ideological debates in Washington, D.C. about a regular standing military versus militia force and the civil-military context and security purpose, or absence thereof. Houston's philosophy of greater reliance on a militia did not result in the disbanding of the Rangers. Their

assignments continued to be menial tasks. The approach to providing regular law enforcement within Texas and along the borders remained in flux.

Mirabeau Buonaparte Lamar who would succeed Houston as president of Texas took the complete opposite approach advocating for a substantial regular force, changing the republic's policies about the frontiers and advocating for a significantly increased role for the ranger force. Lamar had made it clear "the Cherokees can no longer remain among us...Should they refuse to leave our territory force must be employed, for they must go."¹⁰ Under Lamar, the Texas Rangers deployed against the Cherokees, in the process building a reputation for violence.

When Houston assumed office for a second term replacing Lamar, he reversed most of Lamar's policies. The force of Texas Rangers that had grown to over 300 men during Lamar's presidency remained. Houston, while maintaining his goal of achieving efficiencies in the republic's budget, concluded that the Texas Rangers were the most efficient and least expensive method of protecting the frontiers. Moreover, it was to be the boundaries of the Texas Republic, specifically its southern border with Mexico and the Nueces strip that would be partially responsible for the onset of the Mexican-American War in 1846. Arguably the strip of land between the south bank of the Nueces River and the north bank of the Rio Grande River had not been disputed until an

¹⁰ Charles A. Gulick and Katherine Elliott, eds., *The Papers of Mirabeau Lamar* (Austin: Von-Boeckmann-Jones Co., 1927), vol. III, 11-12. The intensity of the feelings against the Cherokee, a tribe Houston sought to work with on a peaceful solution, resulted from alleged involvement with Mexico aimed at destabilizing the new Republic of Texas.

independent Texas commenced its claims that the Rio Grande was the republic's official border with Mexico.¹¹

Employing the 1845 annexation agreement with the Republic of Texas and the status of the Rio Grande as the de facto international border between the United States and Mexico, President Polk was able to assert that the threat of any Mexican army crossing the Rio Grande “must be regarded as an invasion of the United States.”¹² The presence of American regular forces under the command of General Zachery Taylor having been ordered to take up a blocking position around Corpus Christi on the south

¹¹ The issue of the Rio Grande as a border dates back to a spurious claim under the 1713 Treaty of Utrecht that French rights were recognized as far south as the Rio Grande despite the presence of the Spanish. The 1819 Adams-Onís Treaty had established the Sabine River as the border between the Louisiana Purchase territory and Spanish Texas thereby giving up the American claim that Texas had in fact formed part of the original purchase agreement. Mexican independence in 1821 resulted in the entire area of Texas coming under Mexican jurisdiction. The administration of President J.Q. Adams had sent Joel Poinsett to Mexico City to attempt to negotiate the purchase of Mexican territory as far south as the Rio Grande to which Mexico had refused to consent. The military defeat of General Santa Anna at the Battle of San Jacinto in May 1836 led to the Treaty of Velasco. An essential term of the treaty was the withdrawal of all Mexican forces south of the Rio Grande. In the view of Texas, this represented a de facto acknowledgment that all land between the north bank of the Rio Grande and the south bank of the Nueces River was in fact now part of the independent Republic of Texas. The repudiation by the Mexican Congress of the treaty denoted the territory was still Mexican. In 1842 Texan forces were soundly defeated by those of Mexican General Santa Anna in the area between the two rivers but it failed to negate the Texan claim of the Rio Grande. The 1845 annexation agreement promulgated by the government of the United States included the Gulf coast and all the land north and east of the Rio Grande to its source and north to the 42nd parallel. The U.S. Congress viewed the resolution of subsequent potential border disputes as a subject for future negotiations and determination.

¹² *Congressional Globe* 29th Cong., 1st sess., 782-783

bank of the Nueces River and, therefore, from a Mexican standpoint, having invaded Mexican sovereign territory inevitably led to the forces engaging one another.¹³

The 1846-48 Mexican-American War resulted in the United States securing “a victor’s peace” encapsulated in the 1848 Treaty of Guadalupe-Hidalgo. Article V concluded with the notation: “The Boundary line established by this Article shall be religiously respected by the two Republics...” Additional modifications to the line of demarcation were subsequently agreed upon in 1853 as a result of the Gadsden Purchase.

¹⁴In his Annual Address to the U.S. Congress on December 5, 1848, President Polk proclaimed "peace, plenty, and contentment reign throughout our borders, and our beloved country presents a sublime moral spectacle to the world."¹⁵

¹³ The Mexican statesman and historian Carlos María de Bustamante in his contemporary account *El nuevo Bernal Díaz del Castillo ó sea Historia de la invasión de Los anglo-americanos en México* published in 1847 wrote "sending troops into Mexican territory doomed all moderation, and Mexico was left with no other recourse but to engage in battle. The territory between the Nueces and the Rio Grande rivers neither by fact nor by law could have belonged to Texas...nor...by law because all this coast, through a territorial division recognized by all the nation and by the Texas colonists themselves, has belonged to the state of Tamaulipas." (Mexico City: Imprenta de Vicente Garcia Torres, 1847).

¹⁴ “Treaty Between the United States of America and the Mexican Republic. Relative to Boundary Line, Transit of Persons, etc., Across the Isthmus of Tehuantepec,” December 30, 1853, *United States Statutes at Large* 10.

¹⁵ President James Polk. Annual Address, Dec. 5, 1848. *Compilation of the Messages and Papers of the Presidents, 1789-1897* (Washington, D.C.: Government Printing Office, 1896-99), 4: 629 Units of the Texas Rangers were federalized during the Mexican-American War and incorporated into the American Army although they retained their identity as Texas Rangers. Robert Utley. *Lone Star Justice* (New York: Berkley Books, 2002), 17. For more on the Mexican-American War see John S.D. Eisenhower, *So Far from God: The U.S. War with Mexico, 1846-48* (Norman: University of Oklahoma Press, 2000); Timothy Johnson, *A Gallant Little Army: The Mexico City Campaign* (Lawrence: University of Kansas Press, 2007); Brian DeLay, *War of a Thousand Deserts: Indian Raids and the U.S. Mexican War* (New Haven: Yale University Press, 2008); on the role

Under Article XI of the 1848 Treaty, the government of the United States assumed the responsibility for those Native American living north of the newly demarcated border. The main provisions of Article XI committed the United States government to restrain the various “savage tribes, who will hereafter be under the exclusive control of the Government of the United States government” from crossing the international border and undertaking “incursions within the territory of Mexico.” Failure to prevent such border crossings would be viewed as “prejudicial in the extreme” with the first paragraph concluding:

...it is solemnly agreed that all such incursions shall be forcibly restrained by the Government of the United States whensoever this may be necessary; and then when they can be prevented, they shall be punished by the said Government. And satisfaction for the same shall be exacted in all the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own territory, against its citizens.¹⁶

In a letter dated March 18, 1848, to the Mexican Minister for Foreign Relations, Secretary of State James Buchanan informed his counterpart that the U.S. Senate had made a series of changes to the overall treaty. Significantly with regards Article XI and future problems along the border, amended language withdrew the previous sanction on selling weapons and ammunition to Native Americans in the border region. Buchanan noted that "Indians must live by the chase, and without firearms, they cannot secure the means of subsistence." He pointed out that "for want of such arms, the extremity of hunger and suffering might drive them to commit the very depredations which the Treaty

of the Texas rangers see Frederick Wilkins, *The Highly Irregular Irregulars: The Texas Rangers in the Mexican War*, (Austin: Eakin Press, 1990).

¹⁶ Article XI, *Treaties, and Conventions Between the United States and Other Powers Since July 4, 1776* (Washington, D.C.: Government Printing Office, 1871): 687.

seeks to avoid, and to make incursions for food either upon the Mexican or American border settlements." The amendment "was adopted on a principle of humanity."

Buchanan in the same paragraph sought to balance that part of the amendment "adopted on a principle of humanity." He offered reassurances to his Mexican counterpart that, "The Government possesses both the ability and the will to restrain the Indians within the extended limits of the United States from making incursions into Mexican territories, as well as to execute all other stipulations of the 11th article."¹⁷ The question, once again, was to be with what forces, and almost immediately the "ability" and "will" referred to by Buchanan was put to the test along the border.

Equally, the appropriation of the necessary funds to construct a force sufficiently large enough and with the allied logistical support to carry out Article XI obligations once again triggered an intense debate in the Congress. Memories of both the debacle on the Canadian border and Secretary of War Poinsett's proposed enlargement plan for a force to protect the border put forward in 1840 undoubtedly triggered the intense and impassioned debate about fears of creating a large standing army.

Apart from the philosophical arguments with regards the requirement for a more substantial military force the debates in Congress were also shrouded in general ignorance of the geographic enormity of the area in question. Displaying his ignorance on some levels Congressman Robert Toombs, a Democrat from Georgia, argued that two

¹⁷ Letter to the Mexican Minister for Foreign Relations, 18th March 1848. *The Works of James Buchanan Comprising his Speeches, State Papers, and Private Correspondence*, ed., John Bassett Moore (Philadelphia: J.B. Lippincott and Company, 1909). vol. VIII, 1848-1853,14-21, 19.

regiments "were enough to keep in check all the Indians in New Mexico, Oregon, and California."¹⁸

Once again, akin to those states that bordered Canada, local and state awareness of the geography, distances, logistical problems and indigenous peoples far outstripped the breadth of knowledge at the federal government level. The anticipated fiscal demands for a sufficiently large force even led to some in Congress advocating that holding the lands captured from Mexico and being obligated to protect such a vast Mexican-American border, was not worth the money and continued anticipated expenditure. Congressman Samuel Vinton, a fiscally conservative Whig from Ohio, and chairman of the powerful House Ways and Means Committee in the 30th Congress led the charge. Vinton highlighted the anticipated annual expenditure in the region of \$3 million for a sufficiently large enough force for the southern border, and asked: "whether it would be better for this country to give these Territories up at once, and beg Mexico to take them back."¹⁹

Congressman Horace Greely, the editor of the New York Tribune and a Whig, also joined the ranks of those congressmen who strongly objected to increased expenditure for the army and any plans for expanded recruiting.²⁰ While professing to be

¹⁸ *Congressional Globe*, 30th Cong., 1st sess., 1848, 1035

¹⁹ *Ibid.*, 1034. Congressman Vinton turned down the position of Speaker of the House of Representatives to take the chairmanship of the House Ways and Means Committee. One of his colleagues referred to Vinton as a man who had "more influence in the House of Representatives, than any other man in it." Congressman Vinton was also a central figure in the creation of the Department of the Interior in 1849.

²⁰ Greely, who was appointed by the local party in New York's Sixth District to fill the seat for three short months from December 1848 to March 1849, also objected to increased funding for the Navy and in his three short months as a congressman

no supporter of England Greely asked, "how it came to pass that Great Britain, with more Indians than we have upon their frontier, expended nothing for Indian wars? Why was it, then, that our northern neighbors, who were never remarkable for their peaceable temper, had none?" He argued, "if one-half the sum which was now expended by the Government in these Indian wars and frontier duties were expended in keeping them quiet instead of driving them out of the country, it would operate as an immense saving to the treasury." In his view "the standing army could be reduced, and a volunteer army could defend the frontiers."²¹

He also sought to propose a new boundary line between Texas and New Mexico to prevent "the people of New Mexico having to submit to the people of Texas on the question of slavery." Greely argued that "this question of boundary was more than a mere question of law; it was a question of liberty and right." Both of Greely's objections failed to win sufficient support in the House.²²

The fiscal conservatism of the U.S. Congress towards sufficient appropriations for U.S. army operations along borders and frontiers also extended to bureaucratic activities with regards Native Americans. Despite Greely's call for a reallocation of funds, the abilities of the Bureau of Indian Affairs continued to be severely constrained., The Bureau had very few Indian agents on the federal payroll. Congressional authorization and appropriation had allowed for three Indian agents, and four interpreters to deal with

introduced a flurry of legislation all of which failed. His newspaper also published evidence claiming to show fraud on the part of many of his colleagues with regards travel allowances. For more on Greely's short tenure as a congressman see Robert C. Williams. Horace Greely, *Champion of Freedom* (New York: University Press, 2006), 113-116.

²¹ *Congressional Globe*. U.S. 30th Cong., 2nd sess. 371.

²² *Ibid.*, 608-610.

over 25,000 Native Americans from 16 tribes and merely compounded the lack of federal “eyes” and “ears” on the ground in the frontier and border regions.²³

From a U.S. congressional standpoint, a definitive policy dealing with Native Americans in the southwest was extremely slow in its evolution. The lethargy was due in large part to the U.S. Congress being “busy with quarrels over slavery,” and the transfer of the office of Commissioner of Indian Affairs from the War Department to the newly created Department of the Interior.²⁴ In October 1851, James Calhoun, the Indian Agent at Santa Fe and the Superintendent of Indian Affairs in New Mexico, in correspondence with Secretary of State Daniel Webster, complained “the military and civil authorities of the Territory, with but few exceptions are in hostile array, and one or both should be relieved from duty in the Territory.”²⁵ Subsequent correspondence with Luke Lea, Commissioner of Indian Affairs, noted “a want of comity and cooperation between the Indian and Military departments in this Territory.”²⁶

²³ When the U.S. Congress established the War Department in 1789, it also assumed responsibility for relations between Native Americans and the United States. In 1824, without authorization from the U.S. Congress Secretary of War John C. Calhoun established the Bureau of Indian Affairs. After some debate, the Congress sanctioned Calhoun's decision by creating the Indian Office and position of commissioner of Indian Affairs to be appointed by the president. The office would have “the direction and management of all Indian affairs, and of all matters arising out of Indian relations.” In 1849—in recognition of the evolving nature of the Indian Office—Congress transferred responsibility for Indian affairs from military to civilian control in the newly established Department of the Interior.

²⁴ J. Fred Rippy. “The Indians of the Southwest in the Diplomacy of the United States and Mexico, 1848-1853.” *The Hispanic American Historical Review*. 2:3 (1919) 363-396, 366.

²⁵ Annie H. Abel, *The Official Correspondence of James S. Calhoun while Indian Agent at Santa Fe and Superintendent of Indian Affairs in New Mexico* (Washington, D.C.: Government Printing Office, 1915), 430-431.

²⁶ *Ibid.*, 421.

Native Americans did not recognize or accept the white man's legal distinction of an international border. Raiding parties continued to frequently cross the newly designated international border virtually unopposed to carry out their raids, usually rustling both cattle and horses from Texan ranches situated close to the border. They consistently returned to the relative safety of the vastness of Mexican sovereign territory. Compounding the issue was the lack of any real Mexican state or federal presence to either prevent such raids or to apprehend raiding parties. It quickly assumed major significance from the standpoint of the Texas state legislature. Support was now actively sought from the federal government for policing and guarding the international border with Mexico.

The Texas Two-Step with the federal government: Who Leads” Who Follows?

The period immediately after the cessation of hostilities with Mexico triggered the customary Congressional debates on the overall requirements for a standing federal army. The regular force, once again, rapidly downsized. The Congress immediately sought cost-saving measures across the board in the areas of manpower requirements and military construction and procurement projects. The tenor of the congressional debates continued to reflect a fundamental lack of awareness and appreciation of the enormity of the geographic task now confronting the federal government with regards the enforcement of federal laws along the 6,000-plus miles of international borders.

The government of the state of Texas, however, remained a vocal proponent of its determination of the requirements for policing the 1,250 miles of its border with Mexico.

The state government will continue to demand more of the federal government while actively filling the vacuum created by the perceived lack of federal commitment to the border even threatening secession. Texas will engage in its brand of law enforcement operations and system of justice, including cross-border operations, which adds to the simmering acrimonious relationship with the federal government.

The U.S. Congress remained principally opposed both philosophically and economically to creating a large federal force in general. It had little or no sense of urgency to increase the size of the army. The Adjutant-General's report for December 2, 1848, however, conveys some insight into the fundamental problem of geographic breadth of territory under federal jurisdiction and the comparatively small size of the federal force posted to Texas and the New Mexico Territory. The entry of Texas into the United States delivered over 230,000 square miles and a border with Mexico 1,241 miles in length. Overall, the Mexican Cession, following the 1848 peace treaty, brought an area more than 525,000 square miles under American sovereign jurisdiction and added a further 691 miles to the southern border.²⁷ By the end of 1848, the Adjutant-General's Report showed a total 938 federal troops in and *en route* to posts in New Mexico, and a total of 1,362 troops in and *en route* to Texas.²⁸ By the end of 1849, the overall figures for New Mexico were unchanged, while the number for Texas had declined by over 250 to 1,074 overall.

²⁷ Janice C. Beaver, *U.S. International Borders: Brief Facts* (Washington, D.C.: Congressional Research Service, 2006), CRS Report RS21729, CRS-1-5, CRS-3.

²⁸ *Reports of the Adjutant-General, 1848-1853*, in House Ex., doc. 1, 30th Cong., sess., 2, 184; Senate Ex., doc. 1, 31st Cong., sess., 1, 188; Senate Ex., doc., 1, part II, 31st Cong., sess., 2 116; House Ex., doc., 2, 32nd Cong., sess., 1, 200-206; Senate Ex., doc., 32nd Cong., sess., 2, 58-60.

The U.S. Army lacked a detailed appreciation of the geographic dimensions of the frontier and border. Starting in 1849 it undertook to construct nine new forts running along a line from Fort Worth in the north to Fort Duncan on the Rio Grande with the objective of providing some form of protection from Kiowa and Comanche raids emanating from the western half of Texas. While these forts were "well located and strategically placed," they lacked the right type of garrison force.²⁹ The vast majority were garrisoned by about 50 infantrymen with very few, if any, mounted units.³⁰ To Texans, all too familiar with the methods and actions of Native American raiding parties emanating either from within the state or from across the Rio Grande, the federal army was mismatched. One Texan complained to the state government in Austin whether they might "conceive of anything more absurd than starting in pursuit of flying Comanche in a wagon drawn by mules."³¹

The situation along the Rio Grande was decidedly worse. From El Paso to the mouth of the Rio Grande, the U.S. Army had four forts with a total complement of approximately 600 soldiers to guard an international border of 1,900-plus miles. The lack of numbers among federal forces compelled the federal government to turn to the Governor of Texas and the option of employing Texas Rangers in a supplementary role. Four companies of Texas Rangers were federalized in late 1849 for two years service

²⁹ Harold B. Simpson, *Cry Comanche: The 2nd U.S. Cavalry in Texas, 1855-1861* (Hillsboro: Hill Junior College Press, 1979), 55

³⁰ One Texas newspaper editorialized "the idea of repelling mounted Indians, the most expert horsemen in the world, with a force of foot soldiers is ridiculous." Cited in Mike Cox, *The Texas Rangers Wearing the Cinco Peso, 1821-1900* (New York: Doherty Associates, 2000), 131.

³¹ James R. Arnold, *Jeff Davis's Own: Cavalry, Comanches, and the Battle for the Texas Frontier* (New York: John Wiley and Sons, Inc., 2000), 16.

under Major General George M. Brooke, commander of the Western Division of the U.S. Army. Brooke expressed his reservations and angst. He disliked having to ask Governor Wood for the Rangers, and he complained to Washington through a letter to the Adjutant-General, that "their feelings, and you may say general hostility to Indians, would be very apt to bring about what we wish to avoid—a general war."³²

The vast majority of those Texas Rangers federalized for service during the war had returned home and had, once again, started undertaking their 'ranging' duties at the behest of the Texas state legislature. Local and state support for the deployment of Texas Rangers, particularly along the border with Mexico, was quickly forthcoming. In an editorial published in *The Advocate* in Victoria County on November 16, 1848, the sentiment was clear. The editorial concluded, "they may be permanently retained in the service on our frontier is extremely desirable, and we cannot permit ourselves to doubt [that]...such will be the case."³³ They were considered "one of the most colorful, efficient and deadly bands of irregular partisans on the side of law and order."³⁴

Walter Prescott Webb in his 1935 classic work on the Texas Rangers, wrote that the decade of the 1850s saw them as "little more than a historical expression." In more ways than one, they remained trapped between operational definitions. From the beginning of their official establishment, they were viewed as neither regular forces or considered militia. According to Webb, the Rangers were also "inefficient, their service

³² Brooke to AG, San Antonio, August 31 and September 20, 1849, in *Report of the Secretary of War, 1849* (Washington, D.C.: Government Printing Office, 1849), 143, 147-148.

³³ Cited in Mike Cox. *The Texas Rangers*, 125.

³⁴ T.R. Fehrenbach, *Lone Star: A History of Texas and the Texans* (New York: Perseus Books, 2000), 473.

ragged and able leadership almost wholly lacking."³⁵ He wrote they were "poorly equipped and unpaid" and "they were irregular, wore no uniforms and were neither militia³⁶ nor regular."³⁷

Webb continued:

Theoretically, there was no place for them because the United States had agreed by treaty to protect the frontier. Though they were frequently called in emergencies, they were never permitted to remain long in service, usually three to six months. If Texas called them, it demanded that the United States pay them, and the [federal] government consistently refused to do so for any length of time. It could not make them a permanent institution without admitting that the U.S. army was incompetent, and this is was not willing to do.³⁸

Subsequent historians of the Texas Rangers, while acknowledging the seemingly never-ending fight over appropriations for operations, have also taken a different approach to Webb.³⁹ They viewed the federal government as somewhat more, albeit always grudgingly, accommodating and "when prodded by the Texas delegation [for payment] sometimes the Congress did, more often than not."⁴⁰ However, the contentious

³⁵ Walter Prescott Webb, *The Texas Rangers. A Century of Frontier Defense* (Austin: University of Texas Press, 1935), 20

³⁶ The term derives from the Latin *militia* "military service." The concept of the militia as a legal and political institution was a product of English heritage," and "was modified by the uniqueness of the American experience." William S. Fields and David T. Hardy, "The Militia and the Constitution: A Legal History," *Military Law Review*, Vol. 136, (Spring 1992), 1-42, 1.

³⁷ Webb. *The Texas Rangers. A Century of Frontier Defense*, 20.

³⁸ *Ibid.*, 131.

³⁹ Webb quoted an October 6, 1849, editorial from the *Austin State Gazette* complaining that "Texas has joined herself to the United States," but "no lover has ever treated his bride with more cruelty, cold-heartedness, and less feeling, that the United States has treated Texas. The want of protection, the scornful look, and the efforts to rob her of her dowry, all mark the faithlessness and deception of the lover!" Webb, *Texas Rangers*, 129.

⁴⁰ Robert Utley, *The First Century of the Texas Rangers* (New York: Berkley Books, 2002), 87.

issues of overall responsibilities, consistent funding and even the tactical composition of forces arrayed along the border, would remain a constant theme in federal-state relations.

The relationship between Texas and the federal government steadily grew more acrimonious following the signing of the 1848 peace treaty with Mexico. A great deal of the focus remained the issue of border delineation, externally with Mexico and internally with regards the western boundary with the New Mexico Territory. During its time as an independent republic, Texas had consistently sought to take advantage of the lack of any real federal Mexican presence in the adjoining Mexican states. Texan legislators claimed extensive areas of land on both sides of the Rio Grande above El Paso and stretching northwards to the headwaters of the Rio Grande located in the region of the town of Santa Fe. A group of fervent expansionists even claimed the entire town of Santa Fe as falling within the purview of Texas.

In the summer of 1841, Hugh McCleod led a sizable military escort protecting a trading expedition of 21 ox-drawn wagons to Santa Fe. The objective of the expedition was actually to seize control of Santa Fe, The expedition was a disaster from the outset. A confrontation with a force of 1500 men of the Mexican Army led to those surviving expedition members be held prisoner in Mexico City until the spring of 1842 when their release was secured by Washington.⁴¹

Paradoxically the setback did little to curb expansionist sentiments. The defeat of the Mexican Republic by the United States in 1848 only served to encourage the state of Texas in its efforts to finally acquire the disputed territory through the threat of force, if

⁴¹ For more on the failed expedition, see George Wilkins Kendall, *Narrative of the Texan Santa Fé Expedition* (London: Wiley and Putnam's, 1844), Two volumes.

necessary, this time directed at the federal troops of the United States stationed in what became the New Mexico territory.⁴² The confrontational approach on the part of the state of Texas directly challenged the power of the federal government about both delineations of borders both internal and external and the disposition of lands under federal control.

Governor Wood of Texas recommended, in late 1849, that the governor must have extended ample power and the means to demonstrate, not only through argument but with the full "resources of the State," the legality and fairness of the claims of Texas. An editorial in the *Houston Democratic Telegraph* barely concealed the vitriol aimed at the federal government over Texan claims on New Mexico, and all but threatened military action if the federal government "will place itself in the position that Mexico occupied before annexation." The editorial took the position "Texas will be forced by circumstances beyond her control to resume her old position. She was then at war with

⁴² Within weeks of a declaration of war on Mexico General Stephen Kearny had moved into Mexican territory and seized the Mexican town of Santa Fe without firing a shot. He placed the town under federal military control and appointed a civilian territorial governor, Charles Bent. Kearny's Army of the West then proceeded to California. Two smaller federal forces were left behind under the overall command of Colonel Alexander Doniphan: one stationed in Santa Fe and one ordered to continue operations throughout the area. In January 1847 the Taos revolt erupted in northern New Mexico against American control. American forces subsequently crushed it but not before Governor Bent lost his life. For more on the background of the Taos Revolt and the American response see James A. Crutchfield, *Revolt at Taos: The New Mexican and Indian Insurrection of 1847* (Yardley: Westholme Publishing, 2015); Carols Herrera, "New Mexico Resistance to U.S. Occupation," Erlinda Gonzales-Berry and David R. Maciel eds., (Albuquerque: University of New Mexico Press, 2000).

Mexico, and if the general government assumes the position of Mexico, Texas will be at war with her."⁴³

The onset of the crisis also highlighted the value of first-hand knowledge and experience on the part of one president - Zachery Taylor - when it came to the region in dispute and those making the entirely baseless territorial claims. Likewise, the subsequent resolution of the border crisis, realized by another president - Millard Fillmore - who lacked both first-hand knowledge and experience of the region. He also lacked experienced cabinet members to provide timely and factual advice and counsel, and allowed Texas to secure a majority of its land claim while obtaining a significant financial settlement from the federal government.

That the territory of New Mexico was firmly under federal control when Zachery Taylor took the oath of office in March 1849 was not in doubt. Federal troops remained stationed in New Mexico and their commander, Brevet Lieutenant Colonel John Washington, brushed aside demands from a representative of the Texas state government that Texas would regard as "void all judicial and civil proceedings inconsistent with her laws." Colonel Washington made it clear that the New Mexico territory would remain under federal control. Likewise, its delineated borders until he received orders to the contrary. It was clear that any move on the part of Texas was a bluff in as much as the state possessed no fighting force of any caliber to take on federal troops in New Mexico. Austin was 800 miles away from Santa Fe. Critically President Zachery Taylor as a

⁴³ Frank W. Johnson and Eugene C. Barker eds., *A History of Texas and Texans* (Chicago: American Historical Society), Vol. 1, 496 quoting *The Democratic Telegraph and Texas Register*, November 9, 1849.

seasoned military leader had served in the region, knew the geography well, knew that Texas lacked the military assets to make good on its threat, and disliked anything to do with the Texas Rangers as a result of experiences during the war with Mexico. Equally as important, President Taylor was well aware of the ultimate goal of Texas was to incorporate New Mexican territory and in doing bring it under Texan law to continue the spread of slavery.⁴⁴

In his only Annual Address to Congress, delivered on December 4, 1849, President Taylor made clear that New Mexico would in due course present a petition for admission to the Union. Quoting George Washington, he advocated against furnishing "any ground for characterizing parties by geographical discriminations." He also noted that the conclusion of the war with Mexico had "greatly expanded our exposed frontier and rendered its defense more difficult." Additionally, "that treaty has also brought us under obligations to Mexico, to comply with which a military force is requisite. But our military establishment is not materially changed as to its efficiency from the condition in which it stood before the commencement of the Mexican War." President Taylor

⁴⁴ The New Mexico territory had already drawn up a couple of petitions for admission to the Union as a free territory. It was clear that the consensus on the part of the people of New Mexico was that they did not want to become a part of the state of Texas. President Taylor favored their gaining admission as a state as quickly as could be sanctioned. This opinion was communicated back to Santa Fe via Secretary of War Crawford. He advised, "if the people of New Mexico desired to take steps toward securing admission as a state, it would be his [Taylor's] duty not to thwart but to advance their wishes since it was their right to ask for admission." Quoted in Holman Hamilton, *Zachery Taylor: Soldier in the White House* (Indianapolis: Bobbs-Merrill, 1951), 181.

proposed the Congress consider an increase of "the several corps of the Army at our distant Western posts."⁴⁵

President Taylor's comments and observations with regards the status of New Mexico and the scale of the problem, both diplomatically and logistically, in fulfilling new American commitments obligated under the Treaty of Guadalupe Hidalgo with regards the international border appear only to have encouraged Texan bravado and bluff. Within a short time after the Address to Congress the new governor of Texas, Peter Hansborough Bell, who was a quasi-folk-hero in the state, secured permission from the Texas legislature to employ force to establish Texan claims to New Mexico territory.⁴⁶

In an incredible act of audacity, he also dispatched an agent of the legislature to Washington, D.C. to secure funds for the Texas legislature by proposing to sell Texan lands situated north of the 36° 30' Missouri Compromise line to the federal government. The proposed revenue would underwrite Texas's state debts which presumably included funding for any Texan force destined for deployment in neighboring New Mexico against federal authorities.

⁴⁵ Zachary Taylor: "Annual Message," December 4, 1849. Online by Gerhard Peters and John T. Woolley, The American Presidency Project.
<http://www.presidency.ucsb.edu/ws/?pid=29490>.

⁴⁶ Peter H. Bell had served in the Texas Army under Sam Houston and held the positions of Adjutant general and inspector general of the overall force. In 1845 he was commissioned an officer in the Texas Rangers, fought with distinct with his federalized unit during the Mexican-American War, and returned with his unit, released from federal assignment to Texas. He ran his gubernatorial campaign in 1849 on demands for strong frontier defenses against both Mexican and Native American incursions. Bell fought for additional state and federal resources to eradicate the Native American population still residing in Texas and advocated for the dispatch of Texan forces to seize territory in New Mexico for Texas. Coyner C. Luther. "Peter Hansborough Bell." *The Quarterly of the Texas State Historical Association*, vol. 3, no. 1, (July 1899), 49-53.

The move was yet another example of the Texas state legislature employing the issue of the border to solicit funds from the federal government to underwrite state operations. One of the first resolutions of the new state legislature, elected with Governor Bell in November 1849, to the federal government in January 1850 was for reimbursement of \$53,946.43 for a "regiment of mounted volunteers, raised the previous year." The resolution noted, "while not adequate to the extent of the exposed settlements of Texas, [it] at least suffered to check the temerity with which the numerous savage tribes upon the borders would have doubtless have committed their characteristic deeds of theft and murder." The resolution ended with a plea: "In refunding to the State the amount assumed by her, the general government will perform an act of justice and give evidence of her sense of obligation to protect from violence and wrong the people of Texas equally with the citizens of her sister states." The resolution was an act of sheer defiance.⁴⁷

The act of defiance failed to succeed on both counts. President Taylor knew from his experience in the region, and of Texans in general, that a resolution passed by the state legislature in no way equated to the dispatch of a force over a substantial distance, sufficiently well organized and supplied, and capable of defeating a federal force already in New Mexico. Likewise, the intemperate and overtly bellicose attitude on the part of the Texas delegation in Washington which threatened the president with secession should their demands not to be agreed upon, were instead met with force on the part of the

⁴⁷ Memorial of the Legislature of Texas Praying for the reimbursement of expenses incurred by the State in providing for the military defense of her frontier in 1848-49. 31st Cong. 1st sess., Miscellaneous No. 97, April 12, 1850.

president. President Taylor replied, "if it becomes necessary I'll take command of the army myself, and if you are taken in rebellion against the Union I will hang you with less reluctance than I hanged deserters and spies in Mexico."⁴⁸

President Taylor's untimely death on July 9, 1850, removed a leader ready to challenge, with military force if necessary, the threat of secession. Millard Fillmore, his successor, exhibited none of the qualities of Taylor's leadership or possessed any of his experience particularly with regards Texas, assumed the office. In a sign of what was to come the incoming president fired all of President Taylor's cabinet. While it might be understandable that President Fillmore wanted his people in cabinet positions, the loss of experienced individuals and counselors such as Secretary of War Crawford would only result in contributing to the executive's retreat in confronting Texan border and territorial claims.

Ironically, it appeared initially as if President Fillmore would continue President Taylor's hardline with Texas. In a letter to both houses of Congress issued on August 6, 1850, President Fillmore, referred to a June 14, 1850, letter from Governor Bell to President Taylor. The letter detailed the ongoing actions of the Texas state legislature to extend, by force if necessary, Texas's claims to New Mexico territory. President Taylor had placed Governor Bell on notice. He made clear that this was not a dispute between Texas and New Mexico but between Texas and the United States. The president likewise made it clear "Texas is a State, authorized to maintain her laws and treaties of the United States..." however, "all this power is local and confined entirely within the limits of

⁴⁸ Albert Castel, "Zachary Taylor," *American History Illustrated*, 5: 3, (June 1970), 47.

Texas herself. She can confer no authority which can lawfully be exercised beyond her boundaries." If Texas's forces moved across the state-territorial boundary, they would have crossed a constitutional line by using force with regards New Mexico, and it would not go unchallenged. The intimation being that those federal forces stationed in New Mexico would actively resist any incursion on the part of Texan forces, and to reinforce his stand President Fillmore ordered the dispatch of an additional 750 federal troops to New Mexico.⁴⁹

Having established a clear and forthright legal position, laid out the consequences of any overt moves by Texan forces against New Mexico, and signaling that he was holding resolutely to the Taylor line, the president then proceeded to undermine his position entirely. In the same message, President Fillmore made clear "the executive government of the United States has no power or authority to determine what was the exact line of boundary between Mexico and the United States before the treaty of Guadalupe Hidalgo, nor has it any such power now, since the question has become an issue between the State of Texas and the United States. So far as this boundary is doubtful, that doubt can only be removed by some act of Congress, to which the assent of the State of Texas may be necessary, or by some appropriate mode of legal adjudication;"⁵⁰ The president had sent a clear signal that Texas would have the power of nullification over both executive and legislative branches when it came to the question of internal boundaries.

⁴⁹ Millard Fillmore, Message to the U.S. Congress, (August 6, 1850) *Compilation of Messages and Papers of the Presidents, 1789-1897*, James D. Richardson, ed., (Washington, D.C.: U.S. Government Printing Office, 1900), vol. V, part I.

⁵⁰ Ibid.

Why would the president who appeared to be in a strong position on the issue of borders and boundaries provide such an opening for Texas? Certainly, the evolving domestic political situation over the issue of the expansion of slavery and President Fillmore's views were critical issues. President Fillmore had replaced Secretary of War Crawford with Charles Conrad from Louisiana, but Conrad was a virtual unknown. He had no military experience and as a congressman from Louisiana had tried to persuade President Taylor to acquiesce in Texas's claim to the New Mexico territory.

The lack of any real first-hand geographic appreciation of the area in question and the absence of any practical military counsel to the president were also critical elements. It was clear that President Fillmore had no real idea of how difficult, if not impossible, it would have been for Texas to enforce its will against a determined executive. But his unwarranted fear of Texan saber-rattling and, in his mind, the threat of a broader civil conflict breaking out during his administration led him to stand behind a settlement undoubtedly in favor of Texas ultimately. The state acquired 70,000 acres of New Mexico territory, opened up the New Mexican territory to slavery and awarded Texas \$10 million in compensation.

President Fillmore's public position persuaded Governor Bell that he could continue to push for federal assistance. In a letter dated August 20, 1852, to President Millard Fillmore, Governor P.H. Bell appealed for federal aid "to check the murders and depredations of lawless bands of Indians and Mexicans."⁵¹ Referring to the "desperate

⁵¹ Peter H. Bell had evolved into a quasi-folk hero in Texas. He had served in the Texas Army under Sam Houston and had been both adjutant general and inspector general of the overall force. In 1845 he was commissioned an officer in the Texas Rangers, fought

situation and the insecurity of life and property" along the Rio Grande Valley, Bell informed the president that "civil authorities are perfectly paralyzed, and the military stationed on the lower Rio Grande, have declared themselves unable to render the requested assistance to support the execution of the laws." Without elucidating as to why the federal military would not assist, Bell "forcibly impressed your Excellency with the urgent necessity for additional troops upon that line to sustain the authorities and suppress infraction."

Governor Bell pressed his position further with the president. Bell informed President Fillmore "I felt it my duty to take immediate steps for the relief of the lower Rio Grande...and have called into the service of the State three companies of mounted volunteers who are to act in concert with the United States troops stationed in that quarter." He concluded by asking the federal government to "make such further and more permanent disposition, as upon, an examination shall be found necessary to restore that peace and security to which this unfortunate country has so long been a stranger."⁵²

The reaction of the War Department to Governor Bell's calls for assistance was emblematic of both ongoing the executive-legislative and federal-state divide when it came to responsibilities, legislated or otherwise, on questions of policing the borders.

with distinction with his federalized unit in the Mexican-American War, and returned to his post with the Texas Rangers after the war. His campaign in 1849 called for a strong frontier defense against Mexico and Native American incursions, called for additional resources to eradicate the Native American population in Texas, and advocated sending Texas troops to Santa Fe in support of Texas' claims to Santa Fe County. Coyner C. Luther. "Peter Hansborough Bell," *The Quarterly of the Texas State Historical Association* 3:1 (July 1899), 49-53.

⁵² *Journals of the House of Representatives of the State of Texas*. Fourth Legislature-Extra Session. Jan.-March 1853. 48-51

Secretary of War Charles Conrad immediately shifted all responsibilities for the apparent lack of sufficient federal forces in the region onto the U.S. Congress.

Sympathizing with Governor Bell's troubles at the same time the Secretary of War made it clear "the Executive has repeatedly informed Congress that the military establishment of the country was inadequate to the protection of its widely extended frontier." Further, "Congress had seen fit to disregard these recommendations [to increase the military presence] at a time when the necessity for their adoption was more apparent than it is at present"⁵³

Having shown support for Governor Bell but blaming the U.S. Congress, the Secretary of War then proceeded to push back and in a significant manner. First, he cited a series of new peace treaties with various Native American tribes in the state of Texas. In Conrad's view, these had led to a period of relative quiet within the state. Secretary Conrad, contradicting Bell noted, "that not only were the rumors that the Indians were preparing extensive hostilities unfounded but that in fact (with a few partial exceptions) they have not been for a long time as peaceably disposed." Secondly, the Secretary of War proceeded to employ the economic argument prohibiting any further federal actions. Arguing, "even if there were a manifest necessity for an additional increase of the military establishment, the executive would hesitate to call into the service of the government a description of force, while it is far less efficient than that which Congress has refused to authorize, is more expensive."

⁵³ Ibid., 48.

Secretary Conrad then proceeded to quote legal chapter and verse to explain why President Fillmore could not respond in the manner that Governor Bell requested and also cast aspersions on the integrity of the Governor's entire argument for seeking federal assistance. Referring to the constitutional provision that allowed for any president to call forth the militia to execute the laws of the Union, to suppress insurrections and repel invasions, Secretary Conrad "doubted whether the act applies to the present case." He went on, "It appears from these papers that the neighborhood of El Paso and Brownsville, has for several months past been infested by lawless persons who traverses the country singly or in small parties, driving off cattle and occasionally committing murders.... That the civil authorities were powerless to stop these outrages, the officers of justice not being able to collect sufficient civil force to execute the process. There is a reason to suspect that these statements are somewhat exaggerated."

The Secretary continued his critique of Bell's claims. "In addition to this, many young men are always found who are anxious to enroll [sic] themselves as volunteers, and there is no part of the frontier from Oregon and California to Florida where similar applications have been made, but in every instance, they have been rejected," he said.⁵⁴ Conrad informed Bell "the commander of that Department [Texas] positively pronounces several of the statements contained therein [Bell's letters] are entirely unfounded and does not recommend that these volunteers be received into the service of the United States." Finally, Conrad noted that even if the accounts that Governor Bell described were

⁵⁴ Ibid., 50.

“strictly correct, the outraged and disorders complained of (except when committed by Indians) are hardly such as this government ought to be called upon to express.”

Secretary Conrad completed his dismantling of Governor Bell’s request arguing that “the perpetrators of these acts, whether Americans or Mexicans, are not *public enemies* to be encountered by the army of the United States, but *private malefactors*, to be arrested and punished by the civil authorities of Texas.” Conrad refused to be drawn into a situation whereby federal forces were to be employed in a simple law enforcement capacity. The US military was not to be regarded as a police force summoned by every state and locale the moment any civil law was infringed. Civil authorities were to uphold civil laws. Likewise, the federal government did not exist to simply pay any bill for state law enforcement activities. "If the government of Texas finds it necessary to call out her militia to execute her own laws and to defend her own citizens against robbers and murderers, surely it ought not to expect the United States to pay the expenses of the proceeding,” he remonstrated.”⁵⁵

The rebuke did little to dissuade Governor Bell who proceeded to take his case literally and that of the state of Texas to Washington, D.C. Beginning in March 1853 with the new 33rd Congress, Bell resigned the governorship to represent Texas' second district in the House of Representatives. In doing so, he was able to effectively team up with his old mentor Sam Houston who served Texas in the U.S. Senate and had become a very active champion of both the role and mission of the Texas Rangers and of seeking greater federal assistance along the border with Mexico.

⁵⁵ Ibid.

In a subsequent wide-ranging debate focusing on the size and deployment of the U.S. Army, Senator Houston made his thoughts quite clear as to the option that he favored to undertake the defense and to police the Texas-Mexico border. "Give us one thousand rangers," he argued, "and we will be accountable for the defense of our frontier of eighteen hundred miles. We will give a quittance if you give us a thousand rangers. We ask for no regular troops; withdraw them if you please...Troops in garrisons never gave protection to a frontier."⁵⁶

Senator Jefferson Davis, re-elected to the U.S. Senate following a term as Secretary of War in the Pierce administration, thought Houston simplistic in both his strategic outlook and tactical awareness. Countering that there were a significant number of federal forces already present in Texas, Davis asserted, "if the Government could absolve itself from its obligations to the state of Texas, it would do well to give the whole amount a thousand rangers would cost, to get rid of the defense of its frontier, but I do not think he would find it quite so easy."⁵⁷

Firmly now caught in the middle of the fray was the U.S. Army itself. Major General George Mercer Brooke had assumed command of the 8th Military District in July 1849. He immediately made known his dual concerns. The first, the rapidly evolving

⁵⁶ *Congressional Globe*. 35th Cong., 1st sess., 1857-58, 672.

⁵⁷ *Ibid.*, 672-73. He likewise 'respectively' admonished Senator Houston for not "keeping pace with the history of events in his own State." Senator Jefferson, in a series of observations that carried with them a distinct hue of a political put-down, called Houston to task for his confusion over whether it was federal "dragoons or cavalry that performed the feats" within Texas, leading Senator Houston to reply that he had "confounded the two," professing "I am not technical." Davis also challenged Houston over his claims entered into the U.S. Senate record for questioning the abilities of federal forces versus those of Texas Rangers.

situation on the ground in Texas and being able to provide sufficient federal military protection and presence through the construction of forts. The second, a dilemma confronted by every army commander, the question of adequate manpower resources to meet continually evolving tactical goals and objectives. General Brooke's fundamental question that remained unanswered what was the role of the U.S. army?

Brooke complained that as fast as forts were constructed the population continued to migrate westwards out of the protective zone of defense provided by the forts. From a manpower perspective, his force lacked sufficient mounted assets, and the Texas press and Texas politicians, such as Bell and Houston, were quick to point out infantry moved too slowly to police a long border.⁵⁸

In his final report before his untimely death in March 1851, Maj. Gen. Brooke continued to give voice to his frustrations over manpower levels that also contributed to the growing dependency on local forces in efforts to police cross-border activities by local Native American tribes and others taking advantage of the scarcity of troops stationed near and along the border with Mexico.

I do not believe that three thousand men or more stationed in the frontier posts can prevent these deluded people from secretly passing the line of posts in very small parties at different point and afterward uniting in large bodies in particular neighborhoods where they commit their acts of murder and depredation and instantly return to their own country, neither stopping night or day until they conceive themselves out of danger.⁵⁹ The ability of the United States to fulfill its treaty obligations, proudly boasted about by

Secretary of State Buchanan to his Mexican counterpart after the signing of the Treaty of Guadalupe-Hildago was increasingly suspect. As Alice Baumgartner succinctly points

⁵⁸ Maj. Gen. George M. Brooke to Adjutant General, San Antonio, August 31, 1849, in *Report of the Secretary of War, 1849*. House Ex. Doc. No. 5 31st Cong. 1st sess., 143.

⁵⁹ *Report of the Secretary of War, 1850*, House Doc. No. 1. 31st Cong. 2nd sess., 51-53.

out "U.S. authorities quickly learned of the difficulty of policing a long, unsettled borderline."⁶⁰

And yet Baumgartner convincingly argues, "local authorities were remarkably effective at controlling transnational crime" in the period after the signing of the Treaty of Guadalupe-Hildago.⁶¹ It was achieved partly through encouraging free movement across the international border, and by developing relationships with local ranchers and landowners, often on both sides of the international border, a 'middle ground.'⁶² This allowed issues such as rustled cattle and petty crime to be dealt with effectively at the local level. Northern border communities exhibited a similar symbiotic relationship between local groups. Moreover, in many ways this reinforced Secretary of War Conrad's stated view to Governor Bell that much of the trouble along the southern border was, in fact, both local in origin and did not fall within the jurisdictional purview of the federal government: local problems required local solutions.

The rustling of cattle constituted one of the major issues along the border, but in the view of the federal government, it was a local issue requiring local law enforcement. Rustling violated state laws against trespass and theft. Though often involving foreign nationals crossing the border, the crime did not concern the government in Washington,

⁶⁰ Alice L. Baumgartner. "The Line of Positive Safety," 1109.

⁶¹ Ibid.

⁶² This point forms a central tenet of Richard White's thesis in *The Middle Ground: Indians, Empires and the Republics in the Great Lakes region, 1650-1815* (Cambridge University Press, 1991). While his argument has come under attack in recent years with what critics argue as the "crudely rampant version of the term" being viewed as actually "damaging an understanding of the past," it is arguable that just as the inland lake shores of the Great Lakes were neither entirely Native American nor French, nor was the area of the U.S.-Mexican borderland altogether Mexican, Native American or American.

which counted regulating foreign trade and defending against external invasion as its primary duties. Ironically, while Native Americans were not considered foreign nationals, and were not citizens of the United States, the federal government did accept the responsibility for defending against Native Americans who stole livestock, whether they originated from within Texas or from across the border in Mexico. The federal government did not, however, have an obligation to act as a deterrent against others, American citizens or foreign nationals, who rustled cattle. This was a civil crime, not a foreign invasion.

Secretary Conrad addressed the issue of frontier law enforcement and defense in December 1852 remarking “the efforts of the department have been principally directed to the defence [sic] of our frontiers and those of Mexico from the Indian tribes within our borders.” Noting “out of about 11,000 officers and men borne on the rolls of the army, about 8,000 are employed in the defence of Texas, New Mexico, California and Oregon, or of emigrants destined to the two last,” and it afforded him “great pleasure to say that that the efforts of the department for this purpose have been attended with more than usual success.”

Despite the overall effectiveness along the border “a portion of the Rio Grande country” continued to suffer from the repercussions of the earlier defeat of José Carvajal by Mexican forces resulting in “a number of persons of desperate character and fortunes” who having dispersed after the defeat “resorted to plunder for subsistence.”⁶³ Conrad also pointed out that Mexicans in the same border region “either sort [sic] to avenge

⁶³ For more on the filibustering raids by Jose Carvajal see “The Carvajal Disturbances,” by Ernest C. Shearer. *The Southwestern Historical Quarterly*, vol. 55, no.2, 201-230.

themselves of the wrongs inflicted on them by that adventurer and his followers, or found in his lawlessness proceedings a justification for their own and retaliated on the peaceable inhabitants" which included American citizens. An additional impact was "Indians in that vicinity availed themselves of the confusion and alarm consequent upon this state of things to renew their depredations. Thefts, robberies, and even assassinations were the consequence."⁶⁴

This suggests additional federal forces had been committed to the area, but Conrad pointed out "the prevention or punishment of disorders like these when perpetrated by others than Indians belongs rather to the civil authorities of the State than to the military force of the United States." He went on "So long, however, as the species of border warfare which has lately been carried on in that region between inhabitants of the countries continue, it will be difficult, if not impossible, with any number of troops, and with the strictest vigilance on the part of their officers, to prevent, on so extensive a frontier, a repetition of these disorders."⁶⁵

⁶⁴ *Annual Report of the Secretary of War*. 32nd Cong., 2nd sess., Part II, December 4, 1852, 3.

⁶⁵ *Ibid.* Ironically, Secretary Conrad also announced that despite all the manpower pressures he had the "satisfaction to announce that the expenditures [for the department] had been considerably reduced, and this too, in the quartermaster's department—that branch of the service of which the expenditures are most affected by these circumstances." He also continued to advocate for following any other policy other than force against Native American tribes in the frontier region. He argued "sound policy, no less than humanity requires that some other means than force should be tried to restrain the Indians and to prevent the frequent collisions that occur between them and the white inhabitants in their neighborhood. Secretary Conrad also did not see the point of continuing to station and pay for U.S forces in New Mexico. "To protect the small population, we are compelled to maintain a large military force at an annual expense nearly equal to half the value of the whole real estate of the territory." While not going so far as Congressman Vinton and "begging Mexico to take back the territory," the

Policing both borders on the eve of the Civil War: Filibusterers, Fugitives, and Runaway Slaves overwhelm the U.S. Marshals

In the antebellum period, responsibility for federal law enforcement continued to reside principally with the U.S. Marshals Service. Individual U.S. Marshals were authorized to appoint deputies, and “to command all necessary assistance in the execution of his duty.” Commanding “all necessary assistance” denoted the ability to call on state and local militias, and, if required, the federal army to enforce federal laws. U.S. Marshals retained a unique position as the pivotal connection between local law enforcement such as sheriffs and the federal government. They also represented the federal government, a position many at the state and local level opposed because of the institution they served. In the decade before the Civil War the numerous challenges to federal laws, including filibustering and runaway slaves, both of which had the international borders as a focal point, threatened to overwhelm the U.S. Marshals.

The U.S. Marshals Service as a federal department labored under the standard bureaucratic flag of significant mission expectations but with barely sufficient federal funding to fulfill the missions. Larry Ball writes, U.S. Marshals “acquired custody of ships and goods seized by the U.S. revenue officers. Additional tasks included the protection of public lands and the enforcement of the neutrality laws.” From their creation through to the Civil War, “the marshals acquired many superiors.” The

Secretary of War did advocate abandoning the country "which hardly seems fit for the habitation of civilized man," and renumerating property owners "in money or lands situated in a more favored region." Those troops stationed in the New Mexico territory could then be redeployed "for the protection of other portions of our own and Mexican territory." Failure to following this course of action would ultimately require "an additional regiment of mounted men be authorized" with consequent demand on the Army's budget.

Departments of State, Treasury, the office of the Attorney General and, from its creation in 1849, the Department of the Interior, all sought to exercise in some format jurisdiction over U.S. Marshals.⁶⁶

The paucity of their numbers in the territories and along the two international borders necessitated their continued reliance on, and cooperation with, local sheriffs and deputies to fulfill even the most basic of law enforcement administrative functions. In no area was this more challenging than the contentious issue of U.S. Marshals being able to call for federal assistance under the rubric of the *posse comitatus*. Calling for federal assistance would prove to be a financial, jurisdictional and legislative hurdle throughout the first half of the 19th Century.

Within two years of the passage of the Judiciary Act in 1789, Governor Arthur St. Clair of the Northwest Territory wrote of his concerns about the deployment of federal forces in by *posse comitatus*. Responding to a complaint that his predecessor had not provided the appropriate federal assistance to local law enforcement Governor St. Clair defended his predecessor's actions arguing that adequate support be forthcoming upon request, but it was establishing precedents that St. Clair himself was uncomfortable following. He wrote: "The Troops of the United States are certainly paid, among other things "for the protection of People and Government", but the manner in which that Protection is to be applied, is not, I presume, within the Province of a Judge or a Justice to determine, nor all of them put together." He continued, "It is not the Business of a

⁶⁶ Larry D. Ball, *The United States Marshals of New Mexico and the Arizona Territories, 1846-1912* (Albuquerque: University of New Mexico Press, 1978), 4.

military servant of the sovereign Authority to take Cognizance of Breeches of the Laws, except it be for those regulating the Conduct of all military servants...”

He proceeded to clarify the duties of a local sheriff and deputy marshal while making it clear “every necessary Aid either in suppressing Tumults, apprehending Offenders or safely keeping them after they are apprehended, to which the Power of the County may be inadequate, will be cheerfully rendered by the military whenever it shall be required by the Civil Authority.” But St. Clair added a caveat “it much behooves me, as the chief civil and military power happen to be united in my Person, to keep the Exercise of them perfectly distinct, and that I make no Precedent now, that it would be improper should be followed, by either respectively, when they shall be separated hereafter.”

It is clear that Governor St. Clair had strong reservations with regards federal military forces crossing the jurisdictional line into civilian law enforcement. He offered what he saw as a suitable solution to "prevent the civil Authority from being prostrated...without the Aid of military Imprisoning, which, by the by is not very congenial to Freedom and political Happiness. Let the Sheriff be prosecuted for every Escape in Cases where the public is concerned.”⁶⁷

Aside from the federal bureaucratic competition for jurisdiction over the service, the marshals were also at the mercy of the Department of Treasury bookkeepers, and an administrative chain of command that required presidential sanction before the

⁶⁷ *The Territorial Papers of the United States. Volume III, The Territory Northwest of the River Ohio, 1787-1803 Continued*, Clarence E. Carter, ed., (Washington, D.C. Government Printing Office, 1934), 344-346.

reimbursement of any federal monies to any federal marshal who found himself having to invoke *posse comitatus*. Additionally, any marshal, even though he could well have been appointed from within the ranks of local government officials, bore the moniker of the federal government. As such, even the invocation of *posse comitatus* would periodically result in locals refusing to heed the call, choosing instead to side with those aggrieved locals against whom the marshal was seeking to uphold federal laws. Failure to secure sufficient local support via *posse comitatus* invariably forced the marshal to request the assistance from any federal army troops located in the geographic region.

The call upon federal forces for assistance, however, brought forth issues of basic competence, leadership, and fitness for duty. Hubert Howe Bancroft, who observed regular army units in action, characterized the frontier garrisons as "lazy, careless, indifferent and stupid." They were, he argued, "no match for desperate men on the frontier."⁶⁸ In the 1850s, dealing with 'desperate men on the frontier' as an issue of law enforcement for both US Marshals and federal garrisons along the borders would be conjoined with the even more legally vexing question of filibustering raids primarily across the US-Mexican border. Despite the convoluted bureaucratic process involved, however, the army would, usually, be at the service of any U.S. Marshal if called upon to assist.⁶⁹

⁶⁸ Larry D. Ball. "The US Army as a Constabulary on the Northern Plains," *Great Plains Quarterly*, 13, (Winter 1993), 21-32, 29.

⁶⁹ Larry Ball cites an example that occurred in 1853 before the finalization of the Gadsden Purchase whereby the U.S. Marshal in the remote Third Judicial District called upon local Mexican army officers to help him apprehend a group of Mexicans who had committed a murder. The army officers promptly refused. Turning to the federal forces stationed at Fort Filmore he was immediately denied assistance for a second time on the

The onward march of manifest destiny had as a goal in the eyes of many, particularly Southerners, the acquisition of additional territory, possibly securing the island of Cuba, and even other territorial ambitions throughout the Caribbean and Central American countries. Mexico, however, was viewed as the most viable option for further southern expansion both from official and unofficial means.⁷⁰

The failure of the ‘official’ option did not deter unofficial, or more appropriately illegal efforts to acquire Mexican territory through the guise of filibustering raids across the southern border. Rachel St. John writes, of those filibustering raids organized in California in the 1850s, “most reflected the risk-taking and cosmopolitan characteristics of Gold Rush California.”⁷¹ Many filibustering raids took place. They invariably resulted in complete failure and frequently the execution of the leaders. However, the attacks also highlighted the continued ineffectiveness of the federal government to enforce federal law either through federal forces stationed along or near the border, or US marshals tasked with the enforcement of the 1794 Neutrality Act.⁷²

part of the commander of the fort. The net result the marshal gave up the pursuit of the fugitives. *The U.S. Marshals*, 26-27.

⁷⁰ In 1853, the Pierce administration authorized up to \$50 million for the acquisition of Tamaulipas, Coahuila, Nuevo León, Baja California, and the northern parts of Chihuahua and Sonora. In 1857, the Buchanan administration authorized the American minister in Mexico City, John Forsyth, to offer \$15 million for northern Chihuahua, most of Sonora and Baja California. Both efforts failed. Oscar Martinez, *Troublesome Border*, 4th Edition (Tucson: University of Arizona Press, 1988), 19-23.

⁷¹ St. John, Rachel C. "Line in the Sand: The Desert Border Between the United States and Mexico, 1848-1934." Ph.D. diss., Stanford University, 2005, 43.

⁷² The case of “Colonel” Henry Crabb in 1857 was a clear illustration of the powerlessness of a US marshal in the New Mexico territory. A number of residents of Tucson tried to join Crabb’s ultimately doomed filibuster expedition. The US Marshal, Charles P. Clever, however, was powerless to enforce federal law. Firstly, the geographic distance between his office in Santa Fe and the Tucson area was a major obstacle.

Luis de la Rosa, the Mexican minister in Washington, D.C., in a note to Secretary of State C John Clayton in April 1850, declared that the previous efforts of the United States to fulfill its obligations under Article XI of the Treaty of Guadalupe-Hidalgo had been unsuccessful. The reason, the "want of military force sufficient to restrain and repress the Indians, and from want, moreover of funds to cover the great expense rendered necessary" by the article. In Ambassador de la Rosa's mind "his first and principal duty, as representative of Mexico in this country, consists in constantly requiring the most exact and punctual fulfillment of that article." The ambassador urged his counterpart to "obtain from the Congress of the United States the laws necessary for the execution of the eleventh article of the treaty of Guadalupe."⁷³

While imploring the American government to take additional steps to police the Mexican-American border from the American side adequately, Mexican border state governments sought to expand their powers to counter cross-border activities including the right of pursuit onto American sovereign territory. In a series of notes to the federal government in Mexico City, border state governors argued: "nothing practicable could be devised unless the privilege of pursuing savages on American soil could be obtained, or

Secondly, the locals in both Santa Fe refused to respond to his *posse comitatus* call, and thirdly, the federal forces in the region were too small and already overcommitted and, likewise, did not respond to his call for assistance. For a history of the various filibuster expeditions, see Joseph A. Stout, Jr., *Schemers and Dreamers: Filibustering in Mexico, 1848-1921* (Fort Worth: Texas Christian University Press, 2002); Robert E. May, *Manifest Destiny's Underworld: Filibustering in Antebellum America*, (Chapel Hill: University of North Carolina Press, 2002); Charles H. Brown, *Agents of Manifest Destiny: The Lives and Times of the Filibusters* (Chapel Hill: University of North Carolina Press, 1980); John M. Lipski, "Filibustero: origin and development." *Journal of Hispanic Philology*, 6, 1982, 213-238.

⁷³ *Senate Ex. Doc. 44*, 31st cong., 1st sess., April 4, 1850, 2

the American Government could be induced to attack them on crossing the Rio Grande."⁷⁴ Mexican federal officials ruled out any possibility of the second option "through the scarcity of troops along the entire line of the American frontier, and till more were placed there, the desolation of the Mexican border was inevitable."⁷⁵ Border state governors suggested the Mexican government take steps to secure at least the Mexican side of the border.

On February 22, 1852, the Mexican government, led by General Mariano Arista, issued a new Plan of Defense. A major diplomatic goal continued to be to secure American compliance with treaty obligations. The 78th Article called for:

The government of the coalition will earnestly urge the supreme national authorities to obtain from the government at Washington permission for the Mexican forces to cross the Rio Grande, and attack the nomadic tribes which reside in that territory; without omitting to demand constantly and vigorously the fulfillment of Article XI of the treaty of Guadalupe, and as indemnification for the losses which the frontier has heretofore suffered from the non-fulfillment of that article.⁷⁶

Ironically, Mexican forces had already crossed the border more than once in pursuit of 'nomadic tribes' who had conducted raids from American territory into Mexico and continued to do so. On September 5, 1852, Juan N. Zubirán, the Mexican vice counsel in Franklin Texas, reported that Mexican soldiers at Presidio del Norte often

⁷⁴ Pinart Transcripts, Sonora, vol. IV (1847-51), 244-245

⁷⁵ "Reports of the Commission of Investigations sent in 1873 by the Mexican Government to the Frontier of Texas." Translated from the official edition made in Mexico (New York: Bake and Goodwin, 1875), 340.

⁷⁶ Ibid.

cross the river [Rio Grande] with the knowledge of their commander and his counterpart in Texas."⁷⁷

Commensurate with the Mexican government endeavoring to secure the active support of Washington to police the southern border, American frontier territorial governments were likewise struggling to convince Washington of the necessity to provide more federal forces. In 1852, Governor Calhoun of the New Mexico Territory complained, "Our territory is in more critical condition than it has ever been before...If the Government of the United States intends to do anything for our protection or Heavens sake let us know it or give us an opportunity for each of us to look out for himself and allow us an opportunity to leave as soon as possible."⁷⁸

Governor Calhoun only served to infuriate the federal army commander in the New Mexico territory, Colonel Edwin V. Sumner who did not attempt to hide his contempt for both Governor Calhoun and civilian territorial government. Working under orders from Secretary of War Charles Conrad to "revise the whole system of defense in the territory up to and including the Mexican border," Sumner wrote a letter to the Secretary on May 27, 1852, which subsequently found its way into the *New York Times* on January 11, 1853. Sounding like Congressman Vinton, who had suggested returning ungovernable territories to Mexico, Sumner's letter described the territory as far from ready for self-government, and voiced the opinion that "no civil government can be

⁷⁷ Juan N. Zubirán to Foreign Affairs Secretary, September 5, 1852, vol 20-12-57, Correspondence with Mexican Counsel in Brownsville.

⁷⁸ Calhoun to Lea, Spring 6, 1852, "Letters of the New Mexico Superintendency." Quoted in St. John, Rachel C. "Line in the Sand: The Desert Border Between the United States and Mexico, 1848-1934." Ph.D. diss., Stanford University, 2005. 58.

maintained here without the aid of military force; in fact, without its being virtually a military government." Citing the unwillingness of residents of the territory to be taxed to provide even funding for such basic institutions as law enforcement, judges, and prisons, Sumner recommended that the United States "withdraw all troops and civil officers" and leave New Mexico.

When it came to providing a defense against raids from Native American and dealing with his Mexican counterparts, Sumner was quite circumspect on a potential solution. "If the Mexicans should act justly by the Indians, I think there would be no difficulty; but if they did not, and war should ensue, the Mexicans would always steal from the Indians quite as much as the Indians would steal from them, and thus they would be losers in the end." He concluded, "it would be well to give the Mexicans a liberal allowance of arms and ammunition, especially if there is an abundant supply here that is not worth transporting back."⁷⁹

An additional legal complication impacting the policing of both the Mexican and Canadian borders was the ongoing issue of fugitive slaves crossing the border to seek sanctuary. The passage of the 1850 Fugitive Slave Act,⁸⁰ Reinforcing the 1793 Fugitive Slave Law, now made it the duty of U.S. Marshals and their deputies to apprehend fugitive slaves anywhere in the United States or its territories. Both Mexico and Canada typically refused requests for cooperation with regards the rendition of fugitive slaves.

⁷⁹ Brevet Col. Edmund V. Sumner to Hon. C.M. Conrad, Secretary of War, May 27, 1852, in *Annual Report of the Secretary of War, 1852-53*. House Ex. Doc. 1, Part II, 32nd Cong., 2nd sess., 23-26.

⁸⁰ For more on the impact of the adoption and operation of the 1850 Fugitive Slave law see Peter Andreas, *Smuggler Nation*, 130-151.

Mexico persistently declined to sign an extradition treaty with the United States that included the rendition of fugitive slaves.

Texan slaveholders seeking the return of fugitive slaves who had crossed the border would often employ their local network of cross-border communications seeking cooperation in the return of their “property.” Cooperation, however, was not always forthcoming. The result was occasional cross-border ‘raids’ by slave-owners and hired hands whose objective were ascertaining the location, and subsequently successfully kidnapping fugitive slaves and bringing them back to Texas. While these kidnapping raids more often than not met with both legal and actual physical resistance on the part of Mexican communities, it continued to highlight the lack of any significant federal presence along the border and confirmed the ‘localness’ of the border.⁸¹

US Marshals found themselves firmly trapped in an almost untenable legal and logistical situation with regards the enforcement of the Fugitive Slave Law. Neither Canadian or Mexican authorities appeared willing to provide any form of assistance from the standpoint of repatriation of fugitive slaves that had crossed the borders, Most fugitive slaves were being moved along ‘slave railroads’ to both countries. Enlisting local assistance through *posse comitatus* mainly in northern states bordering Canada with all the associated political problems of enforcing a fugitive slave law was problematic at best. Finally, calling upon the services of the U.S. military, while perfectly legal, would

⁸¹ In his article “The Callahan Expedition of 1855: Indians or Negroes?” Ronnie C. Tyler examined the impact of such a cross-border raid. *Southwestern Historical Quarterly*, 170 (April 1967), 574-85.

be establishing precedents for the use of the Army as a civil law enforcement tool, a view championed by Southern states but increasingly resisted in Northern states.⁸²

Moreover, although operations of this nature were never widespread or frequent when they did take place they invariably created controversy, none more so than in May 1854. A combined force of over 1,600 military and civilian law enforcement personnel was required to escort a fugitive slave captured in Boston, *en route* to Canada, back to Virginia. Robert Coakley in his seminal study of the role of federal forces in domestic disturbances described the operation as “the largest *posse comitatus* in the nation’s history.”⁸³

In the same year President Pierce’s Attorney General, Caleb Cushing, issued a legal clarification designed to speed up the legal process whereby any U.S. marshal could summon assistance. The legal opinion also served to theoretically clarify the responsibilities of the U.S. marshal and the U.S. military but in all practicality, especially along both international borders, did little of any merit:

A marshal of the United States, when opposed in the execution of his duty by unlawful combinations, has authority to summon the entire able-bodied force of his precinct as a *posse comitatus*. This authority comprehends, not only bystanders and other citizens generally, but any and all organized armed forces, whether militia of the State, officers, soldiers, sailors, and marines of *the* United States.⁸⁴

⁸² In a 1970 work, Stanley Campbell argued, “the law was enforced by those charged with the responsibility for enforcement, namely, officers of the federal courts.” *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill: University of North Carolina Press, 1970).

⁸³ Coakley. *The Role of Federal Military Forces in Domestic Disturbances*, 137.

⁸⁴ *Extraction of Fugitives from Service, Official Opinions of the Attorney’s General of the United States, 1854*. (Washington, D.C.: R. Farnham, 1854), vol. VI. 466.

The stirring of an understanding of the macro requirement for at least some form of basic federal administrative and enforcement capabilities along the borders, albeit in the shape of revenue collection and not enforcing other laws or policing cross-border movement, appeared the year before Attorney General Cushing legal clarification from another member of the Pierce administration. Shortly after assuming the office of Secretary of the Treasury James Guthrie authorized the department's Collectors of Customs to establish a force of Mounted Inspectors. The objective was to patrol along the length of both international borders and to rigorously enforce the collection of tariff duties and begin the crackdown on smuggling.⁸⁵

An avid supporter of the president's goals of reducing the federal debt by applying the Treasury's surplus in strict compliance with the Independent Treasury Act, Secretary Guthrie also took office with an avowed aim "to infuse vigilance, fidelity and, economy into public service." For Secretary Guthrie, this translated into the Customs Service assuming much a greater regulatory role, particularly along the borders. In a speech to the department's customs collectors, Secretary Guthrie made clear his views, noting that they could "too soon enter upon the task of reforming what had been amiss, and introducing a more energetic, vigilant and economical system."⁸⁶

⁸⁵ For more on Secretary Guthrie's policies see Leo Graff. *The Economic History of the Lower Rio Grande, 1820-1875*, vol. II., (Boston: Harvard University Press, 1943), 305. See also George Diaz, *Border Contraband: A History of Smuggling Across the Rio Grande*, (Austin: University of Texas Press, 2015) and John A. Adams, Jr., *Conflict and Commerce on the Rio Grande: Laredo, 1775-1955*, (College Station: Texas A&M University Press, 2008).

⁸⁶ Congressional legislation reflected Guthrie's goals for enforcement of revenue collection and oversight into what was crossing the borders. The jurisdiction of the Customs service was extended in regards the importation of drugs, medicines and

Despite the tentative first steps by the Treasury Department to begin construction of some form of regulatory and enforcement regime for customs duties, a significant federal government presence was conspicuous by its absence. Native American tribes continued to travel back and forth over both northern and southern borders with little regard for the precepts of either Anglo or Hispanic laws defining sovereign borders. There were strong indications that immigrant groups, particularly the Irish, were starting to come into the United States via overland trails from both Canada and Mexico into the United States across unguarded borders. Border state governments and local governments clashed with each other and the federal government as to levels of responsibility and the financial wherewithal to police an international border. On the eve of the civil war, the United States government had a tenuous grasp on both borders and the borderlands.

Conclusion

Despite the first tentative steps by the Treasury Department to implement some form of regulatory and enforcement regime for customs duties, the federal government remained mostly absent from the southern border that on the eve of the Civil War stretched for over 1,900 miles. While fulfilling its constitutional obligations to regulate

chemical preparations allowing for the appointment of special examiners at major ports who would determine if the relevant goods met standards established by the leading pharmaceutical companies of the day. Additional regulatory and enforcement powers were subsequently forthcoming. And yet, by 1875 there were only 25 mounted Customs Inspectors working the entire length of the Mexican-American border and 14 on the Canadian-American border. For more see Carl E. Prince and Mollie Keller, *The U.S. Customs Service: A Bicentennial History* (Washington, D.C. Department of the Treasury, U.S. Customs Service, 1989) and Laurence Schmeckebier, *The Customs Service: Its History, Activities, and Organization* (Baltimore: Johns Hopkins University Press, 1924).

foreign commerce and defend against external invasion, the federal government did not view enforcing state laws such as those against trespass and cattle rustling as part of its mandate.

The relationship between some of the northern states and the federal government over issues concerning enforcement issues along the border remained fractious. The relationship between the state government in Austin and the federal government bordered on being confrontational when it came to aspects of border enforcement. While the U.S. Army, with its limited resources, tried to contain groups such as the Comanche and Kiowas effectively, many in Texas felt the best answer lay with their own Texas Rangers, "an efficient an deadly band of irregular partisans on the side of law and order."⁸⁷

Ironically, during the decade before the American Civil War, the Texas Rangers as a force had become "little more than a historical expression." They lost most of their senior commanders and core of experienced men. This did not prevent Senator Sam Houston from trying to convince his Senate colleagues that federal funds would be far more efficiently spent, and a better job of law enforcement undertaken if an agreement could be reached to provide appropriations for the Texas Rangers. Houston's claim that the federal government "may withdraw every regular soldier from the borders of Texas, if you will give her but a single regiment of Texas Rangers," only drew condescension from Senate colleagues such as Senator Jefferson Davis.

Secretary of War Conrad consistently refused to yield to the persistent demands from people such as Governor Bell, that the federal government should either simply pay

⁸⁷ T.R. Fehrenbach, *Lone Star*, 473.

the bill when the Rangers were mobilized, or give Texas sufficient monies to operate a regular force without any interference from Washington. The federal government did not view the Texas Rangers as a force that could be trusted to carry out law enforcement duties, and with the onset of the Civil War those Texans left in the Rangers drifted off to join Texas regiments fighting for the Confederacy. Federal efforts to control the southern border would have to wait for the outcome of the Civil War when they would have to confront a new issue along the southern border, the presence of French forces in Mexico.

CHAPTER THREE

Joseph Howe, a Nova Scotian politician, advocated for the maintenance of Anglo-American friendship on the North American continent. In the first year of the Civil War citing the 4,000-mile border, he wrote, "The Northern States are our immediate neighbors, and next to the Mother Country, ought to be fast friends and firm allies. We claim a common origin; our populations are almost homogeneous, bridges and ferries, stage, steamboat, and railway lines connect our frontier town or sea-board cities. Our people intermarry, and socially intermix, all along the frontier..."¹

On the eve of the American Civil War, Canada had become the destination of choice for runaway slaves using the Underground Railroad. Fears and agitation among Canadians living near the border of potential unimpeded cross-border pursuits of runaway slaves by groups of pro-slavery Americans or mercenary bounty hunters, contributed to the growing sense of nervous anticipation, a situation of a "war in anticipation."

The third chapter switches the focus back to the northern border and examines the still-evolving relationship between initially British-Canada, transitioning to the Canadian Confederation and the United States and the impact that the Fenian Brotherhood, the Métis, and whiskey have on the issue of law enforcement along the northern border.

¹ J.A. Chisholm, *The Speeches and Public Letters of Joseph Howe*, (Toronto: The Chronicle Publishing Company, 1909) 2 volumes, vol. II, 409.

Encompassing the time frame from the eve of the Civil War to the late 1880s, the openness of the border combined with increasingly volatile examples of American actions along the southern border with Mexico, compels the Canadian government in the early 1870s to take the first step in establishing a dedicated civilian law enforcement unit, the Northwest Mounted Police, with a mandate to police the border. The federal government does not follow the example, and by the 1880s a new issue begins to emerge on both borders, immigrants crossing into the United States via land routes.

The Canadian Border – “a war in anticipation.”

John Russell, the British Foreign Secretary, on the eve of the American Civil War, declared, “There is room for us both on the globe.”² Previously, Sir Henry Lytton Bulwer, British Ambassador to Washington, had stated his wish to “get at the heart of the American people and to cure this anti-English disease at its source.”³ By 1861, the central disputes between London and Washington centered on the northern border had been amicably resolved. This situation led to the belief, at least on London's part, of a more satisfactory state of affairs existing between the two countries.

From the perspective of the United States, however, a suspicious attitude towards London persisted; American attitudes would be slow to change, and for many, the northern border would remain one of the fundamental rallying points in anti-British

² G. F. Hickson, “Palmerston and the Clayton-Bulwer Treaty,” *Cambridge Historical Journal* 3:3, (1931), 295-303, 302.

³ Wilson Beckles, *Friendly Relations, A Narrative of Britain's Ministers and Ambassadors to America, 1791-1930* (London: Little Brown & Co., 1934), 174.

attitudes. There existed a sense of “a war in anticipation” with the northern border as one of the potential trip-wires.⁴

In 1861, the northern border stretched for nearly 4,000 miles. The vast majority followed the 49th parallel. It remained mostly unsurveyed, mostly uninhabited save for Native American tribes who continued to pursue their old migratory patterns regardless of any artificial boundary line imposed by others, and lacking any substantive law enforcement components on either side.

For some people, on both sides of the border, the idea of an actual border remained as ever an anathema. Whether couched from an American standpoint in terms of "Manifest Destiny," "Continentalism," "Young America," or even "Pan-Americanism" and the lingering desire to see all the Canadian colonies incorporated into a larger pan-America, or through calls from dissident Canadian Conservatives for “a friendly and peaceful separation from British connexion, [sic] and a union upon equitable terms with the great North American confederacy of sovereign states," there remained a perceptible emotion that the border would ultimately prove pointless and that economics and greater economic interdependence still might ultimately result in annexation.⁵

⁴ Robin Winks, *Canada, and the United States: The Civil War Years* (Montreal: McGill University Press, 1960), 3, 379.

⁵ *The Annexation Manifesto of 1849: reprinted from the original pamphlet with the names of the signers* (Montreal: D. English & Co., 1881), 6. The signers of the manifesto also tried to tempt their American counterparts with the potential savings to be garnered from doing away with the border. “To the United States also, the annexation of Canada presents many important inducements. The withdrawal from her borders of so powerful a nation, by whom in time of war the immense and growing commerce of the lakes would be jeopardized—the ability to dispense with the costly but ineffectual revenue establishment over a frontier of many hundreds of miles... would undoubtedly be conceded.” *Ibid.*, 9.

A secure and preferential trading relationship between the British Canadian colonies and the United States also theoretically worked in Britain's favor in two ways. First, removing any amount of the political grievances and angst on the part of Canadians through greater linkages with the larger and more prosperous American market could arguably reduce the lingering calls for political annexation. Secondly, a less bellicose atmosphere between both the United States and British-Canada could result in a significant reduction in the amount of revenue allotted to border defenses on the part of London thereby allowing the government to safely reduce its North American garrison for redeployment to other parts of the British Empire and in the mid-1850s to serve as reinforcement capacity for the Crimean War.

The potential of bilateral economic connections that transcended borders was given a significant temporary boost under the Pierce administration. The successful negotiation and signing of The Reciprocity Treaty in 1854 resulted in a brief three-year economic stimulation in Canadian-American trade, with Canadians benefitting substantially until the economic crash of 1857 significantly curtailed, and even reversed, economic gains.⁶ The border remained in place, however, and despite the lessening of

⁶ Negotiations for a reciprocity treaty had begun in 1846 four years after the successful culmination of the Webster-Ashburton Treaty dealing with the Canadian-American border, and shortly after the signing of the Oregon Treaty taking the border all the way to the Pacific coast, but progress in the U.S. Congress stalled. The Whig administration of Zachary Taylor viewed any reopening of negotiations as contrary to their fiscal policy and refused to engage with London. In 1852 a fishing dispute off of the Canadian Atlantic coast saw both British and American naval units dispatched to enforce respective fishing rights. The Democratic administration of President Pierce, while by nature a protectionist, saw the economic value in reopening negotiations. For their part, the British government, under the premiership of Lord Aberdeen, was entangled in an increasingly tense European situation. Settling any dispute with the United States became politically

cross-border tariffs on many goods, smuggling across the border continued rampant with neither American or British-Canadian authorities able to prevent it or even diminish it.

Runaway slaves from southern states increasingly were smuggled across the border on the eve of the Civil War. They continued to employ various underground railroads to avoid capture by law enforcement officials or ad hoc slave catchers working on a bounty system and employed by southern slaveholders. While the 1850 Fugitive Slave Act required the federal government to take an active part in the capture and return of fugitive slaves to their owner's, many northern state and local law enforcement officials actively resisted aiding the federal government. Interestingly there was not the scale of cross-border raids by bounty hunters seeking runaway slaves as occurred across the southern border with Mexico. Once again coming into potential conflict with white Canadians as opposed to Mexicans while trying to kidnap and forcibly return runaway slaves may well have deterred such raiding parties.

While there was a growing abhorrence to the institution of slavery throughout the north, and, quite possibly, a genuine desire not to aid in the federal government's application of the federal law with regards runaway slaves, facilitating the crossing of the

advantageous. For more on the treaty see Charles Tansill, *The Canadian Reciprocity Treaty of 1854*, Baltimore, MD: Johns Hopkins Press, 1922; Robert E. Ankli, "The Reciprocity Treaty of 1854," *Canadian Journal of Economics/Revue Canadienne d'Economique*, Feb. 1971, 4:1, 1-20; Lawrence H. Officer and Lawrence B. Smith. "The Canadian-American Reciprocity Treaty of 1855-1866." *Journal of Economic History*, Dec. 1968, 28:4, 598-623. The Officer and Smith article challenged the integrity of the overall figures. Taking a macro approach, they argued the introduction of railroads into Canada, and the subsequent onset of the American Civil War resulted in a tremendous boost in demand for Canadian products by northern states. The failure of the wheat harvest in both the United States and Great Britain in 1855, combined with the removal of Russian wheat exports as a direct consequence of the onset of the Crimean War, proved to be an economic boom for Canadian wheat exports.

border into British-Canadian provinces where slavery had been outlawed, may well have had racial undertows. Crossing the border would mean that blacks would not remain in any significant numbers in northern states or territories bordering Canada.

Success in crossing the border for runaway slaves, however, did not mitigate the racial tensions directed towards them. Numerous active anti-slavery groups operated in British Canadian provinces ready to support runaways. But equally many Canadians exhibited a racial prejudice akin to that found in the northern United States and questioned both Canadian provincial governments and, by default, the British government about the lack of enforcement along the border that allowed so many runaway slaves to cross over successfully.⁷

Optimism on the part of the London government that increased economic interaction between the Canadian provinces and the United States would translate into long-term reduced budgetary demands associated with defending and policing the international border had already faltered by the close of 1857. In 1861 with the growing threat of civil war in the United States it all but disappeared. On the Canadian side border fortifications once again began to be strengthened and improved. Precautionary deployments of both American and British naval units on the Great Lakes effectively negated the 1818 Rush-Bagot agreement. The London government was aware, however,

⁷ While exact numbers are not known conjecture places the figure around 30,000 runaway slaves having crossed the border by the eve of the Civil War. Once on British territory, they were free and safe from legal extradition. The 1842 Webster-Ashburton Treaty had diplomatically danced around the issue of slavery, but under the treaty, persons could be extradited for trial from one country to another, as long as the offense was common to both countries. Slavery existed only in the United States so the treaty could not be used to extradite runaway slaves from British territory back to American slave owners.

that "the equilibrium of weakness on that continent had already become seriously distorted and the Civil War merely confirmed the obvious."⁸ A consensus evolved, however, in Quebec and London that northern "preoccupation with its war with the Confederacy might deter the Union from turning north for a considerable time, but it was obvious that at any moment an incident might produce a crisis."⁹

The fear of an American invasion remained palpable throughout the war years in the Canadian provinces, fueled by a group of war hawks in Congress such as Congressman Owen Lovejoy, an Illinois friend of President Lincoln who continued to agitate, arguably unrealistically for the majority of the war years, for an invasion of Canada.¹⁰ For those Canadians who continued to favor annexation with the United States,

⁸ Richard A. Preston. *The Defense of the Undefended Border. Planning for War in North America, 1867-1939* (Montreal: McGill-Queen's University Press, 1977), 22. For more on British preparations see Kenneth Bourne, "British Preparations for War with the North, 1861-62, *English Historical Review*, October 1961, 76:301, 600-632. For the relationship between the British Army and the Canadian militia see C.P. Stacey, *Canada and the British Army, 1846-1871: A Study in the Practice of Responsible Government*, rev. ed. (Toronto: University of Toronto Press, 1963). For the relationship between Canada and the United States, see Robin Winks, *Canada, and the United States*, (Baltimore: Johns Hopkins University Press, 1960).

⁹ *Ibid.*, 24. Quebec was country's capital for 1859-1865. Queen Victoria had already chosen Ottawa to become the permanent capital, and in 1866 Ottawa assumed the duties of legislative capital, and in 1867 became the permanent capital.

¹⁰ The *Trent* affair was to be one of the most provocative incidents that almost resulted in the outbreak of conflict between the Union and Great Britain. The intensity of the animosity towards Great Britain on the part of many Northern legislators over the *Trent* affair found a voice in Congressman Owen Lovejoy of Illinois. A leader of one of the underground railroads in his state and a close friend of President Lincoln, in a blistering attack on Great Britain in early January 1862, he looked forward to the day when "we shall have suppressed this rebellion and be prepared to avenge and wipe out this insult we have received." Lovejoy went on to advocate a course of action: "We will stir up Ireland; we will appeal to the Chartists of England; we will go to the old French *inhabitants* of Canada; we will join hands with France and Russia to take away the eastern possession of that proud empire, and will darken every jewel that glitters in her diadem. "

their greatest fear remained getting caught between the United States and Great Britain.¹¹ There was frequent reference to a line in the 1849 Annexation Manifesto that prophesied: "in the event of a rupture between the two of the most powerful nations of the world Canada would become the battlefield and the sufferer..."¹² Other Canadians such as Joseph Howe, a prominent journalist from Nova Scotia spoke of "the Northern States as our immediate neighbors and next to the mother country, ought to be our fast friends and firms allies. We claim a common origin; our populations are almost homogeneous...our commerce is enormous...our people intermarry, and social intermix all along the frontier. All these neutral ties and intimate relations are securities for the preservation of peace."¹³

Even with a more significant military presence on both sides of the border the human traffic crossing both ways and smuggling operations continued unabated throughout the war years. Research has indicated that between 35,000 to 55,000 British North Americans/Canadians crossed the border to fight in the Civil War, the vast

Congressional Globe, 37th Cong., 2nd sess., January 15, 1862, 333. Secretary of State Seward in April 1861, in a series of notes entitled "For Foreign Nations," and destined for the eyes of President Lincoln, counseled demanding explanations from countries such as Great Britain, Canada, and Russia as to their threats to intervene in the American crisis. If the explanations proved to be unsatisfactory, then war should be declared against specific countries. Doris Kearns Goodwin, *Team of Rivals. The Political Genius of Abraham Lincoln* (New York: Simon & Schuster, 2005), 342. Following the seizure of the *Trent* on November 4, 1861, Thurlow Weed wrote, "word circulated in "high places" that Seward hoped to provoke war with England for the purpose of getting Canada." Ibid. 397-98.

¹¹ The colonies of Upper and Lower Canada (present-day Ontario and Quebec) were viewed as the most likely candidates for any invasion by forces of the Union. Both colonies had, by the end of the conflict, triple local defense expenditures established two military colleges and steadily increased the number of active militia forces to complement the regular British troops that remained along the Canadian border.

¹² 1849 Annexation Manifesto, 4.

¹³ J. B. Brebner, *North Atlantic Triangle* (New Haven: Yale University Press, 1945), 161.

majority for the Union but some enlisting for the South in doing so violating the 1819 Foreign Enlistment Act.¹⁴

In the early months of the war, Canadian newspapers carried numerous stories not only of large numbers of Canadians crossing the border unmolested but also of Union recruiters coming north of the border to recruit in Canadian towns and cities actively. Governor General Edmund Walker had copies of the 1819 Act distributed throughout the colonies and reprinted in all the major newspapers admonishing Canadians for crossing the border and sending a subtle warning to American Union Army recruiters that if caught they would be held accountable.

In the early months of the war, the warning of the Governor General went mostly unheeded. A sizable proportion of those crossing the border were Americans who had moved to Canada seeking better economic opportunities and were motivated to return across the border by belief in the Union cause and did not view the 1819 Act as impacting them. Many British- Americans/Canadians likewise ignored the threat of legal action and saw enlistment as a way out of economic hardship, although many Canadians from wealthy families also crossed the border and enlisted including the son of Joseph Howe who ended up on the staff of General Sherman.¹⁵ Likewise, an estimated 12,000 American draft dodgers crossed the border into Canada with apparent impunity.¹⁶

¹⁴ John Boyko, *Blood and Daring: How Canada Fought the American Civil War and Forged a Nation* (Toronto: Vintage Canada, 2014).

¹⁵ For more on cross-border recruitment see Danny Jenkins. “*British North Americans who fought in the American Civil War, 1861-1865*,” MA thesis, University of Ottawa, 1993, online edition.

(<https://www.ruor.uottawa.ca/fr/bitstream/handle/10393/6698/MM89606.PDF?sequence=1>); John Herd Thompson and Stephen J Randall, *Canada and the United States*,

Aside from Union activities north of the border agents from the Confederacy were also were active in Canada. Cells of activists established themselves in cities such as Montreal and Toronto.¹⁷ A primary goal was maintaining diplomatic contact with the British

Montreal, Quebec, Canada: McGill-Queens University Press, 2008, 37; Allen P. Stouffer, "Canadian-American Relations in the Shadow of the Civil War," *Dalhousie Review*, 1977 57:2, 332-346; for the French Canadian view on the civil war see, Preston Jones, "Civil War, Culture War: French Quebec and the American War Between the States," *Catholic Historical Review*, January 2001, 87:1, 55-70. Among the most notable Canadians was Dr. Anderson Ruffin Abbot, son of freed blacks who had left Alabama in 1835. He was born in Toronto, Ontario in 1837. He tried to enlist in the Union Army as an assistant surgeon in 1863. Eventually, he found employment as a civilian surgeon with the Union Army's Colored Troops regiments. He was among the doctors present at the death of President Lincoln in April 1865. He eventually returned to Canada and resumed civilian medical practice. Among the strangest was the campaign of Arthur Rankin, son of Irish immigrants who settled in Windsor Ontario. Rankin, a classic entrepreneur, politician, showman and seeker of glory, traveled to Washington, DC in the summer of 1861 and met with President Lincoln and Secretary of State Seward. He offered, and it was accepted by the president, to raise a regiment of soldiers recruited from the province of Canada. He was granted the necessary regimental warrant, returned to Canada and began recruiting 1,600 men to comprise his First Michigan Lancers. Within a month of returning to Canada Rankin was arrested on the charge of having violated the 1819 Foreign Enlistment Act. His recruitment efforts also split the newspapers. The *Hamilton Spectator* opined, "It is a pity that British subject should be so foolish and wicked as to interfere in a quarrel that does not concern them." The *Montreal Gazette* noted, "There are not many men in Canada better known for his somewhat Quixotic eccentricities than Arthur Rankin." Rankin wrote letters published in *The Globe* and *The Leader* in which he asked, "Why should it be treated as a crime for Canadians to enter the American service? Is not the cause of the United States the cause of civilization and free government?" Rankin was guilty of violating the Foreign Enlistment Act, but the magistrate believed he lacked the authority to make a ruling on the case and referred the matter to a superior court. Having been found guilty of an imperial statute, only the Queen's Bench in England could try him. The Canadian court had no authority to have Rankin bound over to appear in England. The case, therefore, was dropped.

¹⁶ John Herd Thompson and Stephen J. Randall, *Canada and the United States: Ambivalent Allies* (Athens: University of Georgia Press, 2008), 37.

¹⁷ The St. Lawrence Hall hotel in Montreal became a focal point for meetings and gatherings of agents of the Richmond government and supporters of the southern cause. While most supporters were idealists and self-confessed opportunists more than once the hotel was the meeting place of members of the group of conspirators planning to assassinate President Lincoln. John Wilkes Booth visited Montreal and the hotel more

government in London. A secondary objective was to use Canadian territory as a jump-off point to launch cross-border raids against northern frontier towns with the strategic goal of forcing a more significant number of Union forces to be deployed along the border and thereby drawing those forces away from operational fronts in the South.¹⁸

The most notable cross-border raid was carried out on St. Albans, Vermont on October 19, 1864. The city's three major banks were robbed at gunpoint. The group of 21 men identified themselves as Confederate soldiers, although they were not in uniform, and following a brief skirmish with locals in which one man was killed and one wounded, the raiders fled back across the border.

The fact that Canadian militia units within 24 hours captured most of the raiding force did little to assuage the vitriol that was released by both northern newspapers and members of Congress against not only the action itself. The apparent clear lack of any credible force on the Canadian side of the border to prevent such actions, and the subsequent judicial proceedings against the raiders added to the outrage on the Union side of the border. Deftly not mentioned was the fundamental lack of any real enforcement force – federal or state – on the American side of the border testament to

than once initially to work on a plan to kidnap the president, and then ultimately to assassinate him. Canada was also to be the place of refuge for the conspirators after the assassination plot had been carried out. For more on the planning in Canada see Clayton Gray, *Conspiracy in Canada* (Montreal: Atelier Press, 1959).

¹⁸ In an entry in his diary dated September 6, 1864, John Surratt, Jr., wrote of the proposed plans to launch attacks from Canada. “The cities of Boston, Philadelphia and New York are to be burned; a raid is to be made from Canada upon the shipping of the lakes, and a force of men are to rush across the border and attack the frontier towns. The prisoners at Johnson’s Island are also to be released, and join the affair.” What is also clear throughout Surratt’s diary is the relative ease with which he crossed back and forth over the international border. *The private journal and diary of John H. Surratt, the conspirator*, Edited by Dion Haco, Esq. (New York: Frederic A. Brady, 1866), 78-79.

which was the ease with which known Confederate agents were allowed to continuously transit the border without being apprehended.¹⁹

Canadians also joined in the chorus of protest against their colonial governments, and by default the British government, for not doing more to protect and police the border. From London's standpoint little had changed strategically since the onset of the civil war with regards British numbers and deployment along the border. What had changed was the growing realization with the turn of the tide in the war in favor of the Union that incidents such as the St. Albans raid could well result in a Union invasion at any time. The small British garrison stretched thinly along the border from the Atlantic coast to the Great Lakes, could be quickly overwhelmed. The growing sentiment, reminiscent of earlier days in North America that the Canadian militia was both inefficient, poorly led and not doing its job, led Benjamin Disraeli to exclaim in 1865, "An army maintained in a country which does not even permit us to even govern it! What an anomaly!"²⁰

¹⁹ The Governor General of Canada expected there to be a lengthy trial of all those arrested during which time diplomatic steps could be taken to try and mollify the intensifying American calls for some action aimed at the Canadian provinces. The plan was dealt a significant setback when the Montreal judge overseeing the preliminary case dismissed all the charges on a technicality and ordered the release of every prisoner from the raid. To add insult to injury the remaining American currency from the bank raids, captured by the raiders, was ordered returned to them and not to the banks in Vermont. For more on the St. Albans raid see Dennis K. Wilson, *Justice under Pressure: The St. Albans Raid and Its Aftermath*, Lanham, MD: University Press of America, 1992; John D. Kazar, "The Canadian View of the Confederate Raid on Saint Albans," *Vermont History*, 1964, (1) 255-273.

²⁰ L.B. Shippee, *Canadian American Relations, 1849-1874*, (New Haven: Yale University Press, 1939), 173.

In response to the St Albans raid, Secretary of State Seward gave notice at the end of October, by the terms of the 1818 Rush-Bagot Agreement, that "at the expiration of six months... the United States will deem themselves at liberty to increase the Naval Armament on the Lakes, if, in their judgment, the condition of affairs in that quarter shall then require it." In mid-December 1864 there followed an Executive Order signed by the president ordering, "henceforth no traveler shall be allowed to enter the United States from a foreign country without a passport." While exempting immigrant passengers arriving directly at an American port by sea, the order went to specify that the "regulation is intended to apply especially to persons proposing to come to the United States from neighboring British Provinces. Its observance will be strictly enforced by all officers, civil, military and naval in the service of the United States, and the State and municipal authorities are requested to aid in its execution."²¹

Responsibility for the new regulatory enforcement of the passport controls at the border was allocated to the Department of Treasury's Division of Customs and its unit of Mounted Customs Inspectors, but individual states remained responsible for regulating the arrival and departure of people along the national borders. While this marked another tentative first step on the part of the federal government to begin federal enforcement along the borders, the Division of Customs and its enforcement arm was woefully

²¹ Abraham Lincoln: "Executive Order," December 17, 1864. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=70064>. Within a month of the issuance of the Executive Order, the US Congress passed a joint resolution authorizing the president to give the notice to abrogate the 1854 Treaty of Reciprocity bringing to an end the short-lived open trade relationship. The opposition was partly from a growing protectionist sentiment allied to a group who, while favoring the retention of the economic aspects of the treaty, jumped onboard the political bandwagon in preferring abrogation.

undermanned and underfunded to undertake the new mission successfully. Nearly 200 relevant tariff acts still had to be enforced, and the size of appropriations the Treasury Department was permitted to allocate to customs operations was a gross amount set by the Congress on an ad hoc basis.²²

The last months of the Civil War witnessed increasing calls from members of the US Congress to invade the Canadian provinces. American newspapers also once again started joining the chorus of calls for annexation. An editorial in the *New York Herald* was indicative of much of the opinion: “When the termination of our civil conflicts shall have arrived, it may be the turn of our foreign enemies...Four hundred thousand thoroughly disciplined troops will ask no better occupation than to destroy the last vestiges of British rule on the American continent, and annex Canada to the United States.”²³

John Mcdonald, prime minister of the province of Canada, remained convinced that a US invasion would take place within two years. There was also growing sense on the part of many Canadians that the London government was ‘hedging its diplomatic bets’ given the unfolding of events in Europe with regards an increasingly belligerent and expansive Prussia. This opinion found a voice in the British Minister to Washington, Lord Lyons, who impressed upon the Palmerston government in London “to support by

²² Annual appropriations to fund the US Customs Service would not materialize until 1913. Aside from the ad hoc Congressional funding legislation passed in 1849 required that all receipts came to the Department of Treasury that would, in turn, allocate appropriate funds to each district to cover expenses.

²³ The province of Canada resulted from the unification of Upper and Lower Canada in 1841. Upper Canada was also sometimes referred to as Canada West while Lower Canada was often referred to as Canada East. Quoted in J.B. Brebner, *Atlantic Triangle*, 172.

all the force at her command her colonies as long as they are loyal and to resent injustice towards them as an injustice to herself." At the same time he made clear in his correspondence with Lord John Russell, the Foreign Secretary, that granting British North America its freedom was an option London should actively consider.²⁴

The combination of apparent unrelenting pressure from the United States and the diplomatic tentativeness on the part of London were the main factors that drove forward the idea of unifying the Canadian colonies into one national component. While the concept was not new this time, the movement towards unification and an independent status had far more significant urgency. The initial plans for a federated Canada and therefore Canadian control and enforcement of their side of the border came before the Canadian Colony's legislative council in January 1865. During the debate over 50 legislators cited the increasing danger that the United States posed to the Canadian Colonies once the Union secured overall victory.

The challenges of the Fenians, the Métis, and Whiskey

Fenians

²⁴ Quoted in L.B. Shippee, *Canadian-American Relations*, 94. Lord Lyons had been one of the most experienced diplomats representing British interests in the United States and North America. Queen Victoria was impressed with his service that she made it known that "Lord Lyons could represent her at any Court." Ill health forced him to leave Washington in early 1865 to be replaced by Sir Frederick Wright-Bruce. In his work on the British Diplomatic Service, Raymond Jones pronounced, "the Mason-Slidell affair established his well-deserved reputation as Britain's greatest mid-century Ambassador." Raymond Jones, *The British Diplomatic Service, 1815-1914* (Waterloo: Wilfred Laurier University Press, 1983), 126.

Once the American Civil War was over, the new challenge triggering fears of “a war in anticipation,” came not from Union armies crossing over the northern border en masse, but from a disparate group known as the Fenian Brotherhood, consisting primarily of demobilized, yet well-armed, Union soldiers of Irish extraction. Conceived with the goal of coercing the London government to grant full independence to Ireland, the Fenian Brotherhood had the objective of seizing and holding British Canada, or at least significant parts of the border regions, as a bargaining asset.

Throughout the Civil War Years, Congressman Lovejoy of Illinois had called for trouble to be stirred up for England with regards Ireland and the Canadian colonies. Lovejoy's calls only added to the persistent agitation among many Irish immigrants against Britain and its Irish policies. Now the Fenian Brotherhood, comprising well-armed and well-trained veterans of the Union Army, sought to bring the dream into reality.

Their quixotic plan had little chance of success. The simple lack of numbers and logistics meant that any potential cross-border effort would be quickly dealt with on the Canadian side of the border by a combined force of British regulars and Canadian militia units. The Fenian Brotherhood's efforts exposed once again, however, the implications with regards a lack of any substantive federal civil law enforcement presence along the border.

In June 1866, in a single large-scale raid involving over 1,000 Fenian loyalists crossed the Niagara River into Ontario. They briefly captured and held the Canadian border town of Ridgeway, but were then just as quickly driven back across the border by

a combined British and Canadian force. A large number of Fenians were taken prisoner by the British and put on trial.

The raid was significant from the reaction of the US government towards securing the border. Initially no real effort was made on the part of the Johnson administration to restrain the Fenians from organizing and moving into positions along the border. A meeting took place between a Fenian delegation to the White House and President Johnson and Secretary of State Seward. Reportedly, the Fenians were told that the United States would "acknowledge accomplished facts" in the words of historian William D'Arcy, when Johnson and Seward were informed about the group's vague intention to both seize Canadian territory and declare themselves a republic.

Editorials in some American newspapers backed the Fenians. Equally some American politicians did not want to run the risk of potentially losing the Irish vote in their congressional districts, therefore, chose to not speak out against the actions along the border. There was even a resolution introduced into the House of Representatives to admit the Canadian Provinces into the United States.²⁵ Many Americans sought payback for the St. Albans raid on the assertion that no real effort was made to stop Confederate agents operating in Canada during the Civil War. And yet, Canadian historians have concluded that the Fenians misjudged both the opinion of the Johnson administration and

²⁵ H.R. 754 "A Bill to Admit Canadian Provinces as States and Territories of the United States." Congressman Nathaniel P. Banks of Massachusetts, a leading advocate of Manifest Destiny, introduced it on July 2, 1866. It solicited no support in the Congress or British Canadian political circles. Fred H. Harrington, *Fighting Politician: Major General N. P. Banks* (Philadelphia: University of Pennsylvania Press, 1948), 176.

that of Canadians, most of whom were of Protestant Irish lineage not of Catholic descent to the point that Fenian plans “were based on completely false assumptions.”²⁶

Nevertheless, the raids went forward. The first planned Fenian raid into New Brunswick resulted in a few shots fired, leading to the attack being quickly contained and dissolved.²⁷ But the June 1, 1866, raid could not be ignored. Even though it did not equate with the cross-border actions at the height of the border troubles in the late 1830s, it was significantly large enough to warrant a federal response eventually. President Johnson ordered General Grant to halt the movement of Fenians across the border. General Grant ordered General George G. Meade to the city of Buffalo to take charge of operations informing General Meade "to use all vigilance to prevent armed or hostile forces or organizations from leaving the United States to enter British provinces." General Grant noted, "I do not feel authorized to direct any interference [sic] with Fenian meetings within the United States; but as the intentions of the Brotherhood seem to be very public their proceedings should be closely watched..." Concluding his order to General Meade General Grant sardonically commented, "During our late troubles neither the British Government or Canadian officials gave themselves much trouble to prevent hostilities being organized against the United States from their possessions. But two

²⁶ W.S. Neidhardt, *Fenianism in North America* (University Park: Pennsylvania State University Press, 1975), 41-42.

²⁷ The objective was to raid Indian Island in New Brunswick with the further aim of gaining a foothold on the nearby island of Campobello. The Fenians hoped to declare themselves a republic at war with Great Britain, attain the status of belligerents rather than pirates or filibusters and thereby avoid violating American neutrality laws.

wrongs never make a right, and it is our duty to prevent the wrong on the part of our people." ²⁸

Federal forces quickly moved into the borders area with orders to intercept, disarm and turn back Fenian forces. On June 2 federal forces onboard the U.S. steamer *Michigan* intercepted and apprehended over 700 Fenians including the leader Colonel John O'Neill when they tried to return to United States territory using boats after the botched raid into Canada. All of their weapons were confiscated, but no one was arrested because the federal forces still lacked the necessary authority. General Meade did, however, ban all Fenian meetings despite General Grant's apparent hesitation to authorize any interference. To move groups of Fenians away from the border Meade suggested the War Department "furnish them transportation to their homes." The War Department acquiesced in Meade's suggestion, and Meade issued a proclamation calling on the gathered Fenians to disperse and offering to pay their way home on the railroads. ²⁹

In endeavoring to fulfill his mission, General Meade quickly came to appreciate those historical lessons of geographic size and distance along the northern border. "The enormity of trying to guard so extensive a border with so few men compelled him to alter his tactics." Meade had federal troops stationed along the shoreline of Lake Erie. But instead of extending them all along the banks of the St. Lawrence General Meade ordered

²⁸ Letter to Major General George Meade, March 12, 1866. *The Papers of Ulysses S. Grant*. Vol. 16, 1866. (Carbondale: Southern Illinois University Press, 1988), 108. Meade had been baptized a Catholic, but both his parents had drifted away from the Catholic Church, and he had not been brought up in the Catholic faith.

²⁹ <https://www.americamagazine.org/issue/gettysburgs-catholic-memories>
<https://newspaperarchive.com/philadelphia-age-jun-11-1866-p-1/>; Tom Huntingdon, *Searching for George Gordon Meade: The Forgotten Victor of Gettysburg* (Mechanicsburg: Stackpole Books, 2013), 359.

General Hooker, commander of the Department of the East to station his men to the rear along the junctions of major roads and waterways that the Fenians would be most likely to use for the transportation of men and equipment.³⁰

Finally, on June 6 President Johnson issued a proclamation under the auspices of the 1838 law, forbidding filibustering expeditions and authorizing General Meade to employ all land and naval forces and members of the state militias to arrest violators of the ban.³¹ Meade, for “reasons of economy” never exercised his authority to call out the militia, mainly as, once again, it was a situation on the border that had the potential for quickly getting out of hand if not promptly and efficiently contained which he achieved with a small federal force. Meade also used his friendship and diplomatic skills with Major General Hastings Doyle, the British commander of the Canadian troops, whom he met with in Calais, Maine on the border, to further defuse the crisis on along the border.³²

The Johnson administration, in a similar vein to the Van Buren administration, arguably wanted to prevent further incursions into Canada for fear, once again, of provoking an international incident with Great Britain. A significant difference with the Johnson administration was that by 1866 the scales had tipped very heavily in favor of the United States from a military perspective in North America. The question remains

³⁰ Coakley. *The Role of Federal Military Forces in Domestic Disorders*, 292.

³¹ Andrew Johnson: "Proclamation 155—Warning Against Participation in an Expedition Against North American Colonies of Great Britain," June 6, 1866. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=71989>.

³² George G. Meade, *The Life, and Letters of George Gordon Meade Major-General United States Army* (Boston: Charles Scribners & Sons, 1913), Vol. 2, 281.

why the Johnson administration allowed the arming and assembly of an illicit army within the United States so close to the international border?

A fascinating insight into President Johnson's possible attitude comes from a conversation he had with the Fenian leader John O'Neill in 1868 in the White House witnessed by Thomas Beach. "General your people unfairly blame me a good deal for the part I took in stopping your first movement. Now I want you to understand my sympathies are entirely with you, and anything which lies in my power I am willing to do to assist you. But you must remember I gave you five full days before issuing any proclamation stopping you. What, in God's name, more did you want? If you could not get there in five days, by God, you could never get there; and then, as President, I was compelled to enforce the Neutrality Laws, or be denounced on every side."³³ General Meade's federal forces remained deployed close to the border until the end of 1866, but the rapid demobilization of the Union Army and the necessity of enforcing Reconstruction policies in the South and the ongoing campaigns on the frontier invariably meant redeployment of the limited federal forces. Small groups of Fenians, taking advantage of the redeployment of federal troops continued to undertake cross-border raids through 1870 but they were more of an irritant than an organized campaign.³⁴

³³ Major Henri Le Caron. *Twenty-five years in the secret service: the recollections of a spy*. London: W. Heineman, 1892. 59. Le Caron was an alias adopted by Thomas Beach, a Fenian who also served as a British informer and accompanied O'Neill on his visit to President Johnson in the White House in 1868.

³⁴ H.C. Allen, *Great Britain, and the United States*, 505.

The final raid, launched across the border from the vicinity of Franklin, Vermont, was also a complete failure.³⁵ The raid was planned to coincide with the birthday of Queen Victoria. Forewarned of the imminent assault President Grant issued a proclamation warning all U.S. citizens "against aiding, countenancing, abetting, or taking part in such unlawful proceedings" as the "sundry illegal military enterprises and expeditions...within the territory and jurisdiction of the United States with a view to carry on the same from such territory and jurisdiction against the people and districts of the Dominion of Canada." President Grant made it clear that violation of the border would result in the forfeiture of protection of the US government and that the United States would employ all their lawful authority and power to prevent and defeat the aforesaid unlawful proceedings."³⁶

Despite the presidential proclamation and a warning from a US federal marshal in the area that Canadian forces were waiting for the raiders to cross the border, the raid proceeded. The leader of the raid John O'Neil, a veteran of the failed 1866 raid, was subsequently arrested by federal marshals on the orders of President Grant and despite a massive gathering of Fenians in Malone New York who threatened carry on despite the arrest of their leader, the cross-border raids stopped and the movement as a whole

³⁵ The Fenian Raid of 1870 by Reporters Present at the Scenes, Montreal: Canada, "Witness" Printing House, 1871, 52-70.

³⁶ Ulysses S. Grant, "By the President of the United States of America A Proclamation," May 24, 1870. John Simon ed. *The Papers of Ulysses S. Grant*, Vol. 20, (Carbondale: Southern University Press, 1995), 151.

considerably weakened, although a small number of Fenian loyalists would try again this time into Manitoba in 1873.³⁷

During the Grant administration, the border with Canada and Canada's existence as an independent sovereign nation free from the threat of jingoist annexation claims slowly began to solidify. The lingering annexation claims and fear of the United States had in large part driven the political possibility of Canadian Confederation. When formally announced in 1867, it still did not sit well with many of the pro-annexationists. In March 1867 the House of Representatives passed a resolution deploring the formation of the Confederation claiming that such a move was, in fact, a step in the direction of strengthening the institution of monarchy. Even the state of Maine went on record as being opposed to the formation of a Canadian Confederation.³⁸

Annexation agitation reemerged with the purchase of Alaska from Russia in 1867 for \$7.2 million that added over one thousand miles to the overall American-Canadian border.³⁹ In a speech delivered on March 30, 1867, on the subject of the Alaska Purchase,

³⁷ For more on the Fenian movement in the United States in general and its involvement in cross border raids into Canada see William D'Arcy, *The Fenian Movement in the United States, 1858-1886* (Washington, D.C.: Catholic University of America Press, 1947); Brian Jenkins. *Fenians and Anglo-American Relations during Reconstruction* (New York: Cornell University Press, 1969); Brian Jenkins, *The Fenian Problem: Insurgency and Terrorism in a Liberal State, 1858-1874* (Montreal: McGill-Queen's University Press, 2008); Peter Vronsky. *Ridgeway: The American Fenian Invasion and the 1866 Battle that Made Canada*, (Toronto: Alan Lane/Penguin Books, 2011).

³⁸ Alice R. Stewart. "The State of Maine and Canadian Confederation," *Canadian Historical Review*, 33:3, 148-164.

³⁹ The acquisition brought with it an unresolved boundary dispute. Following the 1825 Anglo-Russian Convention that demarcated the borders between the colonial possessions of each empire, the British and Russian governments had been contesting the exact demarcation of the border along the Pacific coastline. In 1871 the Canadian Province of British Columbia officially joined the Canadian Confederation, and the Canadian

Secretary of State Seward remarked, "that Nature designs that the whole continent, not merely these thirty-six states, shall be sooner or later, within the magic circle of the American Union." Likewise, Senator Sumner, chairman of the U.S. Senate Committee on Foreign Relations, remarked on April 7, 1867, "The Alaska Purchase is a visible step to the occupation of the whole North American continent."⁴⁰

The Métis

The Métis rebellion of 1869-1870 led by Louis Riel provided another opportunity for a small group of U.S. politicians to agitate once again over possible annexation of parts of Canada voiding the 49th parallel as the international border.⁴¹ The rebellion was the first real test for the new Canadian Confederation government concerning both the inviolability of the international border and access to, and control over, territory distant from the seat of the Canadian government. The government in Ottawa expressed genuine

government requested an official joint American-Canadian survey of the disputed border. The Grant administration rejected the request as being too costly, arguing with some degree of veracity, that the border area was extremely remote, sparsely settled, and without economic or strategic interest. The American position would not change for 30 years.

⁴⁰ R.E. Sandborn. "The U.S. and British Northwest, 1865-1870," *North Dakota Historical Quarterly*, October 1931, 13-14. In London and Ottawa, the Alaska Purchase was viewed with suspicion. One editorial reflected the general reaction of Canadian newspapers: "It [the purchase of Alaska] is the answer from Washington to the confederation of our North American provinces. It is more than an answer – it is a challenge." *Morning Post*, April 6, 1867.

⁴¹ For more on Louis Riel see Joseph K. Howard. *Strange Empire: Louis Riel and the Métis People*. (Toronto: Lorimer, 1974); Hartwell Bowsfield, ed. *Louis Riel: Rebel of the Western Frontier or Victim of Politics and Prejudice?* (Toronto: Copp Clark Publishing, 1969.)

concern that American proponents of expansion into Canada would actively agitate and support the Metis revolt and their fears were not without justification.⁴²

The revolt commenced with the capture of Fort Garry on the Red River. The fort was located on land owned by the Hudson Bay Company that had been surrendered to the new Canadian government and was just north of the border with the Dakota Territory. The rapid seizure of the fort, along with an armed group of Métis forcibly evicting a Canadian survey team out of the area and back across the border to Fort Pembina in the Dakota Territory, appeared to be the signal for American annexation rhetoric to once again ramp up. This time including at least one member of the Grant administration. Secretary of State Hamilton Fish provided James W. Taylor, a prominent Minnesotan, long proponent of annexation, and the United States counsel in Winnipeg, with a secret commission to supply the Department of State "information about the attitude of the Red River inhabitants about the United States and commercial prospects in Western Canada."⁴³

⁴² The Métis were a mixed race culture of Canadian First Nations and Europeans, mainly French. They had been incorporated in the geographic areas known as Rupert's Land which was owned by the Hudson's Bay Company. To forestall potential expansionist moves and even possible filibuster operations after the American Civil War, the new Canadian Confederation government bought the vast majority of the land from the Hudson's Bay Company with the transfer being effective on December 1, 1869. The Metis, who lived in the territory's only large settlement on the Red River around Fort Garry, objected to being passed merely from one owner to another without any apparent due consideration given to their wishes and demands. The leader Louis Riel was of French Catholic background.

⁴³ William E. Lass, *Minnesota's Boundary with Canada: Its Evolution Since 1873*. (St. Paul, MN: Minnesota Historical Society Press, 1980), 78.

There remains debate as to whether Louis Riel himself favored annexation by the United States. Riel wrote to President Grant shortly after taking control of Fort Garry.⁴⁴ Helen Nugent argues "at no time did he request direct intervention by the United States government." Riel's primary concerns were securing strict neutrality on the part of Washington, D.C. This positions included refusing permission to allow any British/Canadian force, that he assumed would be dispatched by Ottawa at some point, to cross United States territories to reach the Red River region. He also advocated allowing free emigration for any American citizens who might wish to live in the new region of Canada.⁴⁵

Regardless of Riel's desires for permanent annexation, he did garner plenty of support from American politicians from the northern border states. Ignatius Donnelly, a Radical Republican, former congressman and avid expansionist from Minnesota defended Riel's actions.⁴⁶ In 1870 Senator Alexander Ramsey of Minnesota offered a resolution in the U.S. Senate that the United States should propose "to England and Canada that they shall assent to a public expression by the inhabitants of the Selkirk or Winnipeg district, sometimes called Central British America, and also, if you please, by the inhabitants of British Columbia, on the question of union with the Canadian confederation or with the United States."⁴⁷ Senator Jacob Howard of Michigan and

⁴⁴ George F. G. Stanley. "Riel's Petition to the President of the United States, 1870." *Canadian Historical Review* XX 4 (Dec. 1939) 421-28

⁴⁵ Helen Jean M. Nugent. "Louis Riel and Oliver P. Morton: The Oddest Couple." *Indiana Magazine of History*, Vol. 79 #1, March 1983. 69-79. 74

⁴⁶ Martin Ridge, *Ignatius Connelly: The Portrait of a Politician* (Chicago: University of Chicago Press, 1962), 127.

⁴⁷ *Congressional Globe*, 41st Cong. 2nd sess., 1870. 932-933

Senator Henry W. Corbett of Oregon expressed interest in annexing British Columbia and/or additional areas as partial settlement of the *Alabama* claims.⁴⁸ Howard's fellow senator Zachariah Chandler also did not regard the international border as inviolable. He argued for settlement of the *Alabama* claims by forcing England to cede all of Canada to the United States.⁴⁹

The Canadian government, under pressure from those Protestants in government who saw a French Catholic plot to establish an outpost in western Canada that may or may not seek American assistance, and from those in government eager to firmly establish once and for all Canadian sovereignty particularly in a region so close to the border, decided to dispatch a joint British-Canadian military expedition to the Red River region. The British contingent was composed of regular British forces still stationed in Canada and Canadians were drawn from militia units stationed in Ontario. Moving the force as rapidly as possible to the Red River was the critical logistical issue.

Seeking permission from the United States government for the force to cross the border, board the American railroad system and proceed as far as Minnesota before continuing north on the Red River back over the border into Canada to Fort Garry was one option. The drawback of this option was two-fold: first it would be an admission that the Canadian government could only control their Prairies region through the offices of the United States and thereby add fuel to potential American expansionist sentiments;

⁴⁸ Ibid., 324-325.

⁴⁹ Quoted in Mary Karl George. *Zachariah Chandler: A Political Biography*. (East Lansing: Michigan State University Press, 1969), 215.

secondly, the federal government was not about to countenance British troops crossing the border and transiting through sovereign American territory.

Undertaking an arduous journey by both water and land was the second option. The joint force would proceed from the Toronto garrison to Collingwood on the Georgian Bay, through the Canadian waters of Lake Huron and onto Thunder Bay on Lake Superior and then move overland to Fort Garry. Even though the movement across Lake Superior would likewise be in Canadian waters, the force had to transit the American St. Mary's Falls Canal to gain access to Lake Superior. Two vessels the *Algoma* and the *Chicora* were used to transport men, supplies, and arms to Thunder Bay. The *Algoma* transited the canal with no problems. The *Chicora*, however, was initially denied permission to transit the canal following an intervention by the Department of State that had tried to block the passage of both vessels.⁵⁰

A counter-threat by the Canadian government to prevent American grain exporters using a Canadian canal eventually persuaded the Grant administration to rescind the order to the state of Michigan, the operator of the canal. The *Chicora* subsequently transited the canal, but Canadian vulnerability had been exposed. The communication method with the West, in the event of any form of emergency, was controlled by a foreign power.⁵¹ And while the initial diplomatic *impasse* over the *Chicora* did not represent a significant rupture in U.S.-Canadian relations, it continued to

⁵⁰ Brian S. Osborne and Donald Swainson. *The Sault Ste. Marie Canal A Chapter in the History of the Great Lakes Transport* (Ottawa: Canadian Government Publishing Centre, 1986), 35.

⁵¹ *Ibid.*

highlight questions of attitudes, defense, and transportation issues along the length of the border.

The British-Canadian force quickly suppressed the Métis revolt in August 1870. Riel escaped across the border into the United States, but US federal authorities did not apprehend him. In a sign that the Grant administration decided to step back even further from future contact with disparate Métis and American annexation supporters and to begin enforcing border control, a small group of Métis and Fenians intent on crossing the border into Canada were apprehended by federal troops under the command of Captain Lloyd Wheaton, of the 20th U.S. Infantry stationed at the newly constructed Fort Pembina in the Dakota Territory in later September 1870.⁵² They were turned over to American civil authorities and charged with violating US neutrality laws. In the subsequent trial in October, all the charges were dropped on account of there being insufficient evidence that the group had committed a crime against the United States.⁵³

⁵² Fort Pembina was located two miles south of the US-Canada border. The construction followed orders from the US War Department in 1870, based on the recommendation of Major General Hancock. There had been considerable pressure applied by the state of Minnesota, including a petition by the state legislature to the US Congress, a for a fort to be built and manned by the US Army with the primary goal of defending locals against incursions by Lakota Sioux many of whom had migrated across the border with Canada during the Civil War, but who were now consistently crossing back and forth across the border. The military presence also contributed to the defense of the U.S. Customs House and the customs officers assigned to collect revenue from cross-border traffic. Robert B. Roberts, *Encyclopedia of Historic Forts: The Military, Pioneer, and Trading Posts of the United States* (New York: Macmillan, 1988), 632; *North Dakota History*, (Bismark: State Historical Society of North Dakota, 1969), 36:1, Winter, 1969.

⁵³ Ruth Swan and Edward A. Jerome, ““Unequal Justice” The Métis in the O’Donoghue’s Raid of 1870,” *Manitoba History*, Manitoba Historical Society, Spring/Summer 2000 #39; Jon Guttman, “Last of the Fenian Invasions Raided the Wrong Country,” *Canadian Military Magazine*, 24: 8, (September 14, 2016)

Ironically the defeat of President Grant's efforts to annex Santo Domingo in the Caribbean and, the role played by Senator Sumner in the spring of 1871 in that defeat, may have contributed immeasurably to his willingness to agree to a trilateral treaty between the United States, Great Britain, and Canada in the same year. The Washington Treaty resolved all outstanding issues, and disputes between the three countries and the United States recognized and accepted the territorial status quo in North America with regards Canada.⁵⁴

Much work remained to be undertaken on surveying the entire length of the official border. The treaty allowed the Canadians to begin to move limited financial resources away from border defense and military areas to economic integration programs particularly the building of trans-Canada railroad. The central question of sustaining Canadian authority and maintaining internal law and order would remain critical, however. A breakdown in internal order, new secession movements, cross-border raids by Native Americans might still be reason enough for the United States, officially or unofficially, to intervene like the southern border and US interventions into Mexico.

Whiskey

The "Lame Bull Treaty," with the Blackfoot Nation signed by the U.S. federal government in October 1855 established a reservation for the Blackfoot people in the Montana Territory. The northern border would be the 49th parallel, the international

⁵⁴ Adam Badeau, the U.S. Counsel in London from 1870 to 1881, wrote a letter to President Grant dated March 7, 1871, in which he noted, "they [the English] would give us Canada tomorrow if Canada would come." John Y. Simon, ed., *Papers of Ulysses S. Grant*. Vol. 21. Nov 1 1870 – May 31, 1871. 211.

border, or the “medicine line” in Native American terms, separating then “Rupert’s Land” under the auspices of the Hudson Bay Company in the Canadian territory from American territory, but also splitting in half the Blackfoot Nation. Article 13 of the treaty centered on the “desire to exclude from their country the use of ardent spirits or other intoxicating liquor, and to prevent their people from drinking the same.”⁵⁵

The stipulation of Article 13, found in many of the treaties signed with Native American tribes, was designed to reinforce the original prohibition against hard liquor laid out in the 1832 congressional legislation creating the position of Commissioner of Indian Affairs which stated “No ardent spirits shall be hereafter introduced, under any pretence, [*sic*] into the Indian country.”⁵⁶ No exception was allowed, and the law applied to both traders and non-traders. If caught by US marshals or the US army with whiskey on reservation lands any trader faced confiscation of their goods, fines, and imprisonment. Nationwide, enforcement of the law from the outset was far from perfect primarily because of the combined issues of vast swathes of territory and too few enforcement assets available on a regular basis.⁵⁷

⁵⁵ “Treaty with the Blackfeet,” Oct. 17, 1855, *Indian Affairs: Laws and Treaties. Vol. II (Treaties) in part*. Compiled and edited by Charles J. Kapler (Washington, D.C.: Government Printing Office, 1904), 736-740. The treaty also included the River Crow and Gros Ventre tribes who would share the reservation with the Blackfoot. In addition to the northern boundary being fixed on the 49th parallel, the eastern boundary was the Montana territorial border separating it from the Dakota Territory, the southern boundary the Missouri River and the Rocky Mountains the westernmost boundary.

⁵⁶ *An Act to provide for the appointment of a commissioner of Indian Affairs*. Public Law 564, 22nd Cong. 1st sess. (July 9, 1832), 174, 175.

⁵⁷ Jill E. Martin, “The Greatest Evil” Interpretations of Indian Prohibition Laws, 1832-1953,” *Great Plains Quarterly*, Vol. 23 (Winter 2003) 35-53, 41-42

In the Montana Territory, in the period immediately after the Civil War, enforcement of federal laws by units of the US Army stationed in the territory proved to be of significant deterrence capability, however, to at least seriously impede and interrupt the cross-border whiskey trade. Unscrupulous traders naturally sought ways around US law enforcement, however. Gambling that the US army would not follow them across the border into Canada they began moving their operations north of the international border.⁵⁸

In 1869 John J. Healy sought to take advantage of the virtually complete lack of law enforcement assets across the international border in “Rupert’s Land.” Canadian laws had prohibited the sale of alcohol to Native Americans, but the Hudson Bay Company had been illegally selling alcohol to Native Americans on both sides of the border.⁵⁹ In fact, the Hudson Bay Company being a private entity owning the land abutting the international border as delineated in the 1846 Treaty of Oregon, did not actually view the border as an issue and therefore not as a legal impediment for conducting trade with any group of Native Americans. Leading a group of some 20 well-armed men, Healy crossed

⁵⁸ Gordon E. Tolton, *Healy’s West The Life and Times of John J. Healy* (Vancouver: Heritage House Publishing, 2014), 96. See also Gerald L. Berry, “Fort Whoop-Up and the Whiskey Traders,” *Alberta Historical Review*, 1:1, (Spring 1953), 21-25.

⁵⁹ Hugh Dempsey in his work *Firewater: The Impact of the Whiskey Trade on the Blackfoot Nation*, notes “At first, the use of alcohol was restricted to twice-yearly visits to the Hudson Bay Company or North West Company trading posts. This resulted in binge drinking for a few days and the rest for the year the Blackfoot remained sober....a pattern emerged that made the Blackfoot susceptible to the Montana traders when they began to pour unlimited supplies of whiskey into their camps in exchange for buffalo robes.” Dempsey writes, “Those who knew the Blackfoot could hardly believe how quickly they were reduced to objects of pity and disdain.” *Firewater: The Impact of the Whiskey Trade on the Blackfoot Nation* (Markam: Fifth House Publishers, 2002), 2.

the border and established a trading post that evolved into a fort named after his partner Alf Hamilton.⁶⁰

From this trading post, and from others that were rapidly constructed, illegal cross-border trade in whiskey, and other illicit items most notably rifles, swiftly developed. Native American tribes bartered or purchased for alcohol. The Blackfoot located south of the "medicine line" would cross the border into Canada with little opposition to exchange horses, buffalo hides and other goods plundered from raids on wagon trains moving through the Montana territory towards the West coast. Blackfoot north of the border would also cross into Montana to carry out raids on wagon trains and homesteads with an equal lack of interference from the U.S. military or local law enforcement.

The trail across the border to Fort Hamilton and other illegal trading posts gained the infamous sobriquet of the Whoop-Up Trail. The area immediately north of the border became known as Whoop-Up country. To add insult a number of the hastily constructed trading posts along the trail on Canadian territory even defiantly flew the American flag in a gesture designed to illustrate the complete lack of any Canadian law enforcement presence.⁶¹

⁶⁰ Tolton, *Healy's West*, 97.

⁶¹ One of the best overall descriptions of Whoop-Up country and the overall impact of the white man on the Native American population is Paul Sharp's *Whoop-Up Country: The Canadian-American West, 1865-1885*. St. Paul, MN: University of Minnesota Press, 1955. The language used in the book, however, also reflects the stereotyping of the day when dealing with Native Americans. The name "Whoop-Up country" allegedly came from a message sent by Healy and Hamilton to one of their expedition outfitters at Fort Benton, Montana. Describing their success in swindling the Blackfoot with watered-down whiskey, Healy and Hamilton proclaimed, "we're just whooping' -up on 'em."

Within a year Secretary State Hamilton Fish had written to Prime Minister John Macdonald complaining about the Blackfoot raids emanating from north of the border into American territory and seeking greater enforcement of Canadian laws and associated policing of the international border from the Canadian side. Ironically the position taken by Secretary Fish did not, however, did not preclude federal government departments continuing to issue permits to traders “to pass through Blackfoot County...and across the northern boundary line of the United States...for the purpose of exploring and prospecting the country.”

In 1871 two American traders, Joe Kipp and Charlie Thomas were in the process of moving more than six hundred gallons of alcohol across the border. A Deputy U.S. Marshal Charles Hard sought to arrest the pair for violating U.S. federal laws. Kipp challenged the marshal and claimed that they were in fact on British territory with the result that the marshal's authority and jurisdiction were no longer valid. Deputy Marshal Hard found himself confronting an armed party of men with no immediate assistance available. Complicating matters further was the fact that he also was unsure of where the actual border was located, not an uncommon state of affairs. He took the prudent course of action and backed down.⁶²

Within three years of the establishment of the original Fort Whoop-Up a dozen-plus ramshackle and illegal ‘forts,’ masquerading as trading posts, had been established

⁶² To add insult to injury for the federal government, two of the whiskey traders who had confronted Deputy Marshall Hard subsequently dared to build a new trading post on the spot of the confrontation and called it Fort Standoff. The whiskey traded was made from distilled alcohol mixed with chewing tobacco, red pepper, soap, molasses and red ink and labeled "Whoop-Up juice."

on Canadian territory, predominately by American whiskey traders. The official federal government position, as promoted by Secretary of State Hamilton Fish in his original letter to Prime Minister Macdonald, was to continue curtailment of both domestic sales of alcohol to Native Americans and to prevent further cross-border infiltrations in both directions. To successfully achieve any form of bilateral law enforcement cooperation, however, it would require a law enforcement presence on the Canadian side of the border that in the early 1870s was non-existent.

The whiskey traders themselves had to be aware of the impact that alcohol sales were having on both sides of the border, but mainly on Canadian territory. In the summer of 1871 Frank Wilkeson, a journalist with the *New York Sun* who was undertaking a tour of the Montana Territory crossed the border into southern Alberta and visited several of the illegal American outposts. In one story filed with his newspaper he reported, "Far from being an injury to the United States [the whiskey traders] Said they were a great benefit as they keep the Indians poor, and kill directly, or indirectly more Indians of the most warlike tribe on the continent every year at no cost to the United States government than the more regular army did in ten years!" The Montana press while not showing any side of remorse for the impact of the trade on Native Americans was increasingly outspoken in editorials about the basic lack of border control. An editorial in the *Helena Daily Herald* in early 1873 described "the wretched whiskey traders who ply their nefarious traffic across the line separating the Territory from the British Possession,

bringing back the robes and peltries battered by the savages for the white man's 'fire water.' This traffic is calamitous."⁶³

There is no direct evidence to suggest that Prime Minister Macdonald decided to dispatch a fact-finding mission to Rupert's Land and along the international border solely from the diplomatic note of complaint from Secretary of State Fish. His office came under increasing pressure, however, to take steps to solve the cross-border traffic. The British Ambassador to Washington, Sir Edward Thornton, and the Washington press both ratcheted up the demand for the Canadian government to finally introduce some form of official law and order presence into the region.⁶⁴

The London government still saw the potential for overt American expansionist moves into the sparsely populated Canadian frontier regions. Following the withdrawal of the vast majority of British forces from Canada by the first part of the decade of the 1870s it was clear to London that Ottawa had to both accept the necessity of and provide for law enforcement assets to be deployed both along the international border and into the hinterland of the Canadian prairies. Desmond Morton in his comparative analysis of

⁶³ Quoted in *The Whiskey Trade in Canada* by Hammerson Peters. <http://hammersonpeters.com/?p=1163>. A frequently deployed quote from the Chief of the Siksika Blackfoot, Chief Crowfoot, detailed the damage wrought on his tribe from whiskey. "The whiskey brought among us by the Traders is fast killing us off, and we are powerless before the evil. [We are] totally unable to resist the temptation to drink when brought into contact with the white man's water. We are unable to pitch anywhere that the Trader cannot follow us. Our horses, Buffalo robes and other articles of trade go for whiskey; a large number of our people have killed one another and perished in various ways under the influence." Quoted in Andrew Graybill. *Policing the Great Plains. Rangers, Mounties and the North American Frontier, 1875-1910* (Lincoln: University of Nebraska Press, 2007), 39.

⁶⁴ Sir Edward Thornton had considerable experience in Anglo-American and Anglo-Canadian diplomatic affairs. He had been one of the British Commissioners responsible for successfully negotiating the 1871 Treaty of Washington.

American and Canadian experiences on the frontier noted "most imperial expansion in the 19th century owed less to capitalism or missionaries than to disorder and lawlessness on the adjacent frontier. Very few in the Victorian era—British or American—thought it reprehensible to forcibly extend government and social order." The United States had already used the pretext of the ongoing wars against Native American tribes along the southern frontier as a pretext for cross-border punitive expeditions into sovereign Mexican territory. "Canadians could expect that it might happen to them."⁶⁵

Two subsequent fact-finding missions were dispatched to the vast border regions. The first, led by Captain F.W. Butler, a British Army officer, commissioned by Adams George Archibald, the Lieutenant Governor of the new Manitoba Territory, provided damning evidence of the impact of the American whiskey traders. "The "Moka-manus" (the Big Knives), the white men have pushed up the great Missouri River into the heart of the Blackfeet country, their fire-canoes have forced their way along the muddy waters, and behind them a long chain of armed posts have arisen to hold in check the roving tribes of the Dakota and Montana." Robertson recounted the description of a raid by American whiskey traders and of the brutality of which they [the whiskey traders] "gloried in."⁶⁶ Upon his return, Captain Butler recommended to Archibald that a regular cavalry unit is dispatched to the region to both enforce Canadian laws and to stem the Montanan whiskey trade flowing over that section of the border.

⁶⁵ Desmond Morton. "Comparison of U.S./Canadian Military Experience on the Frontier." (Paper presented, 7th Military History Symposium, United States Air Force Academy, CO, September 30-October 1, 1976).

⁶⁶ Capt. W. Butler. *The Great Lone Land: A Narrative of Travel and Adventure in the Northwest of America* (London: Crown Publishers, 1872), 268. The report was made public by the end of 1871.

In the late spring of 1872, Lieutenant Governor Archibald informed Prime Minister Macdonald of the findings of the Butler mission. They included incontrovertible evidence that the whiskey trade had far from abated. The traffic coming across the border remained as active as ever and the impact on the local tribes as equally destructive. Apparently, the prime minister's office was yet to be convinced, however, of the gravity of the problem or was merely trying to gain time in which to implement a solution. The decision was taken to dispatch yet another fact-finding mission to the region. The mission to be led by Colonel Robertson-Ross, another British Army officer serving in the capacity of adjutant-general of the Canadian militia.

The subsequent findings of the Robertson-Ross mission contained a great deal that was relevant to the evolving situation on the American side of the border. While the report was eventually made public, there is no evidence at this point that the findings impacted American thinking on the issue of civil law enforcement along the border and in the border regions. Robertson-Ross argued that a civil police force under civil power was "undoubtedly very desirable," but went on, "I feel satisfied that the great security for the preservation of good order and the peace of the northwest territories under the changing state of affairs will be for some years to be found to lie in the existence and presence of a disciplined military body under its own military rules, in addition to, but distinct from any civil force which it may be thought proper to establish." Ross qualified his observations by noting "a small number of constables along the border and in the province will be sufficient to maintain order, provided the military force is maintained;

but that in the event of serious disturbances, a large police force would not be able to do so, should the military be withdrawn..."⁶⁷

With regards cross-border activities Ross also noted that smugglers were indeed extremely active along the length of the international border as observed by the Butler mission. Illegal whiskey trading, horse stealing and Native American raiding parties crossing from Montana into Canadian territory were constant issues threatening to cause greater violence. It was notable in Ross' accounts of his travels along the border that whenever he and his party came into contact with parties of Native Americans that had crossed the international border into Canada and subsequently discovered that he was English and not an American, "they became quite friendly in manner, shaking hands with us heartily."⁶⁸

Shortly after the conclusion of the Ross mission the Grant administration suggested: "a joint United States-British project to finally and authoritatively mark the boundary between the Lake of Woods and the summit of the Rocky Mountains."⁶⁹ The

⁶⁷ Colonel Robertson-Ross. "Report of a Reconnaissance of the North-West Provinces and Indian Territories of the Dominion of Canada and Narrative Journey Across the Continent Through Canadian Territory to British Columbia and Vancouver Island." *The Journal of the Royal United Service Institute*, Vol. XVII, No. LXXIV. London: W. Mitchell & Sons, 1873. 543-567, 548.

⁶⁸ Ibid 561.

⁶⁹ For more on the work of the Boundary Commission see from a British perspective: Capt. Albany Featherstone, R.E., *Narrative of the operations of the British North American Boundary Commission, 1872-1876* (Woolwich: A.W. & J.P. Jackson, 1876). This is a firsthand narrative of the British participation in the work of the commission. The book includes detailed coverage of the surveying instruments used, navigation and astronomical aids and maps. From an American perspective: W.J. Twining and Archibald Campbell, *Reports upon the survey of the boundary between the territory of the United States and possessions of Great Britain from the Lake of Woods to the summit of the Rocky Mountains*. Washington, DC, Government Printing Office, 1878; J.E. Parsons,

U.S. Congress approved the proposal with the necessary funds appropriated. Ironically any semblance of being a joint commission did not even extend to the name of the commission and reflected, as Shelia McManus points out, “the different nationalistic agendas at work behind each of the labels...”⁷⁰ For the American government, they were “really only concerned with its own territory, the Canadian government was exerting its new “national” status and dominion over the West, and the British government was exerting a continuing claim over the Canadian West which it had recently handed over to the new Dominion.”⁷¹

“Maintiens le droit;” Canada creates a border constabulary force.

In the early 1870s, Prime Minister Macdonald weighed the options about the findings of the Robertson-Ross mission and its call for a new civil police force under civil power with the objective of policing both the international border and border regions. The issues and questions Macdonald sought answers to provide a preview of areas the United States government would ultimately have to tackle. While the report called for a civilian force, could a civilian force alone meet the challenges of law enforcement duties? Would the regular Canadian military still be required to act as a complementary force when called upon to assist civil law enforcement? Should civil law

West on the 49th parallel: Red River to the Rockies, 1872-1876 (New York: Morrow Publishing, 1963).

⁷⁰ Shelia McManus. *The Line Which Separates: Race, Gender, and the Making of the Alberta-Montana Borderlands* (Edmonton, Alberta: The University of Alberta Press, 2005). The Americans called their commission the Northern Boundary Survey, the Canadians called it the International Boundary Survey, and the British called it the British North American Boundary Survey. 7.

⁷¹ *Ibid.*

enforcement duties reside only with the army, or did a third hybrid option exist? Should operating budgets come from either federal or state coffers or a combination of both? What legal powers would any force possess to enforce federal and state laws, and exactly which laws would they be required to implement?

For Macdonald any force had to be civil in its construct. It also had to be put in place quickly. S.W. Horrall, the official historian of the Royal Canadian Mounted Police, noted that the prime minister was primarily concerned about replicating an American-style west: “He feared that a repetition of the American experience would involve the Dominion in a series of costly Indian wars, retard development in the Northwest and strain the country’s resources.”⁷²

Macdonald wrote to the Canadian minister of militia, George-Etienne Cartier, in June 1871, advocating a ‘mounted police force’ to ensure peace in the Northwest Territories and along the border with the United States: “With emigrants of all nations flowing into that country we are in constant danger of an Indian war, and once that commenced God knows where it may end.”⁷³ He also told a British railroad magnate of

⁷² S.W. Horrell. *The Pictorial History of the Royal Canadian Mounted Police* (New York: McGraw-Hill, Inc., 1973), 181-182. Desmond Morton citing evidence from P.B. Waite’s *The Life and Times of Confederation* (Toronto, 1962) noted that in the first years of the decade of the 1870s the fight against the Native Americans in the United States cost the American taxpayer on average \$14 million per year. The entire Canadian federal budget was on average just over \$20 million per year.

⁷³ Quoted in S.W. Horrall, “Sir John A Macdonald and the Mounted Police Force for the Northwest Territories,” *The Canadian Historical Review*, Vol. LIII #2 June 1972 179-200. 187.

his willingness, personally, "to leave the whole country a wilderness for the next half-century, but I fear if Englishman does not go there, Yankees will..."⁷⁴

The enabling legislation creating a 'Mounted Police' force received Royal Assent on May 23, 1873. During the parliamentary debate on the bill the prime minister informed the House of Commons that the force was "to be purely civil, not a military body with as little gold lace, fuss and fine feathers as possible; not a crack cavalry regiment, but an efficient police force for the rough and ready—particularly ready—enforcement of law and justice." He had weighed the merits of purely military and a purely police organization and sought to have any new force combine as far as possible the advantages of both. Prime Minister Macdonald stated that goal was to "organize a mounted police force, somewhat similar to the Royal Irish Mounted Constabulary. They would have the advantage of military discipline, would be armed in a simple but efficient way, would use the hardy horse of the country, and by being police would be a civil force, each member of which would be a police constable, and therefore a preventive officer."⁷⁵ The legislation also included provisions to establish criminal courts, common jails staffed and managed by civilians and the appointment of magistrates. "The

⁷⁴ Quoted in Desmond Morton's *Comparison of U.S./Canadian Military Experience on the Frontier*, 22.

⁷⁵ Captain Ernest J. Chambers, *The Royal Northwest Mounted Police* (Montreal: The Mortimer Press, 1906), 19. A considerable number of the new enlisted men in the NWMP had served in the Royal Irish Constabulary, and overall very few recruits lacked any military service and experience. For more on the Royal Irish Constabulary see Jim Herlihy, *The Royal Irish Constabulary* (Dublin: The Four Courts Press, 1997); John D. Brewer, *The Royal Irish Constabulary: An Oral History* (Liverpool: Institute of Irish Studies, 1990).

Department of Justice shall have the central management of the police force and all matters connected therewith.”

The Cypress Hills Massacre in June 1873 added further urgency for the establishment of some form of law enforcement presence close to the border. A group of Montana wolf-trappers searching for stolen horses had crossed the border into Canada. According to Paul Sharpe's account of the incident, the wolf-trappers upon finding out that their horses had been stolen and moved across the border had approached the US army commander at Fort Benton in the Montana Territory for assistance. They were turned down with the result that they took actions into their own hands.⁷⁶ Once across the border, they attacked a group of Assiniboine who were both drunk and defenseless and probably not the original horse thieves. Sixteen were killed, and many of the corpses were mutilated.⁷⁷

Secretary of State Hamilton Fish forwarded to Sir Edward Thornton, British Ambassador to Washington, D.C. the findings of a Department of Interior investigation into the massacre. The conclusion was that the murders had taken place on British territory and, therefore, apparently outside American jurisdiction. Secretary Fish did, however, request that the murderers be brought to justice in Canada if at all possible.⁷⁸

⁷⁶ Paul F. Sharpe. “Massacre at Cypress Hills: A Whoop-Up Country Preview.” *The Montana Magazine of History*, (Winter, 1954)

⁷⁷ Cited in Andrew Graybill. *Policing the Great Plains*, 38-39.

⁷⁸ Secretary of State Hamilton Fish to Sir Edward Thornton, August 15, 1873. Cited in Robert S. Allen, "A Witness to Murder: The Cypress Hill Massacre and the Conflict of Attitudes Towards the Native People of the Canadian West During the 1870s," in *As Long as the Sun Shines and the Water Flows, A Reader in Canadian Native Studies*, Ian A. L. Getty and Antonie S. Lussier eds. (Vancouver: University of British Columbia

Given the impact, the incident had had on other tribes in the Montana and Dakota Territories he offered the assistance of federal authorities in affecting any arrests and subsequent extradition of those involved.⁷⁹

In August 1873 the North West Mounted Police force officially came into existence. The original plan had called for 150 men. A force this size was ludicrously small for such a vast geographic area of Western Canada and the length of the border. The total complement total was immediately doubled but remained hardly sufficient for the area to be covered. The force also confronted a lingering mistrust by officers of the Canadian militia.⁸⁰ Creating such a civilian law enforcement force rather than a specific military force as suggested by both the two reports was determined as misguided both strategically and tactically. It is Horrall's opinion that strong support from within the Department of Justice in Ottawa for the Macdonald concept of a civilian force "saved the force."⁸¹ The fact that Macdonald also held the portfolio of Minister of Justice at the time too provided succor for the scheme.

The creation of the mounted police force took on added meaning at the end of 1873. The government of Prime Minister Macdonald collapsed with the onslaught of the

Press, 1983), 229-246, 236. The report then made its way to Ottawa for the attention of Macdonald.

⁷⁹ Philip Goldring, "Whiskey, Horses, and Death: The Cypress Hill Massacre and Sequel," *Occasional Papers in Archaeology and History*, (Ottawa: National Historic Parks and Site Branch, 1979), Canadian Historic Sites, #21, 41-70, 54.

⁸⁰ Captain Ernest J. Chambers, *The Royal Northwest Mounted Police* (Montreal: The Mortimer Press, 1906), 17-20.

⁸¹ S.W. Horrell, *Pictorial History of the RCMP*, 184.

‘Pacific Scandal.’⁸² Unwilling to risk losing a vote of no confidence he resigned. His resignation led to the rise to office of the Liberal party led by Alexander Mackenzie, a devout advocate of prohibition. According to Horrall Mackenzie almost immediately came under pressure from those who sought a military solution to the American whiskey traders rather than employing an untested and far too small new police force. Leading the charge for a military solution to the American problem was the Lieutenant-Governor of the Northwest and Manitoba Territory, Alexander Morris who even advocated the employment of British troops, if London would agree, to move towards the international border and aid in establishing law and order.⁸³

It is difficult to ascertain whether the Morris suggestion of employing British troops reached the Department of State and Secretary Fish. What is clear is that in December 1873 Secretary Fish offered joint co-operation in dealing with the whiskey traders in their respective jurisdictions. The impulse for the offer came from the US Department of Interior's ongoing complaints with regards the restlessness of the

⁸² The Pacific scandal revolved around the office of the prime minister taking money from Sir Hugh Allan, a Montreal shipping magnate who had invested heavily in the building of railroads in Canada and was seeking to win the contract for the construction of the Canadian Pacific Railroad. Ironically, after the Conservatives won the election and Allan was awarded the contract on the assumption that he would remove all American control on the board of directors, it was discovered that the money used to provide the election funds came from American sources. Allan never started the contract, and a new contract was subsequently issued in 1880 to build the Canadian Pacific Railroad. For more on the entire episode see Pierre Berton, *The National Dream: The Great Railway, 1871-1881* (Toronto: Anchor Canada, 2001).

⁸³ S.W. Horrall, *Macdonald and the Mounted Police Force*, 196.

Blackfoot in Montana that found its *raison d'être* in the liquor that remained easily obtainable across the border in Canada.⁸⁴

From a Canadian perspective, with the examples of American cross-border actions along the southern border with Mexico very much in mind, there remained a lingering suspicion that despite the substantial diplomatic progress achieved in settling international border issues American expansionist sentiment remained very much alive. Mackenzie did not help matters by inappropriately suggesting any joint U.S.-Canadian military force targeting all the whiskey traders that would also allow American troops to cross the border into Canada.

The Governor-General of Canada, Lord Dufferin, made it clear to Mackenzie that London would never sanction American troops crossing the border. He sought to convince the prime minister, despite the logistical and numerical odds associated with the new mounted police force, of the value of operating not only independently of the Americans but also in a manner entirely different for the Americans with regards indigenous peoples. "In the first place the mere fact of putting her strength for the purpose of asserting her jurisdiction and repressing outrage in those wild districts, would flatter in a very legitimate manner the national pride of the Dominion...in the next place we should appear upon the scene, not as the Americans have done, for the purpose of

⁸⁴ The United States Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1873* (Washington, D.C.: Government Printing Office, 1874), 252.

restraining and controlling the Indian tribes, but with the view of avenging injuries inflicted on the red man by the white."⁸⁵

The Mackenzie administration ultimately concluded that the proposed Macdonald 'force of soldier-policemen' was the appropriate way forward for Canadian interests. In Horrall's view this force "trained and equipped for warfare on the plains, but with wide judicial powers and responsibilities," gave the Canadian federal government "a firm grasp over the maintenance of order and the administration of justice in the west." The suggestion of joint cooperation with the United States, including the right to cross the international border into Canadian territory, was quietly allowed to dissipate over time. Arguably the American whiskey traders sensing that this time a concerted law enforcement effort was about to arrive in the territory had all but left Canadian territory by the time the first of the new police force arrived in the late spring of 1874 and crossed back into the United States.

According to Graybill the impact of the new 'soldier-policemen' was almost immediate and exemplified the divergent paths Ottawa and Washington were now following about establishing and enforcing law enforcement along both the border itself and in the borderland regions. The distribution of federal aid to Canadian Native American tribes in the form of material gifts such as blankets, tobacco and ammunition by the new police force in addition to making available to the tribes doctors who were serving with the North West Mounted Police amounted to a late 19th Century use of "soft power" that "would not alone be productive of cordiality between our men and the

⁸⁵ Quoted in S.W. Horrell "Sir John Macdonald and the Mounted Police Force for the Northwest Territories," 198.

Indians, but [would] impress the Indians with the belief that the Government really meant to deal fairly with them.”⁸⁶

Graybill notes that the "basically favorable relationship between the police and native peoples of the North-West helped to facilitate the negotiation of two vitally important treaties made by the Canadian government with the Indians." Although, much like their American counterparts, the Native tribes viewed treaties in one manner while the white Canadians saw them through an entirely different prism.

From an American perspective any perceived military threat from Canada, while never wholly discounted in the minds of any American military planner, regarding a military defense of the international border had all but disappeared. An 1873 report of the Chief of Engineers to the Secretary of War subsequently reported to the US Congress revealed that every northern border fortification was listed as requiring no further appropriations for the foreseeable future. Money that was already allotted went to projects such as that of Fort Porter in the state of New York to continue "beautifying the grounds" and "greatly improving the appearance of the post." ⁸⁷ Congressman Farnsworth of Illinois argued, "I do not believe in making appropriations for fortifications of this sort. I do not believe that they are of any earthly use or that they ever will be in a time of war; that is to say many of them or most of them... they will keep men in them who might be

⁸⁶ Quoted in Graybill, *Policing the Great Plains*, 40.

⁸⁷ "Report of the Chief of Engineers" included in the *Report of the Secretary of War*, U.S. Congress, 43rd Cong. 1st sess., House Exec. Docs 1. pt. 2 vol. II Washington, D.C.: Government Printing Office, 1873. 4.

better used somewhere else such as along the length of the international border."⁸⁸ Initial cooperation between the two countries was forthcoming in relation to the arrest and repatriation of military deserters who had crossed the border.⁸⁹

The question of policing the border remained extant on the American side of the border, however. No American equivalent of the North West Mounted Police force would emerge or be actively contemplated by Washington, D.C. The major problem, however, would remain the Native American tribes, but from the mid-1870s onwards the issue revolved around those tribes whose homelands were located south of the 'medicine line' being pushed or choosing to move north towards the international boundary and across into Canadian territory. Within the short span of time between the official standing-up of the North West Mounted force and the defeat of General Custer at the Battle of the Little Bighorn in late June 1876 large numbers of native Americans had already crossed the border into Canada. They crossed virtually no opposition to move out of the way of the ever-expanding movement of settlers coming across the Plains into the border territories.⁹⁰

⁸⁸ Ironically Congressman J.F. Farnsworth, a Republican who represented the 2nd District of Illinois, was born in Canada. *Congressional Globe*, 41st Cong., 3rd sess., Feb. 23, 1871, p. 1536. The majority of those opposed appropriating any further funds in any capacity for border fortifications wanted the appropriations earmarked for railroad construction.

⁸⁹ Richard A. Preston. *The Defense of the undefended Border* (Montreal: McGill-Queens University Press, 1977), 64. Preston also notes an incident in 1876 whereby an American deserter crossed the border into Canada and a U.S. military unit crossed the border into Canada and apprehended him without any prior diplomatic permission. Protests from Ottawa of the incursion led to the deserter being surrendered to Canadian civil authorities at the border, "a noteworthy recognition of Canada's sovereignty."

⁹⁰ Ironically the freedom of movement of Native Americans across the border was enshrined in Article III of the 1794 Jay Treaty. "It is agreed that it shall at all Times be free to His Majesty's Subjects, and to the Citizens of the United States, and to the Indians

Following the Little Big Horn victory and correctly anticipating a major Army offensive against the bands of Lakotas, Northern Cheyennes and Arapahos that had formed the heart of the alliance that had destroyed Custer, the collective decision was made by tribal leaders to move north across the ‘medicine line’ into the “land of the Grandmother.’ The belief being that even though Native Americans did not necessarily recognize the legal sanctity of a border demarcated by white men they would nonetheless respect the line and not cross into Canada. It was a major diplomatic gamble given the actions of the U.S. Army on the Mexican border and the aggressive attitudes of some senior U.S. Army commanders— most notably General Nelson Miles—towards the Native Americans wherever they chose to reside.

The exodus across the border that commenced in 1873 now grew larger in late 1876 and into the spring of 1877 when Sitting Bull, and his band of followers moved across the border. They were driven in large part by a persistent harassing campaign on the part of General Miles who had failed to persuade Sitting Bull to surrender and relocate to a reservation following a face-to-face meeting.⁹¹ Sitting Bull compounded

dwelling on either side of the said Boundary Line freely to pass and repass by Land, on Inland Navigation, into their respective Territories and Countries of the two Parties on the Continent of the America...” Interestingly Article III did not apply to “the Country within the Limits of the Hudson’s Bay Company.” There is no indication that any amendment was promulgated to update the Treaty once the Hudson Bay’s Rupert Land passed into the official hands of the Canadian government in Ottawa in 1870, the assumption being that it simply became a de facto recognition.

⁹¹ An indication of General Miles’ attitude towards Native Americans comes through in his memoirs but particularly in regards to his meeting with Sitting Bull. “I explained to him that all Indian wars had resulted in the Indians becoming loyal to our government; that it was useless for the Indians to contend against the government or the power and numbers of the white race... But all this was fruitless; they scorned the friendly proposition and scoffed at the idea of any power being able to subdue the Sioux

this slight to Miles by being able to avoid subsequent capture by units under General Miles's command. He slipped across the international border with a small band of followers without any problems.

The federal government pointed out to Ottawa that under international law it was Canada's duty to disarm all those Native Americans who crossed the international border. The size and disposition of the newly formed NWMP now became its Achilles heel. There were simply not enough policemen to disarm thousands of Native Americans and to effectively police them while residing on Canadian territory. Additionally, the government in Ottawa was not well disposed to a policy of disarming Native Americans who legitimately needed weapons to hunt. A diplomatic solution had to be found.

Those Native Americans who crossed the border did find one Canadian official who while firm in his relations was also fair towards them. Superintendent James Morrow Walsh of the NWMP established a cordial working relationship with Sitting Bull that was transmitted throughout the exiled tribal community. Walsh took it upon himself to assure the exiled tribes that U.S. troops would not cross the international border in pursuit with ostensibly little in the way of diplomatic ordnance or 'boots on the ground' force to back his assurance.

For their part, the exiled Native Americans were welcomed into Canada as long as they abided by Canadian laws. There were to be no cross-border raids into Montana, and neither could they engage in any cross-border transit. Survival of the exiles, however,

warriors.” General Nelson A, Miles. *Serving the Republic: Memoirs of the civil and military life of Nelson A. Miles. Lieutenant-General, United States Army.* (New York: Harper & Brothers, 1911), 149.

was dependent on successfully hunting buffalo wherever it was to be found, regardless of international boundaries. This was a prescription for clashes with settlers notably if they defied the ban and crossed into American territory. Ottawa also viewed it as a slippery path towards some form of American cross-border pursuit along the lines of the Mexican border with all the potential for a significant incident that involved.

The Hayes administration agreed in the summer of 1877 to the formation of a joint U.S.-Canadian commission with the goal of persuading Sitting Bull the Lakota's and their allies to return to U.S. territory with the ultimate destination a reservation. The arrival in Canada of elements of the New Perce who had outrun the U.S. Army in their flight towards the border compounded the situation. The vast majority of the Nez Perce, including Chief Joseph, never made it across the border and surrendered to General O.O. Howard less than 100 miles from the border.⁹²

The Canadian reaction to the proposed joint commission was interesting. Prime Minister Macdonald, now returned to office, sought whatever means possible to induce the Lakota's to return. In his instructions to John Macleod, the Commissioner of the NWMP who was to act as the Canadian representative to the commission, the Canadian Secretary of State R.W. Scott wrote "Cooperate with the American commissioners but do

⁹² Chief Joseph and approximately 400 Nez Perce surrendered on October 5, 1877. Of that number c. 100 were warriors. About 300 Nez Perce who disagreed with Chief Joseph's decision to surrender managed to make it across the border into Canada pursued the entire time by the U.S. Army. After several years of living on a reservation in Kansas and then in the Indian Territory, both insufficient for Nez Perce needs, they finally moved back to the Pacific Northwest. They settled on the Colville Reservation in Washington, a move supported by both General Howard and Miles, and south of the international border.

not unduly press Indians. Our action should be persuasive, not compulsory."⁹³ David Mills, the Canadian Minister of the Interior took a more aggressive stance informing Macleod that any failure on the part of the commission to induce the tribes to move back over the border into U.S. territory would result in not only "very considerable expense to the Government of Canada," but if they may also be disposed to make hostile incursions into the United States [they would] become a source of international trouble"⁹⁴

The offer on the part of the American commissioners required a return to US territory, the surrender of all weapons to Canadian authorities and an immediate relocation to an assigned reservation. For this General Terry, the lead American commissioner offered a full pardon on behalf of President Hayes. Sitting Bull's response became legendary and resulted in an outright rejection of the terms. When pressed by General Terry Sitting Bull then employed the demarcation of the border to his own ends. "This part of the country does not belong to you, all on this side belongs to these people (meaning the NWMP)." ⁹⁵

Failure of the joint commission to resolve the status and future of Sitting Bull and his followers prompted General Miles to try and force a resolution akin to the southern border with Mexico. Stepping outside the chain of command General Miles wrote

⁹³ Letter to Lieut. Col. Macleod from R.W. Scott Secretary of State, August 15th, 1877. Report of the Secretary of State for Canada for the Year Ending 31st December 1877. Ottawa: MacLean, Roger & Co., 1878. 42

⁹⁴ Ibid. 43. James Walsh also came under criticism from the Canadian prime minister for appearing to be "too friendly towards Sitting Bull" and not being "forceful enough in helping to persuade both Sitting Bull and the Lakota's to return to the United States."

⁹⁵ "For sixty-four years you have kept me and my people and treated us bad... You have come here to tell us lies, but we don't want to hear them... Don't say two more words. Go back where you came from and stay there; come over here and the Great Mother knows of it." Ibid. 48.

directly to General Sherman for permission to take to the field with a dominant force. His objective was to clear the country north of the Missouri River of all "hostiles." The question for General Sherman was how far north did Miles intend to go to achieve his objectives. Would it include crossing the border into Canada? General Miles also had a precedent that he used with General Sherman. Had not General Sheridan essentially given Colonel Mackenzie *carte blanche* with regards the situation along the southern border? General Sherman was not about to risk creating the basis for an international issue with Canada and, in effect, Great Britain, over the border. In response to the repeated requests from General Miles and the private lobbying being undertaken by him in both Montana and back in Washington, D.C., General Sherman finally told him "Because General Sheridan and [Colonel] Mackenzie once consented to act unlawfully in defiance of my authority in a certain political contingency is no reason why I should imitate so bad an example."⁹⁶

Ultimately General Sherman had to consent to the constant barrage of requests but only because of the bands of Lakota's crossed back over the border in the summer of 1879 driven south by the absence of buffalo. Large numbers simply surrendered once

⁹⁶ Quoted in Robert Utley *Frontier Regulars The United States Army and the Indian, 1866-1891* (Lincoln: University of Nebraska Press, 1973), 286. In March 1877 the North American Review published an article by General Miles entitled 'The Indian Problem.' At one point the author is comparing the manner in which Native Americans are treated in Canada as opposed to the United States. "Why has our management of Indian affairs been less successful than that of our neighbors across the northern boundary?—and It can be answered in a few words. Their system is permanent, decided and just. The tide of immigration in Canada has not been as great as along our frontier. They have been able to allow the Indians to live as Indians, which we have not, and do not attempt to force upon them the customs which are distasteful to them." Quoted in Miles *Serving the Republic*, 201.

over the border and were ordered onto reservations. Those elements that still refused to surrender, however, and began actively hunting buffalo now became the target for General Miles. Cognizant of the Mexican border experience General Sherman authorized action but with the explicit proviso to General Miles that he does not create a border incident.

General Miles followed his orders refusing to cross the border even when his force accidentally stumbled onto a hunting party led by Sitting Bull that had crossed from Canada into the US. A pursuit by U.S. Army units halted at the border. Several hundred "Red River half-breeds," were rounded up by units from Miles forces for supplying the Sioux with ammunition and expelled from U.S. territory into Canada.⁹⁷ General Miles who met with Superintendent Walsh of the NWMP complained that once again Canadian traders were selling weapons to the Sioux. Interestingly Walsh did not deny the charge but also sought to convince Miles "the Sioux do not want to fight white people anymore." Miles remained unconvinced, but as long as Sitting Bull stayed in Canada, on the other side of an international border he had been specifically ordered not to violate, there was nothing he could do.

Ultimately other events forced the remaining Sioux to surrender to the inevitable. Despite the efforts of the NWMP to provide essential foodstuffs, it was not enough. Lack of food compelled the remaining Sioux to surrender in the summer of 1881 eventually. Sitting Bull and 187 followers crossed the border back into the United States for the last time and surrendered to Major David Brotherton the commander of Fort Buford in North

⁹⁷ Quoted in Utley's *Frontier Regulars*. 287.

Dakota. The wars on the American frontier were all but finished. In 1882 General Sherman asserted in his annual report that the vast region occupied “by wild beasts...and by wilder Indians” only 17 years before had “become reduced to a condition of comparative civilization.”⁹⁸

Along the northern border, the remaining American fortifications slowly lost all of their defensive value.⁹⁹ The border to all intents and purposes was essentially open for anyone to transit. The Supreme Court’s decision in *Henderson v. Mayor of New York* in 1875 declaring "The laws which govern the right to land passengers in the United States from other countries ought to be the same in New York, Boston, New Orleans and San Francisco," represented the first stirrings of the eventual federal control of immigration and by association the borders.¹⁰⁰ Until 1882 and the passage of the Chinese Exclusion Act followed by the Alien Contract Labor laws of 1885 and 1887,¹⁰¹ Individual states, if they chose to do so, were responsible for regulating the flow of immigrants crossing the

⁹⁸ *Annual Report of the Secretary of War*, (Washington, D.C.: Government Printing Office, 1882), Vol. 1 p. 5

⁹⁹ In 1893 General O. O. Howard who commanded the Army's Department of the East, an administrative region that included a broad swath of the international border responded to a congressional proposal to rebuild the border fortifications, with the observation "it would be absurd to fortify where war is least likely to occur." Quoted in Richard Preston *The Defense of the Undefended Border*, 116.

¹⁰⁰ *Henderson v. Mayor of City of New York*, 92 U.S. 259 (1875).

¹⁰¹ Chinese Exclusion Act of 1882. 47th Cong., 1st sess., Chap. 126; 22 Stat. 58. Approved May 6, 1882; Alien Contract Labor Law of 1885 (Foran Act). 48th Cong. 2nd sess., Chap. 164, 23 Stat 332. (February 26, 1885); The Payson Act of 1887. 49th Cong., 1st sess., Chap. 25 Stat. 476. (March 3, 1887).

international border into their territories. As late as 1881 the Governor of Michigan had established "a commission or board to supervise alien immigration."¹⁰²

Conclusion

Throughout the last two decades of the 19th Century, a high volume of immigrants crossed from Canada into the United States over the international border. What federal law enforcement or administrative presence existed in the United States was in the form of Department of Treasury Customs Collectors. Their primary goal, however, was revenue, not immigrants.¹⁰³ This was vividly illustrated by trips undertaken by John Lowe, the Canadian secretary of agriculture in the second Macdonald administration during annual trips across the border during the period 1880 to 1886. Tasked with trying to ascertain whether the cross-border immigration was primarily Canadian in nature or third-party immigrants transiting through Canada into the United States, he reported on his various trips across the border he "was never asked at any of the times I crossed any questions as to whether or not I was an immigrant into the United States."¹⁰⁴

By the early 1890s, the sense of "war in anticipation" along the northern border had largely abated. Another Métis rebellion in 1884 along the border resulted in U.S. military forces being sent to the relevant area to prevent and contain the possibility of external aid from the United States reaching the Métis. Demarcation of the overall line of the international border had finished. Specific geographic details still required working

¹⁰² John Bukowczyk ed. *Permeable Border: The Great Lakes Region, 1650-1990*, (Pittsburgh: University of Pittsburgh Press, 2005), 130.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, 129.

out primarily through in-depth survey missions and joint commissions. Native American tribes on both sides of the 'medicine line' appeared to have grudgingly accepted the *fait accompli* with regards their existence. The federal government following behind the Supreme Court was slowly stirring into action with regards some form of administrative and law enforcement along the international border. But implementation of new regulations still rested on an uneasy partnership between Washington, D.C. and those border states that were about to experience a massive increase in the number of immigrants coming into the country along with growing problems of smuggling across the international border.

CHAPTER FOUR

The fourth chapter shifts the focus back to the southern border with Mexico and covers a similar time span as chapter three essentially. While American sentiments towards the northern border remained fickle, the stature and power of Great Britain and its resources of empire provided sufficient deterrence to preclude any aggressive American governmental actions, despite the levels of rhetoric from some to the contrary.

Along the southern border, this was not the case. President Lincoln viewed the overtly aggressive and potentially expansionist French presence in Mexico during the American Civil War as far more dangerous and threatened American interests. Taking full advantage of continued internal Mexican revolutionary upheaval, the French and their Mexican supporters, actively aided the Confederacy across the border. General Grant, likewise, viewed the French presence and actions, even after the end of the Civil War, as warranting offensive action across the border. Grant overtly supported the Juárez forces and expressed his disdain for the Johnson administration's lack of desire to militarily confront the French.

The collapse of the Maximilian regime and the eventual ascendancy of Benito Juárez to power in Mexico City did little to prevent problems along the border. Cross-border raids, in both directions, by criminal elements and Native Americans, increased, exacerbated by both the weakness of the Juárez government, and its geographic isolation

from the border. An increasingly belligerent Texas state government, operating under Reconstruction and chafing at the presence of Union soldiers in Texas, demanded the federal government do more to control the border and enforce the law while taking action on its own volition.

Native Americans did not recognize the southern medicine line, just like their northern brethren. Many Mexicans still chafed at the Treaty of Guadalupe Hidalgo and the loss of land and status to the United States. Likewise, many Tejanos were overwhelmed by the influx of American settlers moving in particularly along the border where after the American Civil War the cattle business became a dominant force in local and regional economies.

Commissions from both countries produce detailed reports on the problems along the length of the southern border blaming each other for chaos and lack of law enforcement. Incursions by Texas Rangers and federal forces into Mexico, which came into contact with Mexican authorities, heighten the feeling that full-scale war over the border is an increasing possibility. Border encroachments and raids were far more prolific as evidenced by the over three-quarters of a million head of cattle rustled across the Rio Grande into Mexico in the years following the American Civil War.

The U.S. Congress continued to scale back appropriations for the army and reduce its size. The passage of Posse Comitatus further curtailed the abilities of federal forces to come to the assistance of civilian law enforcement. While a full-scale war never breaks out, the issue of law enforcement along the border assumes greater importance with the passage by the U.S. Congress of the first in a series of Chinese Exclusion Laws.

The Mexican gambit

Throughout the American Civil War, the problems that had afflicted the southern border in the antebellum period continued virtually undiminished. Cross-border raids conducted by Native Americans, general lawlessness and lack of any real law enforcement and continued disagreements over local trade and commercial rights persisted. Added to the litany were occasional military confrontations with both Union and Confederate forces on the part of Mexican troops. Political differences were arising from the support shown by liberal Mexican officials for the cause of the Union and for some of President Lincoln's supporters who were persistent critics of an aggressive strategy of expansionism mainly south of the border such as incoming Secretary of State Seward.¹ But many in the Mexican government also desired an open and friendly border where possible with the Confederacy from which they derived essential customs duties.

¹ Shortly after the end of the Civil War Secretary of State Seward offered the Danish government \$7.5 million for its Danish Antilles Islands in the Caribbean. In writing of the offer, and that the proposal to buy Alaska from Russia in the same year, Seward wrote "the desire for the acquisition of territory has sensibly abated. In short, we have already come to value dollars more and dominion less." The Danish parliament accepted the offer. The St. Thomas Treaty was rejected by the U.S. Senate, however. The United States would have to wait until 1917 to buy the Danish Antilles, this time for the sum of \$25 million. While rejecting the purchase of the Danish Antilles, the Senate did agree to the Alaska Purchase. Frederick Seward, *Seward at Washington as Senator and Secretary of State. A Memoir of His Life with Selections from His Letters, 1861-1872* (New York: Derby and Miller, 1891), 369; Ernest Paolino, *The Foundations of the American Empire William Henry Seward and US Foreign Policy* (Ithaca: Cornell University Press, 1973), 25-40; Thomas Schoonover, "Dollars over Dominion: United States Economic Interests in Mexico, 1861-1867." *Pacific Historical Review*, Vol. 45 No. 1 (Feb. 1976) 23-45, 26.

This was particularly the case in West Texas where the cross-border trade routes were known as the "Matamoros Trade."²

The result was the Mexican government found itself in a diplomatic dilemma, and it endeavored to walk a fine diplomatic line with regards the border. In the first months of the war, Mexican authorities allowed Union forces and supplies to land at Guaymas in Mexico and to transit through Mexican territory to the Arizona territory. This allowed the Union to prevent the territory from being taken over by the Confederacy. But throughout the war the Mexican government also allowed Confederate troops to escape attack from Union forces by allowing them to cross the border into Mexican territory. They likewise permitted agents of the Confederate government to transit their territory without any harassment.³

² Thomas Schoonover. "Mexican Cotton and the American Civil War" *The Americas*, Vol. 30 #4 (April 1974): 429-447. Schoonover writes, "...the United States Civil War, for its entire tragic course north of the Rio Grande, was apparently to have a beneficial effect upon the Mexican economy in several respects." 447. Interestingly and ironically it was the Liberal forces of Benito Juárez, positioned along the southern side of the border and recognized by the United States government in 1859 as the legitimate government, who used the interaction with the Confederate States to acquire weapons to continue the fight against the Conservative forces of Félix Zuloaga and his French supporters.

³ Arguably the aggressive stance taken by representatives of the Confederate government in Mexico City towards Mexican government officials over the granting of permission for Union forces to move through Mexican territory did not bode well for future relations. There remained a strong sense that the annexationist sentiments on the part of many American politicians in the antebellum period resonated among Confederate politicians. Thomas Schoonover, "Napoleon is Coming! Maximilian is Coming! The International History of the Civil War in the California Basin" in *The Union, the Confederacy and the Atlantic Rim*, ed. Robert May, 101-130 (Purdue: Indiana University Press, 1995). For more on the strategy on military engagements in the Civil War in the Southwest see, L. Boyd Finch, "Arizona in Exile: Confederate Schemes to Recapture the Far Southwest," *The Journal of Arizona History*, Vol. 33 #1 (Spring 1992) pp. 57-84; *Confederate Pathway to the Pacific: Major Sherod Hunter and Arizona Territory, C.S.A.*, Tucson, AZ: The Arizona Historical Society, 1996; Thomas Edrington. *The Battle of Glorieta Pass: A*

The remoteness of the western Texas border with Mexico initially relegated it to a lesser strategic priority for the Union government. The landing of approximately 2,500 French troops in the vicinity of Veracruz in January 1862 and subsequent events radically changed the strategic dynamics. The French force, the first stage of a more substantial French expeditionary force, increased by an additional 4,000 troops under the command of General de Lorencez, in late March 1862, followed by a declaration of war against Mexico in April. By the end of August 1862, the French force had expanded to over 39,000 men, and within a year had captured Mexico City, issued the 'Proclamation of Empire' with an invitation to Maximilian to take up the imperial throne. The potential threat emanating from across the southern border, particularly concerning the possible latent support for the Confederacy, necessitated when feasible, strong deterrent action on the part of the Union government.

Through a combination of adroit diplomacy on the part of Secretary Seward and his State Department, albeit skirting diplomatic disaster more than once, and a degree of luck, the Lincoln government, was able to contain any potential threat from the French intervention in Mexico until it was in a position to bring the full weight of the Union industrial and military might to bear on the situation. While skillful diplomacy prevented any diplomatic recognition on the part of Napoleon II of the government of the Confederacy, it could not prevent shipments of rifles and ammunition coming across the Mexican border into Texas personally approved by Napoleon. Arguably, these shipments

Gettysburg in the West, March 26-28, 1862 (Santa Fe: University of New Mexico Press, 1998); Ray Colton. *The Civil War in the Western Territories: Arizona, Colorado, New Mexico, and Utah* (Norman: University of Oklahoma Press, 1984).

played a central role in the ability of Texas to continue to wage war following the fall of Vicksburg in July 1863 that effectively isolated western states of the Confederacy.

In early August 1863 President Lincoln, writing to General Nathaniel Banks, Union commander of New Orleans, noted: "Recent events in Mexico render early action in Texas more important than ever."⁴ In a subsequent note to General Grant on the option of capturing Mobile, the president reasoned that such move "would appear tempting to me also, were it not that in view of recent events in Mexico, I am greatly impressed with the importance of reestablishing the national authority in Western Texas as soon as possible."⁵

Operations to achieve that objective began in November 1863 at the mouth of the Rio Grande with the capture of Brownsville. Inept military leadership, a consistent problem for the Union throughout the war, almost led to a complete military disaster with Union forces being forced to retreat from the mainland in the summer of 1864 and spending the rest of the war located on San Padre Island. The cross-border trade between Texas and Imperial Mexico continued unabated until the end of the Civil War.

While the shrill demands to invade Canada remained constant on the part of a sizable minority of Union politicians through the end of the Civil War, there was an even more significant urgency to check and reverse the ambitions of Napoleon III across the border in Mexico. General Grant feared the strategic aspirations of the French. In his *Memoirs*, he recorded how he viewed the French action as "a foothold for establishing a

⁴ Collected works. The Abraham Lincoln Association Springfield, Illinois, Roy P. Basler, ed., (New Brunswick: Rutgers University Press, 1953), vol. 6, 365.

⁵ *Ibid.*, 375.

European monarchy upon our continent...I, myself, regarded this as a direct act of war against the United States."⁶ Grant had long held the view that French military aid had constantly crossed the border to supply the Confederacy throughout the war. He viewed Napoleon III as "an active part of the rebellion," and securing the southern border as quickly as possible a vital necessity.⁷

On May 17, 1865, six weeks after the signing of the surrender terms at Appomattox, General Grant sent a letter to Major-General Sheridan giving him command of the territory west of the Mississippi. He ordered him to deploy upwards of 50,000 men to "restore Texas and that part of Louisiana held by the enemy to the Union in the shortest practicable time in a way most effectual for securing permanent peace." General Edmund Kirby of the Confederacy who was still operating in the vicinity of the border with Mexico was to be offered the same surrender terms so recently agreed to by General Lee.

General Grant was operating within the parameters of his position as General of the Army, but Sheridan's orders contained an ulterior motive and mission where the border with Mexico was concerned. Sheridan's orders also included the requirement to "place a strong force on the Rio Grande holding it to a point to at least opposite Carmago, and above that, if supplies can be secured." Grant closed his letter by reinforcing the strategic value of the Rio Grande, "To be clear on this last point, I think the Rio Grande should be strongly held, whether the forces in Texas surrender or not and that no time

⁶ *Ulysses S. Grant, Memoirs and Selected Letters* (New York: Library of America, 1990), vol.2, 775.

⁷ John Russell Young, *Around the World with General Grant* (Baltimore and London: Johns Hopkins University Press, 2002), reprint, 247.

should be lost in getting troops there. If war is to be made, they will be in the right place."⁸

This significant show of force along the border was designed to intimidate the authorities of Maximilian and send a warning to Napoleon III. Grant was apparently anticipating some crossborder engagement with the imperialist troops providing the *raison d'être* for Sheridan to cross the border in support of the Juárez forces. General Sheridan, wholeheartedly supported Grant's plan. He made sure the Juárez forces had access to significant military supplies drawn from the surplus Union stocks. These were, in the words of General Sheridan "left at convenient places on our side of the river to fall into their [Juárez] hands."⁹ General Sheridan, recalled in his memoirs General Grant telling him, "With regard to this matter it would be necessary to act with great circumspection since the Secretary of State, Mr. Seward was much opposed to the use of our troops along the border in any active way that would be likely to involve us in a war with European powers."¹⁰ Events along the southern border had evolved into a test of Seward's diplomacy versus Grant's strategic military acumen. President Johnson found himself effectively sidelined.

Grant received a telegram from General Sheridan on June 30, 1865, confirming his fears about the continued interaction of Confederate forces and those of Maximilian. Detailing the sacking of federal arsenals, Sheridan wrote of "everything on wheels, artillery, horses mules...have been run across the border into Mexico. Large and small

⁸ Phil Sheridan, *Personal Memoirs of P.H. Sheridan, General United States Army* (New York: Chase & Webster & Co., 1888), vol. 2, 206.

⁹ *Ibid.*, 206-207.

¹⁰ *Ibid.*

bands of rebel soldiers and some citizens amounting to about two thousand have crossed the Rio Grande into Mexico." ¹¹Grant's immediate fear was of a protracted guerrilla war waged across the Rio Grande, supported by Maximilian, creating chaos all along the Rio Grande and deep into Texas, an outcome he had predicted at a cabinet meeting on June 16, when he urged a confrontation across the border into Mexico.

Seward challenged Grant's proposal at the cabinet meeting arguing that the aggressive approach of Grant would "wound French pride and produce a war with France." In Seward's view, Maximilian's reign "was rapidly perishing, and, if let alone, Maximilian would leave in less than six months, perhaps in sixty days, whereas if we interfered, it would prolong his stay and the Empire also."¹² Gideon Wells, the Secretary of the Navy, noted after the cabinet meeting that, "Seward acts from intelligence, Grant from impulse."¹³

Complaints by the French ambassador to Washington that American forces under Sheridan were "acting in exact opposition to the repeated assurances Your Excellency has given me concerning the desire of the Cabinet at Washington to preserve the most strict neutrality in the events now taking place in Mexico," prompted General Sheridan to note "it required the patience of Job to abide the slow and pokey methods of our State

¹¹ *The Papers of Ulysses S. Grant*, John Y. Simon, ed., (Carbondale: Southern Illinois University Press, 1967-2012), Vol. 15, 163.

¹² Walter Stahr, *Seward: Lincoln's Indispensable Man* (New York: Simon & Shuster, 2012), 443.

¹³ *Gideon Wells, Diary of Gideon Wells, Secretary of the Navy Under Lincoln and Johnson*, Howard Beale, ed., (New York: W.W. Norton, 1960), vol. 2, 317.

Department, and, in truth, it was often very difficult to restrain officers and men from crossing the Rio Grande with hostile purpose."¹⁴

General Sheridan sent a letter to President Johnson, most likely endorsed by General Grant, bragging about the fitness and readiness of his forces stationed on the Rio Grande. According to Sheridan, his men were in "magnificent trim," and he hoped shortly to "have the pleasure of crossing the Rio Grande with them with our faces turned towards the city of Mexico." President Johnson read the letter aloud to his cabinet prompting Secretary Seward to exclaim his shock at the bellicose nature of Sheridan's letter. Once again he issued a warning, apparently aimed at Grant, but designed to influence President Johnson, predicting any crossing of the border into Mexico would result in the United States not being able to extract itself.¹⁵

Grant sought to assign a senior army commander across the border to act as a liaison with the Juárez forces and to facilitate their continual resupply from federal surpluses under Sheridan's command. Seward, seeking to avoid being outmaneuvered, managed to assign Grant's choice of General John Schofield to Paris instead, telling Schofield "to get your legs under Napoleon's mahogany and tell him to get out of Mexico."¹⁶

¹⁴ Philip Sheridan, *The Personal Memoirs of P.H. Sheridan* (New York: C.W. Webster Publishers, 1888), vol. II, c. 9, 405

¹⁵ *Diary of Gideon Wells*, Vol. 2, 333, Entry for July 14, 1865

¹⁶ In a sign of the evolving debate on the handling of issues relating to the southern border, General Grant, independent of the Johnson administration, had worked out a deal with Juárez's representative in Washington, Matías Romero, to allow Union General John Schofield to take a year's leave of absence to recruit and lead American volunteers into Mexico in support of the Juárez forces. Secretary of State Seward was forewarned, however, and had General Schofield appointed to the American Embassy in Paris.

General Grant visited Canada in the summer of 1865 meeting Governor-General Monck partly to begin restoring calmness in relations between the two countries over the northern border; the memory of the St Albans raid, not even a year old, still reverberating among some congressmen. The *Toronto Globe* interviewed Grant asking questions about the border with Mexico. The interview was picked up and republished by the *New York Times* on August 10. Grant made clear his determination to secure the border and help bring about the defeat of Maximilian and the French. He offered a tacit ultimatum that probably served to unnerve both President Johnson and Secretary Seward further. Ramping up the number of forces deployed under Sheridan to 100,000, Grant called them "an army of observation on the Rio Grande," and "that the French would have to leave Mexico peaceably if they chose, but forcibly if they refused." Grant also issued a veiled warning to England, conscious as the London government remained about the state of affairs with regards the Canadian border with the United States. "With regards relations between the United States and England he did not think the present friendly state would be disturbed unless complications caused by reason of England's mixing herself up with France in the Mexican question."¹⁷

The eventual defeat of Maximilian by the Juárez forces and the tacit support provided by elements of the United States military did serve to improve U.S-Mexican

Likewise, General Lew Wallace, another close confidant of General Grant, toured the United States after the Civil War ended openly recruiting people, raising funds and delivering overtly nationalistic speeches in favor of the Juárez government. Secretary Seward convinced President Johnson to appoint General Wallace as head of the Andersonville war crimes tribunal thereby denying him the freedom to continue his pro-Juárez activities.

¹⁷ *New York Times*, August 10, 1865, ProQuest Historical Newspapers, 4.

relations temporarily. The collapse of the Maximilian regime and therefore any potential threat from south of the border undoubtedly contributed to the continued rapid demobilization of the Union Army. The rapidly dwindling force left in Texas under General Sheridan now turned its attention to enforcing Reconstruction policies, but the questions over the long-term policing of the border on the part of the federal government remained unresolved.¹⁸

Not even the U.S. Army can be in two places at once: The post-Civil War challenge of Texas and its border with Mexico

By the beginning of 1870 Texas had already endured three years of occupation by Union forces overseeing Reconstruction policies. Throughout the Reconstruction period, Texas had been part of the Fifth Military District, along with Louisiana, under the overall command initially of General Sheridan with General Charles Griffin in command in Texas. Griffin's untimely death from yellow fever in September 1867 led to General Joseph Reynolds, a close friend of General Grant, assuming command in Texas.

From an immediate post-war level of over 51,000 Union soldiers stationed in Texas, the figure quickly fell to roughly 3,000 by the end of 1866, mirroring the rapid demobilization of the Union Army throughout the country. The majority of the Union forces, responding to the French presence in Mexico, had initially been stationed on the

¹⁸ In June 1867 the liberal forces, led by Benito Juárez, overcame the Imperialist forces, captured Maximilian, and executed him. The French withdrew from Mexico. General Sheridan was in no doubt that the presence of the Army ultimately impacted the outcome. He doubted "whether such results could have been achieved without the presence of an American army on the Rio Grande." Paul A. Hutton, *Phil Sheridan and His Army* (Lincoln: University of Nebraska Press, 1985), 20-22.

Texas-Mexico border, and it was on the border that an increasingly acerbic Texas, once readmitted to the Union, would demand federal forces remain.

In April 1870, Texas was readmitted back into the Union, having fulfilled the requirements of Congressional reconstruction. In administrative terms, Texas reverted to its pre-Civil War title - the Department of Texas – within the military organizational chain of command, and placed under the Division of the South. Within a year, however, and following command reorganization, the Department of Texas was placed under the Division of the Missouri where it would remain for the next 25 years. In examining the role of the US Army in the West Robert Wooster observed that Texas had “posed the most complex challenges” for both the federal government and the army after the Civil War. Arguably the basis for which had been the enduring history of the relationship between the state and the federal government even before the Civil War.¹⁹

The commander of the then Fifth Military District, General Philip Sheridan, was under no illusions as to both the difficulties of his mission: “Texas has not yet suffered from the war and will require some intimidation.” The Texas-Mexico border compounded his difficulties. “It is strange that over a white man killed by Indians on an extensive frontier the greatest excitement will take place, but over the killing of many freedmen in the settlements nothing is done.” Similarly, Sheridan suspected that the reported Indian depredations had been “manufactured wholesale...to affect the removal

¹⁹ Robert Wooster, *The American Military Frontiers. The United States Army in the West, 1783-1900*, (Albuquerque: University of New Mexico Press, 2009), 193.

of troops from the interior to the frontier.”²⁰ Texans opposed to the use of the US Army to actively enforce civil rights legislation knew only too well that the US Army could not be in two places at once, at least not in any strength.

Within Texas, the US Army found itself caught in the middle of a struggle. Wooster points out the army “had to balance the expectations of congressional reconstruction against the desires of white Texans.”²¹ Amongst the freed black population and pro-Union supporters, there was an ongoing demand that the regular Army troop strength is kept at least at pre-Civil War levels. The alternative was that state militias would reassume the bulk of the internal law enforcement duties. The militias would essentially be reconstituted Confederate regiments, with former Confederates troops led by former officers of the Confederacy.²²

Once Benito Juárez and his Juárezista forces had gained control of the capital in May 1867 and established a government he tried to immediately reassert control over all the country, including the border regions shared with the United States. His efforts met with only partial success. Juárez's support quickly fragmented with the result that internal fighting followed. The immediate outcome was far-flung Mexican state and local authorities continued to operate their virtual fiefdoms. Cooperation with the central government in Mexico City took place when it suited them. The result, as Wooster noted, was the Rio Grande remained an imperfect international barrier. "The ebb and flow

²⁰ Sheridan quoted in Wooster, *Ibid. The American Military Frontiers. The United States Army in the West, 1783-1900*, 194. Sheridan was viewed by many of the Juárez supporters in a very favorable way just because of his overt support of the Juárezista forces.

²¹ *Ibid.*, 193.

²² Bill Yenne, *Indian Wars The Campaign for the American West* (Yardley: Westholme Publishers, 2008), 156.

through the lands south of the Nueces River of emigrants and Indians, legitimate seekers of opportunity as well as those with more nefarious designs, challenged the social, political and economic order. Cattle theft was endemic on both sides of the border."²³ The presence of Native Americans continued to add another level of complexity to law enforcement on the border. For a century or more before the treaties of 1848 and 1853 traced new boundaries between Mexico and the United States, tribes of Native Americans from the north had regularly and systematically raided the settlements of northern Mexico. From the Great Plains, Kiowa's and Comanche's had scourged the Texas frontier and attacked deep into the Mexican states of Tamaulipas, Nuevo Leon, Coahuila, Chihuahua and even as far southwest as the state of Durango. There were also similar raids by Apaches further westwards in the area of New Mexico. The objectives of the raids were stock, plunder and human captives, many of whom were integrated into various tribes.

Among the tribes, the Kickapoo remained foremost in continually challenging both federal and state authorities in the United States and cleverly exploiting the fears of the Mexican government. With the steady incursion of white settlers pushing into the Great Plains before the Civil War small bands of Kickapoo had begun migrating southwards to towards the border and into Mexico. The Mexican government quickly grasped, however, the strategic value of welcoming and encouraging the Kickapoo into the border-states. Once the Kickapoo arrived in Mexico, they were "welcomed by the

²³ Wooster, *The American Military Frontiers*, 193.

Mexican authorities, granted lands, furnished with seeds, implements, and oxen."²⁴

Establishing a Kickapoo village near a Mexican border town would provide insurance against raids by other tribes.²⁵

A large number of Kickapoo subsequently took advantage of the turmoil of the Civil War to begin a large-scale movement towards Mexico, migrating out of Kansas and the Indian Territory. They sought to avoid any significant confrontation while moving south and took a westerly route to avoid most notably a fight with Texans near the border. They were unsuccessful.

On January 8, 1865, in what became known as the Battle of Dove Creek, a company of Texas Rangers and a group of rangers transformed by statute into soldiers of the Confederacy conducted a surprise attack on what they believed to be a group of Kiowas. They turned out to be Kickapoo moving towards the border. It what became known as "the worst managed fight that ever was," the Texans were badly mauled and driven off.²⁶ The encounter would engender a long-lasting animosity by the Kickapoos for any Texan.²⁷ As Clendenen argues, they "interpreted the attack made on them as a

²⁴ Clendenen, *Blood on the Border. The United States Army and the Mexican Irregulars*, 62.

²⁵ *Ibid.*, 63.

²⁶ For more on the Dove Creek incident see: Barbara Barton, *Ruckus Along the Rivers: True Tales of Earl Settlements Along Spring Creek, Dove Creek and the Conchos* (San Angelo: Anchor Publishing Co., 1997), 3-16; William Pool, "The Battle of Dove Creek," *Southwestern Historical Quarterly*, 53 April 1950, pgs. 367-85. The Kickapoos always claimed that they had been attacked without reason by the Texans save for the fact that they were Native Americans on the move through Texas.

²⁷ Mike Cox, *The Texas Rangers*, 183.

declaration of war. With real enthusiasm, they accepted the challenge and within a short time proved to be the worst scourge the Rio Grande frontier had ever known."²⁸ .

After the Civil War, the US government made a determined effort to bring the Kickapoo back to the United States, specifically to a reservation area in the Indian Territory. The Kickapoo resisted, conducting raids from their Mexican sanctuaries across the border into Texas, almost daring U.S authorities to follow them back into Mexico. Arrell Gibson described the Kickapoo "lacerating the southern Texas frontier. After a bloody raid, they would drive their stolen herds of livestock southward across the Rio Grande, where [Mexican] law protected them from reprisals from the U.S. Army."²⁹

The appeals for the US Army to do more had grown steadily in the five years after the Civil War. Prodded by President Andrew Johnson, General Sheridan, in 1867, eventually ordered both the reoccupation of prewar frontier forts and the building of new fortifications. As historian Robert Wooster notes, "By late 1868 a Texas frontier defense system had been fixed and manned that would endure without change for more than two decades."³⁰ The problem of manpower would remain, however. With the rapid demobilization of the Union Army and, fewer men available for the myriad of duties throughout the country, forts might well be rebuilt and re-occupied, but the numbers undertaking the reoccupation were minimal. As Utley notes, in Texas the Army "provided escort service for freight trains, stagecoaches, and cattle herds; patrolled the

²⁸ Ibid.

²⁹ Arrell M. Gibson, *The Kickapoos. Lords of the Middle Border* (Norman: University of Oklahoma Press, 1975), 183.

³⁰ Robert M. Utley, *Frontier Regulars. The United States Army and the Indian, 1866-1891* (Lincoln: University of Nebraska Press, 1973), 167.

vast expanses of plain and desert that separated the forts, and searched out the trails of the raiding parties that had struck and vanished." Moreover, "the duty was hard, inglorious, and frustrating, and it produced no demonstrable effect on the scale of Indian raiding."³¹

The situation on the Mexican side of the border, tenuous at the best of times, became even more fractured in the early 1870s. A rebellion led by Porfirio Díaz against President Juárez and his successor Sebastián Lerdo de Tejada erupted in 1872 and would continue for four years. During that period, Mexican authority along the border was virtually non-existent. Raiding into the United States by Native Americans became a constant problem. General lawlessness, already growing, spilled over the border into Texas. It became quickly apparent to a growing number of government and military officials, spurred on by the Texas press, that if Mexico could not or would not police its side of the border, the United States would have to assume the responsibility. To do so, US forces would invariably have to cross an international border to fulfill that responsibility regardless of the attitudes of the Mexican government. The priority was the defense and protection of the US side of the border but through the imposition of an in-depth shield on the Mexican side of the border.

In the late spring of 1872, in an effort to better understand the scope of the problem on the border the U.S. Congress, through a joint resolution, appointed a commission to investigate "the extent and character of said depredations, by whom committed, their residence or country inhabited by them, the persons murdered or carried into captivity, the character and value of the property destroyed or carried away, from

³¹ Ibid., 168.

what areas of said State, and to whom the same belonged.”³² Three commissioners traveled to Texas and undertook a series of hearings and interviews over a four-month period.

During the tenure of the commission, the Grant administration faced a deluge of mail from every level of Texan society demanding that the federal government undertake more to protect the border and enforce US laws, and offering examples and evidence of the growing lawlessness and virtual anarchy along the border. The variety and composition of the correspondence provide an insight into the overall view of Texans in general. Judge William H. Russell of the 15th District in Brownsville wrote, "The people are being daily robbed with impunity by armed bandits from the Mexican side, as far up as Laredo & above that point by Indians. I beg to assure Your Excellency that outages herein complained of are not in the least exaggerated." T. J. Davis of Live Oak County wrote to President Grant in broken English: "With leav [sic] I A Citizen of Texas Native of the United States hear By Take The Week Hand to inform you of the diss tress of Our Frunt tear Cuntry...Wee Hav Wated with Patuance for help but I think if Wee Get Help Wee Will haft to Help our Self. II am Aposed to Disobeying the Laws of the US But the Time has Came That Every Man must Look out for his Sel." The letter's author went on

³² Full text of "Report of the United States Commissioners to Texas, appointed under a joint resolution of Congress, approved May 7, 1872" The Commission was established in July 1872 and consisted of three Commissioners: Thomas P. Robb, F.J. Mead, and Richard H. Savage. http://www.archive.org/stream/reportofunitedst02unit/reportofunitedst02unit_djvu.txt Accessed March and April 2016 The appendix of the report listed 354 witnesses as having given testimony 102 petitions, 101 claims for compensation for cross-border horse and cattle rustling and a "Schedule for indictments for murder and outrage along the Rio Grande Frontier" dating from 1853 to 1872.

to make another suggestion to President Grant. "Would you take Thoes Damd Affercans Solders you have Stroud up & down the Reogrande Put then to Work Arm and Equip Regelar Texians Renagers to De fend them Selves and Fameles then Work Would Be Dun And no time Lost or Give them Authority & Powar." He concluded, "Pleas Give us Power To defend our Selves." Another letter dated September 10 from Joseph Haden and James Millican even urged President Grant to declare war on Mexico and that if he consented they would "canvass for such a President." The authors promised to "do all in our power for you if you will consent to war as nothing else will satisfy the Texas people."³³

Having gathered a significant amount of data from their interviews and visits along the border, the Commission issued its report in the fall of 1872. They placed the blame for the continued lawlessness primarily on the Mexican side of the border. "Extending back over a period of twenty years...these frontier troubles are traceable directly to an unwise system of legislation regulating the commerce of the right bank of the Rio Grande which has made that frontier a rendezvous for the lawless, and a base of operations for an illicit traffic with the interior of Mexico and the United States." The Commissioners sought to both clarify the lines of control and to differentiate between the powers of the American military, and those of civilian law enforcement agents who they felt should carry more of the burden of policing the border regions. An "absence of wholesome laws and honest agents to execute them," the commission argued, was "the cause of these frontier feuds, while their effect is seen in a demoralized and unorganized

³³ *The Papers of Ulysses S. Grant*: Vol. 23 1 - December 31, 1872, John Y. Simon ed., (Carbondale: Southern Illinois University Press, 2000, 124-125.

condition of society, and the insecurity of life and property.” To “protect its territory from the incursion of hostile expeditions coming from a neighboring power unable to enforce the law and to surpass violence within its own border,” the commission recommended “the employment of a sufficient force of cavalry to enforce the law and protect life and property on the Rio Grande.”³⁴

In April 1873, some six months after the issuance of the Border Commission’s report, at Fort Clark on the Texas-Mexico border, the Secretary of War, William Belknap, accompanied by General Sheridan, then commanding general of the Division of the Missouri, met with Colonel Ronald S. Mackenzie, commander of the 4th Cavalry. In the meeting General Sheridan delivered the following order to Mackenzie:

You have been ordered down here...because I want something done to stop these conditions of banditry, killings, etc., by these people across the river. I want you to control and hold down the situation, and to do it in your own way. I want you to be bold, enterprising, and at all times full of energy, when you begin, let it be a campaign of annihilation, obliteration and complete destruction.³⁵

Mackenzie supposedly relayed the entire conversation to his adjutant, Robert G. Carter. Carter, who then subsequently recounted the whole episode in his own autobiography published in 1935. Mackenzie needed another witness. When Mackenzie understandably asked General Sheridan "Under whose orders and upon what authority am I to act? Will you issue me the necessary orders for my action?" Sheridan "replied

³⁴ Ibid., 40-41. No action was taken with regards the Commission's findings. Subsequently, another special commission established in 1876 by the 44th Congress noted in its findings, “no action was taken in regard to the report of that commission.” Select Committee on the Texas Frontier Troubles, 44th Congress, 1st Session, House Report No. 343, 11.

³⁵ Clendenen, *Blood on the Border*, 66.

brusquely, "Damn the orders! Damn the authority... Your authority and backing shall be General Grant and myself."³⁶

Mackenzie's target was a camp of Kickapoo raiders located on the San Rodrigo River located about 50 miles west of Piedra Negras near the Mexican town of El Remolino. More importantly, and telling, this town was some 60 miles into the territory of a sovereign nation recognized as such by the United States. There does not appear to have been any forewarning given to the Mexican government or permission sought for the raid. The question of whether President Grant had provided authority for the raid or was operating from a "need to know" basis which would allow plausible deniability is hard to discern from the written records.³⁷

The result of the ten-day raid into Mexico was a significant number of Kickapoo killed and taken prisoner – mainly women and children. Those captured were brought back to United States territory. During their return, Mackenzie's column was harassed the entire way by Mexican forces and other local Native American war parties. The Mexican

³⁶ Robert G. Carter, *On the Border with Mackenzie* (Washington, DC: Enyon Publishing, 1935), 399-406.

³⁷ Equally interesting was the lack of mention of one particular person: General Sherman was at the time still commanding General of the US Army. Part of this is explained in Robert Wooster's insights about the relationship between Sherman and Secretary of War Belknap. Belknap had been a brigade commander under Sherman in the Army of Tennessee during the Civil War. Sherman had briefly held the office of the Secretary of War in the first few months of the first Grant administration. Belknap subsequently replaced Sherman, a move Wooster writes, Sherman "had initially approved." The relationship, however, quickly "soured," with Belknap "infuriating his old chief by issuing orders, transfers, and leaves of absences without going through Sherman's office." So bad did the relationship become that Sherman requested, and Belknap happily approved, to move his command office from Washington, D.C. to St. Louis, because in Sherman's words kowtowing to a political hack was "beneath the dignity of my office and character." Quoted in Wooster, *The American Military Frontier*, 218.

government, the Mexican press, and Mexican people throughout the Mexican border-states were indignant at the raid. Understandably, the Mexican government demanded that President Grant take action against Mackenzie. True to General Sheridan's word and promise, President Grant did nothing.³⁸

Apart from demanding Mackenzie's punishment, the Mexican government also created its own committee to investigate the problems on the Texas-Mexico frontier drawing the ire of the American press. The *Chicago Tribune* opined that Mexicans viewed the American report as "one-sided" and "made simply in the interests of speculators."³⁹ The committee was called the "Investigating Committee of the Northern Frontier."⁴⁰ Taking its lead from the 1872 US Border Commission, its efforts were

³⁸ Another interesting variable in the Sheridan communication to Mackenzie was the role of Sheridan's commanding officer, General William T. Sherman, commanding general of the US Army. Sherman had already decamped from Washington, DC to new headquarters in St. Louis, also headquarters of the Division of the Missouri, General Sheridan's command, because of his frustrations with the federal bureaucracy and his dislike of the Secretary of War William Belknap. Robert Utley in his *Frontier Regulars* includes a note from Sherman to Sheridan on June 3rd, 1873m, after the raid and the onset of Mexican diplomatic protests. In the letter Sherman writes, McKenzie [sic] will, of course, be sustained, but for the sake of history, I would like to have him report clearly the facts that induced him to know that the Indians he attacked and captured were the identical Indians that engaged in raiding Texas. Had he followed a fresh trail there would be law to back him." Sheridan replied that of course, Mackenzie had struck the guilty party because, as Sheridan wrote, "there is none of them guiltless." p.349

³⁹ "Texan Border Disturbances Investigated by Mexican Authorities," *Chicago Tribune*, October 17th, 1872.

<http://archives.chicagotribune.com/1872/10/17/page/1/article/washington>

⁴⁰ *Report of the Committee of Investigation sent in 1873 by the Mexican government to the Frontier of Texas* (translated from the official edition made in Mexico), New York, 1875. University of Michigan Digital Collections Library,

<http://quod.lib.umich.edu/cgi/t/text-idx?c=moa;cc=moa;rgn=main;view=text;idno=Ab>

The committee's report was equally as extensive as its American counterpart. It comprised interviews with nearly 300 witnesses, covered almost 17,688 pages of

directed primarily toward studying the depredations suffered by Mexicans. Indians repeatedly crossed the border into Mexico unopposed by American authorities and conducted raids into northern Mexican states. Interestingly, the committee did endeavor to find witnesses from the Texas side of the border; in the preface, it noted that it had "invited the citizens of Mexico and Texas to present their claims before them."

The committee conducted an extensive review of the history of the problems along the border dating back to 1848. Its members examined judicial records, complaints about cattle rustling, and the stealing of horses. In the process, the Committee endeavored to establish a monetary value of the losses suffered primarily by Mexican citizens. It was clear that the goal of the commission was to develop a litany of abuses originating in Texas and affecting Mexico. Those abuses were enacted either with the knowledge of US and Texan authorities or as a result of incompetence on the part of governing bodies. However, the conclusion of the report urged both countries to exert a greater responsibility to protect the border and enforce laws. The United States, specifically the authorities and people of Texas, had to rein in what was perceived by members of the Commission as continuing expansionist desires. As the Commission noted,

it is only the creation of material interests superior to those they could expect from an increase of territory that can put an end to the restless spirit of the floating population of Texas, which, in the absence of lawful resources to employ the energy of its will, is ever dreaming of revolutionary enterprises inconsistent with the maintenance of peace and harmony between the two nations.⁴¹

manuscript and reports of visits to town and villages along a 450- mile stretch of the Texas-Mexico border.

⁴¹ Ibid., 442.

The report went further in suggesting that the “vigilance of both governments was required in the formation of laws and police regulations respecting the intercourse between settlement on the opposite banks of the Rio Grande.”⁴² The report also mentioned the apparent openness of Texans to bribery and corruption and their singular lack of cooperation in fighting the raiding tribes. The report acknowledged that corruption and bribery existed on both sides of the border, but “it had its beginnings in Texas, being there propagated and perfected.” The report noted corruption “was not confined to any one class; all take part in it...” and “it overflowed into our frontier giving vitality to the natural elements of disorder that have always existed there...”⁴³ Malefactors on both sides of the Rio Grande represented the principal cause of the depredations of which the Texans constantly complained.

Following the Mackenzie raid, the Kickapoo tribe that remained in the Mexican border region “lost their taste for raids into the United States.” In his after-action report on the raid, General Sheridan wrote, “I am happy to state that these depredations have diminished very materially since the punishment administered by Col. Ronald Mackenzie and his Fourth Cavalry.”⁴⁴ Sheridan failed to note that while the Kickapoo had “lost their taste for raids,” other tribes such as the Lipans and Mescaleros and Mexican bandits had not. With no permanent force deployed along the border, the number of raids from Mexico into the United States continued unabated.

⁴² Ibid.

⁴³ Ibid., 86, 127.

⁴⁴ Clendenen, *Blood on the Border*, 71.

Many in Texas hailed Mackenzie's actions as the type of response they had been waiting to see. Mackenzie himself became something of a cult hero to many Texans. On May 25th, 1873 the Texas state legislature extended to Mackenzie, "the grateful thanks of the people of the state and particularly the citizens of our frontier are due to Colonel Mackenzie and the officers and troops under this command for their prompt action and gallant conduct in inflicting well-merited punishment upon these scourges of our frontier."⁴⁵ In memoirs published in 1935, Robert Carter, who served with Mackenzie in Texas and was on the raid wrote "this raid resulted in the Mexican government coming down from their 'high perch,' instead of covering up and concealing high handed, brutal, murders, atrocities, and wholesale robbery along the river."⁴⁶

The Mackenzie raid of 1873 and the apparent tacit approval of both the federal government and senior US Army officers opened the door to further incursions. US Army units pursued either individuals or groups across the border frequently during the two-year period 1873 and 1875. Sometimes the US Army units acted on their own initiative. Sometimes they acted in support of local law enforcement officials who called upon them to help apprehend outlaws, rustlers or raiding parties. But, just as with the Mackenzie raid, American actions did little to stop cross-border raids.

Many in Texas viewed the Mackenzie raid as having dealt a severe blow to the abilities of the Kickapoo to launch border raids. But it had done little to staunch the flow of others crossing the border. Pressure had to be kept on the federal government,

⁴⁵ Quoted in Ernest Wallace, "Prompt in the Saddle: The Military Career of Ranald Slidell Mackenzie," *Military History of Texas and the Southwest*, Vol. IX, 1971, 189.

⁴⁶ Robert Carter, *On the Border with Mackenzie*, 1935, 469.

therefore, to provide the necessary force. Ironically, the economic panic of 1873 presented the Texas congressional delegation, and other western congressmen, with an opportunity to become a curious power broker in both congressional debates on appropriations for the Army in subsequent years, and on Army deployments and locations throughout the West.

The economic panic of 1873 had focused the Congress on cutting federal budgets. A prime target was the War Department and the US Army. In January 1874 the chairman of the House Appropriations Committee, William A. Wheeler (R-NY) proposed slashing \$4 million from army expenditures. But westerners believed the army necessary to their communities. Congressman Charles Kendall, a Democrat from Nevada, asserted that the proposed cuts would "endanger the safety of those settlements and the lives of a people who found that vast country a wilderness, and have built up instead prosperous, powerful and advancing commonwealths." James Nesmith, a Democratic congressman from Oregon, protested "any proposed reduction of the military forces now employed for the protection of the frontier."⁴⁷ The congressional delegation from Texas added its concerns to the proposed budget cuts. However, House and Senate Republican majorities rammed through the cuts, which were signed into law by President Grant in June 1874.

As Texans had warned, the cuts left the border open to Kickapoo raids. The growing number of the Kickapoo raids and growing sense of general lawlessness along the border, prompted the Governor of Texas, and members of the Texas congressional delegation, to continually demand that the federal government do more to protect Texans

⁴⁷ Quoted in Robert Wooster, *The American Military Frontiers The United States Army in the West, 1783-1900*, 217.

and their property, and to undertake whatever military operations were necessary to halt the cross-border raids. The government needed to enforce law and order throughout the Texas-Mexico borderlands region. Governor Richard Coke of Texas wrote to President Grant imploring the aid of federal troops:

Peace cannot be secured by confining the operation of troops to this side of the river. As long as the west bank of the river is the inviolable sanctuary for the marauders, they will depredate on us as heretofore...⁴⁸

The press in Texas also joined the fray frequently publishing editorials that charged that the federal government had never devoted sufficient resources to their state.⁴⁹ One editorial focused on both the cross-border raids and of the inability to even maintain basic law and order along the border. The situation was described gloomily:

Throughout the Valley of the Rio Grande, from the mouth for a distance of two hundred miles upriver and one hundred and fifty miles back from it, crops, herds had been abandoned, the people dared not travel except in armed parties. The civil law outside the towns was suspended, and the sheriffs and judges reported that it was unsafe to attempt to execute processes of law outside of towns unless the officers of the law were accompanied by soldiers to protect them.⁵⁰

The off-year elections of 1874 saw the House revert to Democratic control. The Texas delegation now found itself a part of the party in charge, continuing to resolutely oppose all efforts to reduce the Army's budget and size further. In March of 1875, a

⁴⁸ Daniel Cosío Villegas, *The United States versus Porfirio Díaz* (Lincoln: University of Nebraska Press, 1963), 47.

⁴⁹ Ironically, as Robert Wooster points out, Texas probably exceeded its fair share of War Department resources; in 1856, for example, 25 percent of the entire US Army was stationed in Texas. From 1849-1900, the army disbursed some \$70 million in Texas. US Army on the Texas Frontier, <http://www.texasbeyondhistory.net/forts/military.html> Accessed April 8th, 2011.

⁵⁰ Daniel C. Villegas, *The United States versus Porfirio Díaz*, 44.

group of some 50 Mexican bandits crossed the border and rode over 150 miles into Texas and attacked the small town of Corpus Christi. While the damage and loss of life were minimal, the psychological impact was profound.

The Texan congressional delegation kept up the pressure and secured the establishment in early 1876 of a Special Committee of the House of Representatives whose goal was to examine "Texas-Frontier Troubles." The committee once again took evidence from a large number of witnesses and provided extensive documentary evidence of the number of incursions and the economic consequences. Against the backdrop of both the Mackenzie and the Corpus Christi raid, the committee issued a report that substantially reconfirmed the findings of the 1872 American Border Commission. It once again placed the blame mainly on Mexico for failing to police its side of the border.

All statements agree that the authority of the national government of Mexico is only nominal. If they would, they could send no troops there as they would desert and join the thieves. They have no forces to spare, and they cannot interfere with the livelihood of the robbers without risking the danger of driving them into the ranks of some revolutionary leader.⁵¹

In response, the Special Committee's conclusions included the following recommendation,

That in the view of the inability of the national government of Mexico to prevent the inroads of lawless parties from Mexican soil into Texas, the president is hereby authorized, whenever in his judgment it shall be necessary for the protection of the rights of American citizens on the Texas frontier above described, to order troops when in close pursuit of the robbers with their booty to cross the Rio Grande, and use such means as necessary for recovering the stolen property and checking the raids, guarding, however, in all cases against any unnecessary injury to the peaceful inhabitants of Mexico.⁵²

⁵¹ Special Committee of the House of Representatives to Investigate Texas Frontier Troubles, H.R. Report no 343, 44th Congress, 1st Session. 204 pages, vi-viii.

⁵² Ibid, xvii

Border enforcement, Texas-style

Before the Civil War, "long-standing questions of whether the national government was to possess the fundamental attributes of territorial and governmental sovereignty or was to serve only to coordinate the foreign relations of the constituent, federated states," had remained unresolved.⁵³ The onset of the Civil War witnessed a significant expansion of the power of the federal government. A "new American state" evolved to meet the challenges of making sure that "the laws of the Union be faithfully executed in all states."⁵⁴ During the decade following the readmission of Texas into the Union, the issue of controlling the southern border, and the role of both the federal government and the Texas state government, would test that thesis.

The primary task of the army continued to be the defense of the nation against external enemies, but the Constitution also affirmed the responsibility of the federal government to "ensure domestic tranquility."⁵⁵ The issue was a political catch-22: a well documented historical fear of a large standing army allied with a long-standing concern of excessive military intrusion into civilian law enforcement. And yet it was the army on both the frontier and along the international borders that had carried out a sizable range of law enforcement duties primarily because territorial governments lacked a sizable

⁵³ Richard Franklin Bense, *American Leviathan – the Origins of Central State Authority in America, 1859-1877* (Cambridge: Cambridge University Press, 1990), 1.

⁵⁴ First Inaugural Address of Abraham Lincoln, March 4, 1861. The Avalon Project – Documents in Law, History and Diplomacy, http://avalon.law.yale.edu/19th_century/lincoln1.asp

⁵⁵ The words 'border' and 'boundary' do not appear anywhere in the U.S. Constitution.

population base necessary to support a robust civil law enforcement operation, and because of questions regarding the impartiality of state militias in the application of federal laws.⁵⁶ This state of affairs continued to be an issue along the Texas-Mexico border.

In April 1875, the Department of Texas received a new commander, General Edward O.C. Ord. Historian Robert Utley describes Ord as being “of a somewhat disorderly and imprecise mind, a vigorous old campaigner with a reputation for physical prowess,” an individual who might “not have been the most appropriate commander for a troubled international frontier.”⁵⁷ One of Ord’s subordinate commanders was Lt. Colonel William R. Shafter, commander of the Twenty-fourth Infantry. Known as “Pecos Bill,” he was described as “profane, a harsh disciplinarian and had proved himself as an effective leader.”⁵⁸ The two men believed that the best method of dealing with the new wave of marauders crossing the border into Texas was to do precisely what Mackenzie

⁵⁶ For primary legislation affecting the army's role in civilian law enforcement, see U.S. Statutes at Large 1:242 (Act of 2 May 1792) and 2:443 (Act of 8 March 1807). Frederick W. Wilson, *Federal Aid in Domestic Disturbances, 1787-1903* (Washington, D.C.: GPO, 1903), is a well-documented survey; Homer Cummings and Carl McFarland, *Federal Justice: Chapters in the History of Justice and the Federal Executive* (New York: MacMillan Company, 1937), 545-549; Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878* (Washington, D.C.: Center of Military History, 1988).

⁵⁷ Robert Utley, *Frontier Regulars*, 350. Before his taking command in Texas General Ord had been in charge of the Department of California where he had also had to deal with raiding parties crossing the border. These raiders were primarily Apaches. In a letter, Ord described the Apaches as “robbers and murderers whose hands have always been bloody.” He went on to assert that the Apaches had to be crushed, believing it necessary to “annihilate the enemy.” Quoted in Robert Wooster, “A Difficult and Forlorn Country:” The Military Looks at the American Southwest, 1850-1890,” *Journal of the Southwest*, Vol.28, No. 4 (Winter, 1986) pp.339-356, 345-46.

⁵⁸ Quoted in Robert M. Utley, *Frontier Regulars*, 350.

had done in 1873. They did not care if their actions might violate the territory of a recognized and ostensibly friendly neighbor and ignore international law.

In November 1875, following a raid across the Rio Grande by Mexican rustlers, a detachment of Texas Rangers crossed into Mexico led by Captain L. H. McNally. Before crossing the border, he urged his Rangers to give “the Mexicans a “Texan lesson” which they had forgotten since the war of 1848.”⁵⁹ They were confronted by a large force of regular Mexican troops at Las Cuevas near Camargo. A contingent of US Army regulars subsequently crossed the border in support of the Texas Rangers. Under orders from superior officers, the force, led by Captain James Randlett, withdrew but not before exchanging fire with the Mexican troops.

The issue caused consternation within the State Department. The Governor of Texas appeared to be increasingly sanctioning the use of state troops over the border into Mexico and drawing the federal government into a position of having to support state actions that would undoubtedly have international ramifications. The issue also risked putting both State and War Departments in a policy impasse. For his part, Governor Coke argued that if in 1873 Colonel Mackenzie, an officer in the regular Army, had invaded Mexico without meriting the disapproval of any of his superiors, he did not see why Texas troops could not undertake what federal troops had already done earlier.

The governor found a firm ally in General Ord. Throughout 1876 and into 1877, General Ord not only countenanced frequent raids into Mexico apparently with the War Department's tacit agreement; he even began to advocate some form of occupation of

⁵⁹ Quoted in Daniel C. Villegas *The United States versus Porfirio Diaz*, 47.

northern Mexico. In his mind, the only way to defeat the frequent cross-border attacks and the spreading of lawlessness was to simply take over the northern Mexican states. Historian Robert Gregg notes how Ord “dealt tactfully with the subject or maintained silence, but in his private letters to his superior officer, General Sherman, ‘unburdened his soul’ on the issue of Mexico⁶⁰

In early 1877, General Ord openly advocated occupation of northern Mexico. In writing a letter to Secretary of State William Evarts, Ord wrote that he "had given up all hope that there are loyal men of sense enough in Mexico to keep it all together – or to keep its bandits from plundering whatever stock is seen running at large – now that being the case what are we to do?" In Shafter's eyes the answer to his commanding officer's question was simple, "full authority to operate in Mexico as we choose is the only way in which life and property can be made secure on this frontier."⁶¹

Further complicating any effort to deal with the escalating troubles on the border between Texas and Mexico was the lingering impact of the disputed US presidential election in 1876. Another complication was the revolution that had broken out yet again in Mexico. Revolutionary forces led by Porfirio Díaz had toppled the government of Sebastián Lerdo de Tejada and installed Díaz into power. The evolving standoff along the border could be used successfully by the leaders of both countries for their political ends. Hayes could use the ongoing troubles on the border to avert attention from the disputed election which still had some Americans thinking that civil war could break out again.

⁶⁰ Gregg, Robert D., *The Influence of Border Troubles on Relations between the United States and Mexico, 1876-1910* (New York: Da Capo Press, 1937), 43.

⁶¹ Quoted in Daniel C. Villegas, *The United States versus Porfirio Díaz*, 49.

Díaz could use the incursions by American forces as a rallying call for his revolutionary forces to consolidate the power of his new revolutionary government in Mexico City. As Robert Utley writes, “a sort of war of nerves developed” between Hayes and Díaz. “Hayes used Díaz’ need for US recognition as a lever to force Mexico to remedy the border situation, and Díaz, refusing to be intimidated used the US demand for a remedy, particularly for a treaty permitting border crossings in hot pursuit, as a lever to pry loose recognition.”⁶²

Díaz understood only too well that concessions to the United States, while US forces either were on Mexican territory or threatened incursions, would imperil his government. Mexican regular troops dispatched to the Texas-Mexico border had orders to shoot any American soldiers found on the Mexican side. Díaz was also a realist, however, and understood only too well the value of improved friendship with the United States. He likewise sought to convey the message to American businessmen that stabilization of relations between Mexico and the United States would offer substantial opportunities for attractive investment and commercial opportunities in Mexico.

The situation deteriorated markedly in the early summer of 1877. Colonel Shafter had reported to General Ord in May that “Indians were now taking refuge in Mexican towns,” and had asked General Ord, “how far in such cases can I authorize the troops to go. ”” Following a meeting of the cabinet with President Hayes, Secretary of War George McCrary, gave General Sherman an answer to Shafter’s question. The issuance of the Order of June 1, 1877, expressed the president’s desire to secure cooperation with the

⁶² Utley, *Frontier Regulars*, 351.

Mexican government on the issue of the growing cross-border raids. If, however, “the government of Mexico shall continue to neglect the duty of suppressing these outrages, that duty will devolve upon this government, and will be performed even if its performances should render necessary the occasional crossing of the border by our troops.”⁶³ General Ord further ordered that “when in pursuit of a band of marauders, and when his troops are either in sight of them or upon a fresh trail, to follow them across the Rio Grande, and to overtake them and punish them.”⁶⁴

The reaction to the order in Mexico was, as expected, openly hostile. Robert Gregg provides numerous examples from the Mexican press of the type of response. *El Federalista* viewed the order as “a serious offense to the national dignity and the sovereignty and independence of Mexico.” *El Colonia Española* argued that the question involved a fundamental clash between two races. It was not one of the “family quarrels” which had marred the relations between Mexico and Spain. *El Monitor Republicano* characterized the order as “a formidable threat of the nation that not without reason has been called the American colossus.” The editorial also advanced the idea that the order was designed to “distract American public opinion from the circumstances of his own election.”⁶⁵

In the United States, opposition came from both the Democrats in Congress and the Democratic media. *The Sun*, a tabloid newspaper in New York City and a supporter of the Democratic presidential candidate Samuel Tilden in the 1876 presidential election,

⁶³ Quoted in Robert Gregg, 51.

⁶⁴ Quoted in Utley, *Frontier Regulars*, 352.

⁶⁵ Quoted in Gregg, 53.

criticized the level of power given to General Ord. The paper equated it with the ability to start a war and speculated on the real reasons behind the president's approval. An editorial lambasted “the cunning device of Mexican annexation by which Mr. Hayes and Mr. Evarts [Secretary of State] hope and expect to draw public attention away from the fraudulent title by which they hold their posts.”⁶⁶

In September, Col. Shafter crossed the border into Mexico. This time the targets were Lipan and Mescalero camps near Saragossa. Smaller raids conducted in the fall of 1877, resulted in Mexican protests and threats to take action but no actions resulted.⁶⁷ As with the action of Colonel Mackenzie, the actions of General Ord and Colonel Shafter were immediately lionized by Texans. Congressman Gustave Schleicher of Texas assured General Sherman that “General Ord was among the most popular and requested men in Texas.”⁶⁸ Congressman Schleicher was also both a leading proponent of employing federal forces on the frontier and a persistent advocate to President Hayes for the use of federal forces. In a letter to the president in May 1877, laced with vitriol aimed at anyone living south of the Texas border, he implored him to take action. “On a frontier line separating us from a turbulent population, controlled by no government, but simply a conglomeration of robber villages,” he wrote, “it becomes the duty as well as the right of

⁶⁶ *New York Sun*, June 2nd, 1877

⁶⁷ In November 1877, reports and correspondence from the US Secretaries of State and War dating back throughout 1877 and relating to Mexican border troubles were published by the House of Representatives. The aim was to clearly continue to build the diplomatic and legal case against Mexico, citing Mexican inaction and adding to the call for proactive American actions. Message from President of the United States, Mexican Border Troubles, 45th Congress, 1st Session, House Document No. 13, 244 pages.

⁶⁸ Quoted in Wooster, *The American Military Frontiers*, 240.

our government to protect and defend our own people against invading robbers, and that all steps incident and necessary to an efficient defense are more than justifiable.”⁶⁹

President Hayes now confronted a series of issues that were combining to exert pressure on him with regards the border problems. A growing concern throughout 1877 was the use of federal troops to enforce civilian laws. The Democratic majority in the House of Representatives in the 44th Congress included many southern Democrats who harbored a distinct grudge against the Grant administration for its acquiescence to the request from Republican governors in Louisiana and South Carolina to station federal troops in the vicinity of polling places. Most southern Democrats viewed this move as pure intimidation of voters that had resulted in the election of Hayes to the presidency. The Democratic majority sought to employ the power of the federal purse to hit back at the administration.

The House voted to reduce the size of the army to pre-Civil War levels and to prohibit the use of federal troops from guarding polling places. The Republican Senate did not pass the appropriations bill with the prohibition rider attached. The result was the adjournment of the 44th Congress on March 3rd, 1877 with no military appropriations bill. For the majority of 1877, the US Army went unpaid.⁷⁰ Once again the Texas delegation had been caught in the crossfire. They shared the views of other southern Democrats at the resentment of Reconstruction and the use of the federal military around polling places. They valued the army's efforts to halt the cross-border raids from Mexico and

⁶⁹ Mr. Schleicher to the President, May 7, 1877, Included Mexican Border Troubles, 45th Congress, 1st Session, Executive Document No. 13, Miscellaneous, N. 43.

⁷⁰ Cited in Charles A. Byler, *Civil-Military Relations on the Frontier and Beyond, 1865-1917* (Westport: Praeger Security International, 2006), 27.

particularly applauded the actions of General Ord and voted against decreasing the size of the army and the prohibition of the use of federal forces in polling places.

The situation did not change substantially when the first session of the 45th Congress assembled in October 1877. The army still had not been paid, they remained engaged along the Texas-Mexico border, but the summer of 1877 had also brought the deployment of regular army forces to break the summer's railroad strikes. The strikebreaking actions reinvigorated the demands for legislation to prevent the use of federal troops in enforcing civilian laws and to cut the size of the army again.

Once again members of the Texas House delegation broke ranks with their party and voted for a Senate amendment that blocked new cuts on the army. On November 17, 1877, the House voted 134-129 for a new army appropriations bill with no cuts to the force levels with all the Texas delegation voting in favor. Both issues, however, would be re-visited in the second session of the 45th Congress.⁷¹

On November 23, 1877, the House Committee of Military Affairs held its annual hearings on accepting the annual report from the Secretary of War on levels of preparedness and state of the US Army. The hearings devolved into an examination of the ongoing problems on the Texas border and continued through January 1878.⁷² The

⁷¹ 44th United States Congress – First Session: December 6, 1875 to August 15, 1876; Second Session: December 4, 1876 to March 3, 1877; 45th United States Congress – Special Session: March 5, 1877 to March 17, 1877; First Session: October 15, 1877 to December 3, 1877; Second Session: December 3, 1877 to June 20, 1878; Third Session: December 2, 1878 to March 3, 1879; 46th United States Congress – First Session: March 18, 1879 to July 1, 1879; Second Session: December 1, 1879 to June 16, 1880; Third Session: December 6, 1880 to March 3, 1881.

⁷² Committee on Military Affairs in Relation to the Texas Border Troubles, 45th Congress, 2nd session, Misc Document No. 64, 305 pages.

Secretary of War was asked his opinion of allowing US troops to cross the border in pursuit of raiders who had crossed into the United States. His answer straddled the question but also showed a growing concern with the possibility of a much larger clash taking place with regular Mexican forces.

I think it is a matter of necessity to sometimes to allow our troops to cross in pursuit of raiders if we are to suppress that raiding at all unless we can bring a much larger force to bear upon the border than we have there at present. If these marauders can come into Texas and steal and plunder, and be secure as soon as they reach Mexican soil again, and if the Mexican authorities have not the power or the disposition to punish them, then it follows that these troubles must continue indefinitely, unless we choose to go to war in order to redress our wrongs. I wish it were possible to protect our people in Texas without crossing the line.⁷³

The possibility of accidental clashes with the regular Mexican forces was also uppermost in the mind of Lieutenant-General Sheridan who commanded the Department of the Missouri under which the Department of Texas resided. When asked about the possibility of an accidental clash taking place Sheridan replied:

I have no idea that the Mexican government will provoke hostilities by an armed regular force; but it is possible that some accident might occur which would bring about a collision. This might lead to trouble. Whether it would amount to a war or not I am unable to say; but it is my belief that the Mexican government would very reluctantly engage in hostilities with the United States.⁷⁴

Robert Wooster notes that the success of the appropriations bill with the support of the Texas delegation prompted General Ord to “capitalize on the alliance.” He wrote to Congressman Schleicher that “If the Texas delegation will in a body call on the President to let Texas have that part of the Army, 5,000 men, for her protection, which that

⁷³ Ibid, 3-4

⁷⁴ Ibid, 67.

delegation secured to it by their votes, they can I am sure get it.”⁷⁵ At this point General Sherman, while continuing to harbor his doubts about the suitability of General Ord, concluding "that a cooler and less spasmodic man" would be more suitable to command the Rio Grande Valley, did concede that the regular army must "quiet the clamors of the Texas people, and of the Texas representatives, who have us at their mercy." Sherman knew well that without the continued support of the Texas delegation the army ran the risk of being virtually gutted in both strength and appropriations in future congressional sessions.

The key demand of the Texas delegation was the return of Colonel Mackenzie to a command in Texas. The army complied and within a matter of months of his return to Texas, Mackenzie led, with the full authority of General Ord, another raid into Mexico. The objective this time “a demonstration against the Mexican troops at Rey Molino on June 19, and again at Monclovia , Mexico, on June 21, 1878.”⁷⁶ Following Díaz’s orders to station more substantial numbers of regular Mexican forces nearer the border Mackenzie's force ran into a large contingent of Mexican regulars around Rey Molino and at Monclovia Viejo although Mackenzie still possessed the larger force. It is unclear exactly what took place, but the recounts of Wallace who had remained with Mackenzie appear to point towards the Mexican troops adopting a more non-confrontational posture and exercising a significant degree of flexibility. Twice Mackenzie marched his forces

⁷⁵ Quoted in Wooster, *The American Military Frontiers*, 241

⁷⁶ John H. Nankivell, *Buffalo Soldier Regiment History of the Twenty-fifth United States Infantry, 1869-1926* (Lincoln: University of Nebraska Press, 2001), 29.

directly at the Mexican troops, and twice they gave way rather than contend with the American force, and Mackenzie then returned to American territory.⁷⁷

General Sheridan in his report to the Adjutant-General in October 1878 on the state of affairs along the Rio Grande advocated “Congress pass an act that from and after a certain fixed time if depredations in Texas are not discontinued, a force of troops be sent across at certain points and kept there until depredations entirely cease. The moral effect of such Congressional action would, in my opinion, prevent all further trouble.” In Sheridan’s view, testimony to the potential strategic value of such a step by the US could be found in the success of Mackenzie’s incursion into Mexico in June. “That the evident desire on the part of the Mexican authorities to cooperate more fully with the United States troops in the suppression of lawlessness and depredations along the Rio Grande was brought about by the expedition under Colonel Mackenzie into Mexico,” he wrote.⁷⁸

Sheridan deftly tied Secretary of War George McCrary into the process by noting “the Secretary of War, in his report to the President for 1878, evidently had the expedition in mind when referring to affairs on the Mexican Border.” Sheridan then quoted from McCrary’s report: “The increase of our force in the vicinity of the Rio Grande, and the vigorous policy which for some time has been pursued in dealing with marauders invading our soil from Mexico, have produced the result predicted in my report of one year ago.” In Secretary McCrary’s view, the “result” was “a considerable Mexican force [that] has been sent to the vicinity of the border to operate against the

⁷⁷ Ibid., 32-33.

⁷⁸ Ibid., 31.

bands of Indians infesting that region, and the avowed purpose of the Mexican government to put a stop to raids upon our people and territory.”⁷⁹

By June of 1878 and Mackenzie's latest incursion, the Díaz government had indeed consolidated their hold on power. With rumors of an imminent outbreak of war between the two countries sweeping both capitals, both governments took a step back from the brink. A series of negotiations led to the Díaz government being extended recognition by the Hayes administration. By exercising a significant degree of rationality and the bait of substantial investment opportunities in Mexico, Díaz managed to ratchet down the tensions on the border slowly. His consolidation of power and the positioning of governors in border states loyal to Díaz helped significantly in starting to bring stability to the border. As Robert Utley notes, the actions of General Treviño also had a significant impact. Treviño was a Díaz supporter who in 1878 began to actively pursue bandits, outlaws and raiding Indian parties on the Mexican side of the border. Some American officers argued that this was in direct response to the continued American incursions and out of a sense of humiliation. It also cannot be overlooked that General Treviño was married to General Ord's daughter and the impact of personal relationships was significant.⁸⁰

While the Hayes administration was dealing with the issue of Mexico, the 2nd session of the 45th Congress was also revisiting the issues of the size of the army and its role in enforcing civilian laws. On May 27, Congressman J. Proctor Knott of Kentucky attached a rider to the Army appropriations bill. The rider read:

⁷⁹ Ibid.

⁸⁰ Utley, *Frontier Regulars*, 355.

From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section and any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding ten thousand dollars or imprisonment not exceeding two years, or by both such fine and imprisonment.⁸¹

The Knott amendment – which became known as the Posse Comitatus Act – was approved by both houses of Congress and signed into law by President Hayes as part of the Army Appropriations Act of June 1878. The ruling meant that troops could no longer be used without any lesser authority than that of the president of the United States. A ‘cease and desist’ proclamation must be issued before authorization was granted. Commanders in the field, such as those along the Texas-Mexico border, would no longer have any discretion but must wait for orders from Washington, DC. No longer could local sheriffs or federal marshals summon local military help to enforce civilian laws.

Despite two years of blunt language being frequently employed by both Mexican and American diplomats the situation on the Texas-Mexico border stabilized and calmed down. On February 24, 1880, Secretary of War Ramsey issued General Order Number Four rescinding the June 1, 1877, General Order Number One. Citing Ord’s reports the secretary wrote "having stated in his annual report that the condition of affairs which rendered necessary the order of, June 1, 1877, to cross the border between the United States and Mexico, in his opinion no longer exists, as the Mexican Government has

⁸¹ *Congressional Record*, 44th Cong., 2nd sess. (1877), 20 *Statutes at Large*, 142-152, Today it is Section 1385 of Title 18 of the U.S. Code.

shown its ability and determination to put a stop to the invasions of the United States which gave rise to it..." But Secretary Ramsey made clear that once this information had been communicated to the Mexican military authorities along the border, General Ord was to maintain "the utmost vigilance on his side of the line, and a prompt report of any change or disposition in the part of the Mexican military force that may endanger the permanence and security of the present peaceful situation on the border."⁸²

President Hayes, despite the strong objections of General Sherman, also forced the retirement of General Ord. He replaced him with General Nelson Miles in a further effort to ratchet down the tensions on the border. General Miles, who had been the central figure on the northern border dealing with both the Nez Perce and the Sioux, was also known to be a volatile commander and did not have a good relationship with General Sherman.

The Arthur administration eventually negotiated joint agreements with Mexico to permit troops of either nation to cross the boundary only in pursuit of raiding Indians. This agreement became the format by which American and Mexican forces prosecuted the final campaigns against the Apaches in the far southwest.

With the border tensions slowly abating the Díaz government began making good on its promises to American businesses to open the country to investments. Diaz pursued a program of modernizing Mexico in the image of the United States and Argentina. He dramatically expanded Mexico's railroad system linking it into the advancing American railroad expansion in the southwest. He sparked a massive land accumulation mainly

⁸² Nankivell. *Buffalo Soldier Regiment*, 34.

through foreign investments, most notably from the United States in particular from the growing agribusiness community. In 1884, the completion of the railroad at El Paso, Texas, directly linked Mexican workers in the populous central regions of Mexico to jobs north of the U.S.-Mexico border. The expansion of U.S. capital in Mexico created corridors of migration that brought Mexican workers north when the southwestern agribusiness boom began in the early twentieth century.

The army, now prohibited under the Posse Comitatus law from aiding civilian law enforcement, continued its campaigns against the last remaining Native American tribes who were still resisting the policies of the federal government. Army leaders realized, however, that the danger of further congressional restrictions on budget and manpower numbers would exist as long as the public perceived that the regular army had no critical function. In the 1880s, with the Indian wars drawing to a close and no powerful enemies threatening the United States from without, officers struggled to find a purpose for the army that would convince Americans of its indispensability.

Conclusion

Throughout the tenure of the Díaz presidency, an increased resolution of problems in the border region took place. Relations between the two countries started to strengthen but, just as with Canada, there remained a lingering sense of unease among many Mexicans in regards American regional plans. Would there be further efforts at some form of annexation of Mexican border territories? The active encouragement of American investment, wholly welcomed by American businesses such as the railroads,

clearly helped promote warmer relations and an ongoing effort to solve problems along the border.

The US Army was still technically responsible for the protection of all of the country's borders and retained a mission that provided at least a partial rationale for maintenance of a force. While the Posse Comitatus Act had introduced a new legal dimension in regards assisting civilian law enforcement and military authorities were hesitant to challenge the law, ways were found to circumnavigate the law's restrictions. It did not affect the right of the army to protect national boundaries and public property, but the issue of requiring a presidential proclamation to assist civilian law enforcement would push Border States particularly to continue to look for in-state assets such as the Texas Rangers to provide coverage along the border.

The focus in the late 1880s and early 1890s mainly shifted from Texas to the southwest border and the ongoing fight against the Apaches. There existed no apparent threat of invasion from Mexico or Canada. The argument over whether the army was to devolve into simply a constabulary force while other armies around the world, most notably in Europe, were evolving into modern, well-armed and efficient fighting forces, would constitute a significant debate amongst the ranks of the military throughout the last two decades of the 19th Century.

CHAPTER FIVE

President Chester Arthur delivered a Special Message to the U.S. Congress on April 26, 1882. The topic, the "alarming state of disorder within the Territory of Arizona and along the border with Mexico." the president drew attention to "reports that violence and anarchy prevail, particularly in Cochise County and along the Mexican border." People were being intimidated, and "losing confidence in the protection of the law," and "the civil officers have not sufficient force to make arrests and hold the prisoners for trial or punish them when convicted."¹

President Arthur highlighted the "predatory incursions" made from Mexico into the Territory facing little opposition from civilian law enforcement along the border. He supported the call from the Governor of the Territory to allow for the formation of a volunteer militia to assist state and local law enforcement. The president also sought an amendment to the 1878 Posse Comitatus legislation to facilitate the deployment of the U.S. military to aid civil law enforcement being overwhelmed in their efforts to enforce existing laws. Ten days after his April 26 Message to Congress, President Arthur signed a

¹ Chester A. Arthur: "Special Message," April 26, 1882. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=68732>.

revised version of the Chinese Exclusion legislation adding a further layer of enforcement along the country's borders.²

The Department of the Treasury remained the primary federal agency exercising jurisdictional control of the country's borders — land and maritime — through the majority of the 19th century. The primary objective of the Customs Bureau remained the collection of revenues for the federal government whether from tariffs goods entering through American ports or collecting duties on cattle crossing the land border from Mexico into the United States. The promulgation of the Chinese Exclusion Act assigned yet another enforcement duty to the Customs Bureau, but the U.S. Congress still failed to consider expanding the Customs Bureau or creating a dedicated enforcement unit to address the enforcement issues within the Exclusion Act.

The focus of chapter five begins with the decade of the 1880s and the efforts of the Customs Bureau to enforce a series of expanding immigration restriction laws passed by the U.S. Congress, and how quickly the “Chinese inspectors” of the Customs Bureau are overwhelmed with the enormity of the task on both land borders. The establishment of a federal bureaucratic organization within the Department of the Treasury dedicated to the oversight and operation of federal immigration laws in the early 1890s comes with an increasing call for a dedicated land border force, initially to enforce immigration laws.

Individuals such as Terence Powderly, Frank Sargent, George Pattison, Robert Watchorn, become the champions of the formation of a dedicated land border enforcement agency, although never to a successful conclusion. The U.S. Congress,

² An act to execute certain treaty stipulations relating to Chinese, 47th Cong., sess.,1, ch. 126, 58-61, May 6th, 1882.

however, continued to pass additional restrictive legislation, and throughout the first decade of the new century, both land borders remained focal points for illegal entry into the United States. Efforts to control immigration into Canada, and the pass-through element into the United States, does have an impact, but revolution, once again, in Mexico, compounds enforcement issues along the southern border.

Lack of Proper Enforcement Machinery

The passage of the Chinese Exclusion Act of 1882 in response to growing anti-Chinese agitation in western States, and the subsequent Act to Regulate Immigration of the same year,³ were "seminal pieces of restrictive legislation."⁴ The legislation explicitly targeting Chinese immigration would have an immediate effect with regards the enforcement duties of the Customs Service on both borders. Under the legislation Collectors of Customs took the lead because of the maritime nature of immigration.⁵

³ The Chinese Exclusion Act of 1882, 47th Cong., sess. I, Chap.126, 22 Stat.58, May 6, 1882 instituted a ten-year suspension of the immigration of Chinese laborers into the United States permitted those Chinese in the United States as of November 17, 1880, to stay, travel abroad, and return; prohibited the naturalization of Chinese; and created the Section 6 exempt status for teachers, students, merchants, and travelers. Entry for exempt classes required a certificate from the Chinese government. An Act to Regulate Immigration of 1882, 47th Cong., sess. 1, Chap.376, 22 Stat. 214, August 3, 1882, mandated screening for "any convict, lunatic, idiot or any person unable to take care of himself without becoming a public charge" would be denied permission to land in the United States.

⁴ Ettinger, "We Sometimes Wonder What They Will Spring on Us Next," 163.

⁵ The Chinese inspectors joined state officials and customs collectors in enforcing the new restrictive law. The customs collectors continued their duty of collecting the tax of fifty cents levied on every non-U.S. citizen who came from a foreign port. The Treasury Department's "immigrant fund" was the beneficiary of the tax. Under the rubric of the Exclusion Act, "The money thus collected shall be used to defray the expense of

Customs established a Chinese Bureau without any supplemental appropriations to staff the new bureau. The legislation also failed to include any reference to enforcement along the length of the two land borders. Presumably, the assumption being on the part of the US Congress was that the Customs Service would adapt its small force of mounted inspectors to incorporate the new duties of preventing the smuggling of Chinese across the land borders. Once again it demonstrated a lack of understanding of the necessary logistics and dimensions of policing an international boundary on the part of the Congress.

The reaction of Chinese communities, particularly a focal point such as San Francisco, was not anticipated by the U.S. Congress. Laurence Taylor Hansen demonstrates how the Chinese community in San Francisco was more than ready to take on the challenge of the imposed legal restrictions and the Customs Service initial efforts at policing both ports and the land borders. Working through The Six Companies, or Chinese Consolidated Benevolent Association, based in San Francisco, the smuggling of Chinese across the U.S- Mexico border, evolved into a significant trafficking operation from 1882 until 1930. "An important factor that facilitated contraband activities was the nature of the border itself. Not only was it very extensive but there were few large towns

regulating immigration under this act, and for the relief of such as are in distress, and for the general purposes and expenditures of carrying this act into effect." Roy L. Garis, *Immigration Restriction: A Study of the Opposition and Regulations of Immigration in the United States* (New York: Macmillan Co., 1927), 88.

and innumerable isolated points where one could cross the line without being detected by immigration agents or other border officials."⁶

Ettinger describes the area of British Columbia bordering on the Washington Territory as “not surprisingly” the first major conduit for smuggling Chinese over the northern border following the passage of the Exclusion Law. The Chinese very quickly “availed themselves of natural advantages found in the physical and cultural geography of the Canadian-American borderlands.”⁷The *Los Angeles Times* described the smuggling across the northern border as a “thriving business,” with “Victoria having become a rendezvous for Chinese seeking to cross over to the United States.”⁸ The *New York Times* went further, also taking to task the media. “Since the Restriction act went into force, it is safe to say that thousands of Chinese have been smuggled into this country from the port of Victoria alone,” and “we are amazed at the amount of ignorance displayed by the press in this matter.” With regards the abilities of the Customs Service on the northern border,

⁶ Lawrence Douglas Taylor Hansen, “The Chinese Six Companies of San Francisco and the Smuggling of Chinese Immigrants across the U.S. – Mexico Border, 1882-1930” *Journal of the Southwest*, Vol. 48 No. 1 (Spring 2006) 37-61,48. Cross-border smuggling was only one of the tactics employed to defy the Exclusion Act. The legal system was likewise very efficiently used by Chinese immigrants provoking resentment and frustration on the part of many in Congress and within those responsible for enforcing the restriction laws. See Lucy E. Saylor, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995); Erika Lee, *At America’s Gates: Chinese Immigration during the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2003).

⁷ Ettinger, “We Sometimes Wonder What They Will Spring On Us Next,” 163.

⁸ Smuggling Chinamen. (1883, Oct 04). *Los Angeles Times* (1881-1886) Retrieved from <https://search-proquest-com.mutex.gmu.edu/docview/161222519?accountid=14541>

the article concluded, “It would require a force of at least 500 men to effectually guard our Northern frontier line against those Mongolian hordes.”⁹

The efforts of the Customs Service to enforce the laws throughout the 1880s became more complicated as a direct result of the ever-expanding list of excludable classes added by the US Congress. Passage of the Contract Labor Law in February 1885 prohibited the immigration of aliens under contract to labor, declaring all such agreements and contracts “utterly void and of no effect.”¹⁰ Enforcement of the law devolved to the Customs Service.¹¹ In October 1888, the US Congress also extended to the Secretary of the Treasury, and by default the Customs Service, the power to deport individuals who had been “allowed to land contrary to the prohibition of the law.”¹²

Jefferson Davis Milton was one of the mounted inspectors who struggled to enforce the growing list of laws. Initially a Texas Ranger, Milton joined the ranks of the US Customs Service mounted inspectors in March 1887 as a political appointee. As a political appointee, along with the majority in the Customs Service, he was subject to the whims of political turnover following a presidential election.¹³ This served to complicate further establishing any form of professional continuity within the Customs Service.

⁹ Smuggled Chinamen. (1884, Jul 07). *New York Times* (1857-1922) Retrieved from <https://search-proquest-com.mutex.gmu.edu/docview/94202661?accountid=14541> It is interesting to speculate whether the NY Times was alluding to that area of the border across from Victoria, British Columbia, for a force of 500 Customs Inspectors or the entire length of the northern border. The latter clearly would not have worked either.

¹⁰ Contract Labor Law of 1885, 48th Cong., sess. II Chap. 164; 23 Stat. 332-333, February 26, 1885. The law is also known as the Alien Contract Labor Law.

¹¹ Roy Garis, *Immigration Restriction*, 90.

¹² *Ibid.*, 92-93.

¹³ Milton would, in fact, lose his appointment in 1899 as the result of a ‘house-cleaning’ that took place in the Customs Service during the McKinley administration.

Reflecting the general challenging situation Milton was one of eleven inspectors stationed between El Paso and the Pacific coastline – the Custom Collection District of El Paso. He patrolled, alone, on horseback from Nogales to the Colorado River below Yuma. His primary mission remained the collection of duties on goods brought across the border, but he was also expected to prevent smuggling of Chinese and cheap untaxed liquor and to oversee the return of all apprehended Chinese back to and across the border with Mexico. ¹⁴

Within four years of the passage of the Alien Contract Labor Law, the enormity of the task of guarding, or at least regulating and administering the flow across the borders, the role of the States and limited federal resources on hand was beginning to register on Capitol Hill. In January 1889 a Congressional Select Committee issued "the Report of the Ford Committee," which had been conducting investigations into alleged violations of the immigration laws along both borders and in the major maritime ports of entry. The report stated: "Owing to the large number of immigrants received each day during the spring and summer months questions must be asked rapidly, and the inspection is necessarily done in a very hurried manner, in order that there may be no undue delay in landing them..." Noting that the state of New York was spending more than \$20 million annually "to take care of paupers, insane persons, etc. [sic]," the report concluded, "this condition of affairs is largely due to improper immigration."¹⁵

¹⁴ Bill Broyles and Mark Haynes, *Desert Duty: On the Line with the U.S. Border Patrol* (Austin: University of Texas Press, 2010) 5.

¹⁵ "Select Committee of the House of Representatives to Inquire into the Alleged Violation of the Laws Prohibiting the Importation of Contract Laborers, Paupers,

The report, focusing on the land borders, concluded: "Along the border between Canada and the United States no inspection whatever is made of immigrants: and aliens paupers, insane persons, etc., may land at Quebec and at once proceed to this country without any let or hindrance. The number of persons not lawfully entitled to land in the United States who thus arrive in this country by way of the Canadian frontier is rapidly assuming large proportions, and has become a matter of serious contemplation." The report's findings likewise noted: "At many of the points along the border no account whatsoever is kept of the number of immigrants arriving in the United States whose landing on this continent was first effected in Canada."¹⁶ Amazingly the Select Committee, despite visits to major maritime ports and points of entry along the border to hear witness testimony and given the background of the 1882 Exclusion Act, noted: "In view of the limited time at the disposal of the committee no effort has been made to investigate Chinese immigration."¹⁷

The conclusion of the Select Committee findings opened the legislative door for the beginning of the assumption of federal bureaucratic control of both immigration, and in Ettinger's words, the federal government began to assert "efforts to fortify American

Convicts, and Other Classes" 50th Cong., 2nd sess., *Report* No. 3792. (Washington, D.C.: Government Printing Office, 1889), 2.

¹⁶ *Ibid.*, 3.

¹⁷ *Ibid.*, 4. A separate Select Committee on Immigration and Naturalization issued an independent report on the impact of Chinese immigration. The report consisted of joint hearings conducted by the House Select Committee with the Senate's new Standing Committee on Immigration. Report of the Select Committee on Immigration and Naturalization, Washington, D.C.: Government Printing Office, 1891, No. 2886. In 1891 and 1892 subsequent hearings were conducted under the guidance of the new House Standing Committee on Immigration and Naturalization.

land borders as an incidental consequence of complex and competing political effort.”¹⁸ The findings likewise built on the Supreme Court’s 1876 decision in the *Chy Lung v. Freeman* case that came to see immigration control as an inherent federal power, inextricably linked to the power over foreign affairs and a nation's ability to defend its sovereignty including the policing of its land borders and maritime ports.¹⁹

The committee concluded, "the non-enforcement of these acts of 1882 and 1885 is not so much due to the want of diligence on the part of the officials having their administration in charge as it is to a lack of proper machinery to carry them into effect." That "proper mechanism" in the view of the committee was that "the enforcement of all acts designed to regulate immigration should be intrusted [sic] to the Federal Government and not to the States. The regulation of immigration is a matter affecting the whole Union, and is pre-eminently [sic] a proper subject for Federal control."²⁰

The US Collector of Customs within the Treasury Department “that repository of dirty jobs to be done for the government was given one of the dirtiest when it was asked to

¹⁸ Ettinger, “We Sometimes Wonder What They Will Spring on Us Next,” 162-163.

¹⁹ *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875). Justice Miller in delivering the unanimous verdict noted: “The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to the Congress, and not to the States. It is the power to regulate commerce with foreign nations: the responsibility for the character of those regulations, and for the manner of their execution, belongs solely to the national government." Two other states, New York and Louisiana, had similar statutes challenged at the same time and were covered by the findings in the *Chy Lung v. Freeman* decision. By implication, therefore, although not specifically referenced, the control of the land borders commensurate with "the manner of their execution" lies within the jurisdiction of the federal government.

²⁰ Select Committee to Inquire Into Alleged Violations of the Law, 4.

coordinate the enforcement of the Chinese Exclusion Act."²¹ Supplementing the regular Customs officials who collected the "head tax" from immigrants, a new group of enforcement personnel were hired and became known as the "Chinese inspectors." They were field operatives working under the jurisdiction of the Collector of Customs. They were specifically assigned to handle Chinese cases, and held posts in major cities, predominantly on the West coast such as Seattle, Portland, San Francisco, San Diego, and in smaller towns such as Washington and Astoria. Inspectors in the smaller towns functioned as subsidiaries of a major city, with the local inspector referring a recommendation for the approval or declining of an application from a Chinese immigrant for entry to the United States.

Customs Collectors and "Chinese inspectors" also operated along both land borders, but their numbers were woefully inadequate in comparison to the length of both borders with "trouble spots [that] stretched from Puget Sound Washington to Plattsburgh, New York."²² Railroad border crossing points on both borders were, understandably, significant areas of focus for "Chinese inspectors," one example being the two border towns of Sonora, Mexico, and Nogales in the Arizona Territory. The Sonoran Pacific Railroad that ran from the Mexican port of Guaymas to Nogales where it joined lines to

²¹ Carl E. Prince, *The U.S. Customs Service: A Bicentennial History* (Department of the Treasury, U.S. Customs Service: Washington, D.C. 1989), 173.

²² *Ibid.*, 190. For more on enforcement at Puget Sound, see Roland L. DeLorme, "The U.S. Bureau of Customs and Smuggling on Puget Sound, 1851-1913," *Prologue*, Vol. V (1993), 81.

San Francisco grew into a particularly lucrative route for Chinese smuggling operations.²³ Chinese Inspectors confronted equally challenging operations along the eastern section of the northern border as crossing over the western part became too risky. New arrivals were transported to Toronto or Montreal, by an apparently acquiescent Canadian Pacific Railroad, then subsequently moved through one of the eastern border crossings into New York or Vermont.²⁴

The Select Committee's report on Chinese Immigration received extensive evidence from witnesses testifying to the scarcity of resources the length and breadth of the US borders. George Pattison, a Chinese inspector, working under the collector of Customs of San Francisco, informed the committee of a litany of problems along the southern border. When asked by a member of the committee, "in your judgment would not the force of the United States that is on the border, that is the force the United States Government has on the borders of Sonora, be sufficient to prevent the incoming Chinamen?" Pattison painted a grim picture of control along the border: "No sir, our force there, I am sorry to say, is not sufficient to guard anything or scarcely anything." He went on to provide an example. "Our custom-house in Tombstone Arizona is 30 or 35 miles from the borderline, and there is only one man guarding a line of something like 80 miles long, and that is not sufficient to prevent anything from coming in because the

²³ Ibid., 191. For more on the Sonoran-Nogales smuggling route see George E. Paulsen, "The Yellow Peril at Nogales: The Ordeal of Collector William M. Hoey," *Arizona and the West*, Vol. XIII, (1971), 113-128.

²⁴ Ibid.

border is so large and so long and so rough that he cannot do his work. He may accidentally stumble on a Chinaman or something else, but it would be an accident."²⁵

Deputy U.S. Marshal A.W. Marsh testified to the numbers crossing the southern border into Arizona and New Mexico. He cited examples of Chinese being arrested five and six times on the same day. A Deputy U.S. Marshal would escort them back across the border, and then they would return to the US territory. When asked about the sufficiency of the force along the border he replied "the force that is here now, I mean the custom-house force actually amounts to nothing. There are two custom-house deputy collectors on the line between the United States and Lower California, and Mexico."²⁶

Not every witness viewed the situation as entirely devoid of hope. John Berry, the Collector of Customs in San Diego testified that the line of the border between the Pacific Ocean and the desert, a distance of approximately 30 miles, was guarded by three men, one Customs officer and two Chinese inspectors who were doing their best to hold their own against the smuggling operations. When asked if expanding his force would be appropriate Berry answered, "Not under existing conditions." When pressed by members of the committee Berry explained, "The Department [Treasury] recently put a discretionary power into my hands of meeting any emergency that may arise, by appointment; in view of the fact that an emergency was liable to occur at that time, they put that power in my hands, and I think we are now prepared to meet any emergency that

²⁵ United States House of Representatives, Select Committee on Immigration and Naturalization, Immigration Investigation Part II, Chinese Immigration, 51st Cong., 2nd sess., March 1891, *House Report* 4048, 409.

²⁶ *Ibid.*, 515.

may arise." Berry did lament the fact that he had requested unsuccessfully on more than one occasion "steam launches" to patrol the shoreline.²⁷

The scarcity of full-time Chinese inspectors resulted in temporary constables or special deputies being sworn in, drawn from the areas located around a Customs House. All of those sworn in worked for standard fees set by the Customs Bureau. An arrest earned two dollars, appearing as a witness in a deportation hearing received ten dollars, and all temporary constables were allowed ten cents mileage.²⁸ The system proved to be somewhat ineffective, not for want of people volunteering, but the Treasury Department frequently did not pay fees on time or at all. The word soon spread that volunteering for the Customs Bureau was not worth it.

Datus E. Coon, a Chinese Inspector, complained to the committee members, "enforcement of the law here gives us a great deal of trouble for the reason that we do not have a sufficient force, or didn't have a sufficient force." All those he had employed as "temporary constables" to counter the smuggling operations had all left because the Treasury Department had failed to pay them. "It seems to me that we need more assistance in some way, or else we need we need a provision made by whatever legislation you see fit to adopt whereby men who are temporarily employed and not appointed by the collector may be paid for their services."²⁹

²⁷ Ibid., 550.

²⁸ Ibid., 578.

²⁹ Ibid., 577. In a letter to the assistant secretary of the Treasury on April 2, 1890, Coon illustrated the almost farcical nature of attempting to close the land border. "Should an officer take a Chinaman to the State line today, he will undoubtedly follow that officer back to the city the first dark night. In fact, he continued, "the children on the streets of this city laugh at me when I inform them the punishment of a Chinaman... is to put him

Another Chinese inspector, Thomas Smallcomb, when asked whether the force along the Mexican border was "sufficient to protect the line and prevent smuggling," answered with an emphatic "Not near enough." He went on: "I don't know whether it could be possibly made proper to appoint a force there to safely guard the line or not, but certainly the force that has been there having never been large enough to guard the line."³⁰

Smallcomb's description of the paucity of forces on the border led to Congressman Stump, a member of the Select Committee, offering up one solution: "Don't you think, Mr. Smallcomb, with a small force of cavalry stationed at different points along the line between Tamp and the sea coast, patrolling the line regularly, that nearly all if not entirely all, of the Chinese immigration, could be intercepted?" Smallcomb agreed that such a force, combined with "revenue cutters coasting up and down the shore," would be beneficial, noting that "if the Chinese understand there is a very strict watch of their actions and also along the coast they are not very liable to make an attempt to get in."³¹

across the line into Mexico, as they know full well the Mongolian will be in our Chinatown early next morning for breakfast." Letter to Secretary of the Treasury, 51st Cong., 2nd sess., Senate Ex. Doc 97, Part 7, 4. The Geary Act of 1892 specified in Section 6 that any Chinese laborer found to be "without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue, or his deputies, United States marshal or his deputies, and taken before a United States judge..." The interpretation of the language meant anywhere within the United States giving these officials reasonably broad powers of arrest. The Geary Act 1892, 52 Cong., sess., I Chap 60, Stat. 25.

³⁰ Ibid., 582.

³¹ Ibid., 583.

Smallcomb responded to a question from Congressman Stump on his knowledge of the disposition of Mexican forces on their side of the border, and whether "we could learn anything from them?" He replied, "I believe they have 3 or 4 on the line and a number down below. You know they are better supplied with officers down there than with anything else. The army they have down there stationed around in civil and Government offices is perhaps equal to the rest of the population," Asked whether there is a "cordial feeling between the patrols on either side" [of the border], Smallcomb replied, "I know that the United States marshal and collector are well thought of. The governor down there treats me better really than my own counsel."³²

In his first Annual Address to Congress, President Benjamin Harrison noted the growing problems with enforcement along the Canadian border, "The enforcement of the Chinese exclusion act has been found to be very difficult on the northwestern frontier. Chinamen landing at Victoria find it easy to pass our border, owing to the impossibility with the force at the command of the customs officers of guarding so long an interior line."³³

The eventual findings of the House Select Committee laid the foundations for the continued expansion of federal power. The Committee's report cited divided authorities between state boards and commissions and the federal government in the implementation of federal immigration restrictions. Despite the findings in *Chy Lung v. Freeman* in 1876,

³² Ibid., 584.

³³ Benjamin Harrison: "First Annual Message," December 3, 1889. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=29530>.

state boards and commissions continued to enforce immigration laws throughout the 1880s. The Secretary of the Treasury appointed State officers, usually designated by the Governor of the State, who were responsible for the examination of immigrants on their arrival in the United States. The Treasury Department also provided direction and federal assistance in the form of Customs Collectors and Chinese inspectors at each port of entry.

The Committee concluded, however, these multiple layers were cumbersome, ambiguous and, indeterminate, resulting in increasing violations of the 1882 law. Anticipated future congressional actions to expand the list of excludable classes would only result in making regulation of immigration more complex. Legislative action to establish overall federal control with regards operational and enforcement duties was required.

New bureaucratic machinery

The Congress followed through proposing legislation to further consolidate control over immigration and the borders through a general codification and attempt to strengthen the various statutes already on the books. The result was the Immigration Act of March 3, 1891. Under this act, the number of excluded classes increased to seven, other than Chinese laborers.³⁴

³⁴ 1891 Immigration Act, 51st Cong., sess. II, Chap. 551; 26 Stat. 1084. March 3, 1891. This legislation was primarily a revised version of the 1882 Immigration Act. Those excluded from entry and those who should be apprehended at both ports and borders and refused entry were "All idiots, insane persons, or persons likely to become a public charge, persons suffering from a loathsome or a dangerous contagious disease, persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, polygamists..." 1084.

Responsibility and control of immigration and its enforcement under the provisions of the legislation would now reside with the new Office of the Superintendent of Immigration. President Harrison appointed William Owen as the first Superintendent, an appointment “strongly urged by nearly all the labor organizations in the country because of his interest in their cause and thorough knowledge of the subject.”³⁵ This office would reside within the Department of the Treasury, and the Superintendent would be directly responsible to the Secretary of the Treasury.³⁶ The federal government had begun the process of slowly consolidating control over the administration of federal immigration laws while still failing to effectively deal with the critical issue of enforcement along the land borders.

The creation of a new position within the bureaucratic hierarchy of the Treasury Department in Washington, D.C. still failed to realistically address the logistics required to enforce the laws along the land borders despite the substantial evidence and testimony offered in the hearings of the Select Committee. In fact, the bureaucratic situation became even more complicated with regards the borders. Customs collectors and Chinese

³⁵ “The President Appoints an Indiana Minister to the Position,” *New York Times*, June 5, 1891. Congressman Owen had been chairman of the House Committee on Immigration and Naturalization and was, therefore, a central figure in the crafting and passage of the 1891 Act. Following a period as Secretary of State of Indiana in the late 1890s, he became involved in coffee and rubber plantations in Mexico and real estate speculation. He and his real estate partner were indicted for theft and fraud in 1905. His partner ended up in prison. Owen fled the United States and never to be seen again.

³⁶ “That the office of superintendent of immigration is hereby created and established, and the President, by and with the advice and consent of the Senate, is authorized and directed to appoint such officer... The superintendent of immigration shall be an officer in the Treasury Department, under the control and supervision of the Secretary of Treasury, to whom he shall make annual reports in writing of the transactions of his office...” *Ibid.*, 1085.

inspectors such as Jeff Milton, were now were joined by immigration inspectors reporting directly to the Superintendent of Immigration. This new organizational structure created an overlap in law enforcement jurisdiction and responsibilities among the three offices: the Collector of Customs, the newly formed Chinese Bureau within the Customs Bureau and the Superintendent of Immigration. Section Nine of the act further complicated the jurisdictional overlap. In order "for the preservation of the peace, and in order that arrests may be made for crimes under the laws of the States where various United States immigrant stations are located...State and municipal officers charged with the enforcement of State laws" were permitted to make arrests for crimes under the local laws at immigrant stations and crossing points.³⁷

The small cadre of immigration inspectors almost immediately began to overlap some of the responsibilities of both the Customs Service and the Chinese Bureau. The result was the outbreak of a classic bureaucratic turf war within the Department of the Treasury. The death in office of Secretary William Windom in late January 1891 exacerbated the onset of bureaucratic infighting. His successor, Charles Foster, a sound money advocate, focused much of his attention on monetary policy, but keenly aware of the impact of prolonged bureaucratic infighting asked the Superintendent of Immigration, William Owen, to develop and implement a national immigration policy.³⁸

³⁷ Ibid., 1086.

³⁸ Foster used the Sherman Purchase Act of 1890 to begin coining silver. He also stabilized the Treasury Department by extending the government's credit, which created a surplus that would ultimately help the government address the financial difficulties caused by the Panic of 1893.

The subsequent policy initiated by Superintendent Owen and signed off on by Secretary Foster witnessed both responsibilities and resources stripped from the Customs Service and the Chinese Bureau. The result was even more significant tensions and rivalries between the three bureaucratic entities and a distinct hardening of roles and responsibilities with little if any, crossover of duties along the land borders and in the ports of entry.³⁹

An additional complicating factor in attempting to craft any form of unified policy of roles and responsibilities was the timing of the effort. While the Pendleton Act had been on the legislative books for nearly ten years, civil service reform remained in its infancy.⁴⁰ The spoils systems, long an integral part of the history of the Customs Service remained viable and was only slowly being eradicated. Many customs collectors and inspectors, such as Jack Milton, still owed their positions to the spoils system.

Congressman Stump, chairman of the House Committee on Immigration, was to benefit himself from official patronage following the election of President Cleveland in November 1892. Stump replaced Superintendent Owen in April 1893, although the selection also drew criticism. The Iron and Steel Association labeled Stump the “steamship candidate” for legislation introduced while he was chairman of the House

³⁹ In 21st Century bureaucratic politics this would be seen as ‘hardening of silos.’ See Gillian Tett, *The Silo Effect: The Peril of Expertise and the Promise of Breaking Down Barriers* (New York: Simon and Shuster, 2016)

⁴⁰ The Pendleton Civil Service Reform Act. 47th Cong., 2nd sess., Chap 27, 22 Stat 403, January 16th, 1883. At the time of passage, an estimated 132,000 people were federal employees with only about 10 percent covered under the legislation. For more on the Pendleton Act see Ari Hoogenboom, *Outlawing the Spoils: A History of the Civil Service Reform Movement, 1865-1883* (Urbana: University of Illinois Press, 1961) and David Schultz and Robert Maranto, *The Politics of Civil Service Reform* (New York: Peter Lang Publishing, 1998).

Committee making it easier for steamship companies to facilitate the arrival of immigrants.⁴¹

The Legislative, Executive, and Judicial Act of March 2, 1895, contained changes that were particularly significant and reflected the federal government's placing a higher priority on the oversight and operation of federal immigration laws. Interestingly, this did not yet extend, however, to the necessity for increased numbers of enforcement personnel along the land borders. The title of Superintendent became Commissioner-General of Immigration, and the Office of the Superintendent of Immigration became the Bureau of Immigration, still within the Department of Treasury. The Commission-General was charged with the administration of the contract-labor laws as well as with previously assigned duties.⁴²

Stump's tenure as Commissioner-General ended with the victory of William McKinley in the presidential election of 1896. Terence Powderly, head of the Knights of Labor and a supporter of the McKinley ticket, had grown exceedingly critical of labor politics following the 1892 election and what he perceived as federal weakness in implementing both immigration policies and policing the national borders.⁴³ In July 1897

⁴¹ "Europe's Scum Invited to Come," *The Bulletin of the American Iron and Steel Association*, April 12, 1893, Vol. XXVIII, #14, 106.

⁴² An Act Making appropriations for the legislative, executive and judicial expenses of the Government. 53rd Cong., sess., III Ch. 176, 28 Stat. 780, March 2, 1895.

⁴³ The Democratic press pilloried Powderly for switching his allegiance to the Republican Party and supporting the McKinley. One day's editorial coverage gives a glimpse of the hostility against him. "Groans for Powderly," *The Sun* (New York) Sept. 11, 1896, "No Bryanism for Him," *Chicago Tribune*, Sept. 11, 1896, "Powderly is Hissed," *The World* (New York), Sept. 11, 1896, and "Wage Earners Aroused," *New York Tribune*, Sept. 11, 1896. Quoted in Karl Rove, *The Triumph of William McKinley: Why the Election of 1896 Still Matters* (New York: Simon and Schuster, 2015) 435.

President McKinley nominated Terence Powderly as the person to replace Commissioner Stump. The announcement in the *New York Times* noted Powderly “has often expressed strong opposition to stimulated immigration, or immigration of labor under contract.”⁴⁴ Vincent Falzone, a biographer of Powderly, noted that Powderly often expressed racist sentiments for which he offered no apologies. On one occasion Powderly exclaimed, "I am no bigot, but I am an American and believe self-preservation is the first law of nations as well as nature."⁴⁵

The U.S. Congress continued to strengthen further the Bureau of Immigration concerning the enforcement of the immigration laws and endeavoring to police the borders effectively. Powderly made clear his mission and the directive for his Bureau with regards enforcing the law and guarding the ports and land borders. It was "not only to prevent Chinese from illegally entering the country but to do my utmost to ferret out and deport those who are here in violation of the law." To achieve his goals, Powderly needed a cadre of like-minded Chinese immigration inspectors, and filled the positions with "men friendly to American labor and unfriendly to the Chinese."⁴⁶

⁴⁴ ‘Nominated for Commissioner of Immigration by the President.’ *New York Times*, July 17, 1897, p.1. Among Powderly's expressions of ‘strong opposition’ were his comments in 1892 about the debate over the Exclusion Act of 1882. "Standing behind them are Christian employers of this land, who would rather import heathen willing to work for barely enough to sustain life than retain brother Christian at a wage sufficient to live as a Christian." "The Chinese Evil, Master Workman Powderly Speaks Out, Urges Reenactment of the Exclusion Laws by Congress" *San Francisco Chronicle*, January 18, 1892. Quoted in Julius Becker, *The Course of Exclusion, 1882-1924. San Francisco Newspaper Coverage of the Chinese and Japanese in the United States* (San Francisco: Mellen Research University Press, 1992), 13.

⁴⁵ Vincent Falzone, *Terrence V. Powderly: Middle-Class Reformer* (Washington, D.C.: 1978), 180-181.

⁴⁶ *Ibid.*, 181.

The Sundry Civil Act of June 6, 1900, further expanded the duties of the Commissioner-General. Enforcement of the Alien-Contract laws likewise became an official function of the Bureau under the broad mandate of having "charge of the administration of the Chinese exclusion law and the various Acts regulating immigration into the United States,"⁴⁷ Secretary of Treasury Lyman Gage took the opportunity to reinforce Powderly's 1897 memo on law enforcement duties. "Collectors of customs on the Mexican and Canadian frontiers, and at all ports where commissioner of immigration are not employed, are charged within their respective districts with the execution of the laws pertaining to immigration."⁴⁸ The Chinese Bureau was relocated under the formal control of the Bureau of Immigration thereby enhancing the Bureau's bureaucratic functions being responsible for both land borders and ports.⁴⁹

Powderly continued his tirade against Chinese immigration and other 'undesirables' who sought to gain entry into the United States. In an article published in *Collier's Weekly* in December 1901, three months after the assassination of President McKinley in Buffalo by the self-proclaimed anarchist Leon Czolgosz, entitled 'Exclude Anarchist and Chinaman,' the Commissioner-General laid out his plans for what he termed 'Guarding Against the Embarkation of European Refuse.' Powderly wrote of the need to guard against not only the movement of humans over the borders but now of ideas and philosophies, "those who advocate, teach, practice or attempt to practice anarchism." Powderly called for stationing more men on both borders but took an overly

⁴⁷ The Sundry Civil Act of June 6, 1900, *Expenses of the Government for Fiscal Year Ending June 30, 1901* 56th Cong., sess., I, Ch. 719, 31 Stat. 610-11.

⁴⁸ Quoted in Ettinger *Imaginary Lines*, 81.

⁴⁹ The Sundry Civil Act 611.

optimistic, arguably misguided, view when it came to actual numbers of inspectors required to enforce the immigration laws effectively. "Such a plan would not be so expensive as the uninitiated might suppose. We already have the machinery in operation, but few additional inspectors would be required, and with a corps of efficient officers operating inland, the work would be promptly and properly done," he wrote."⁵⁰

Powderly advocated for increased resources for all aspects of enforcing the country's immigration laws in each of his *Annual Report's of the Commissioner-General*. His final report noting "reliance must hereafter be had upon a strict patrol of efficient officers over the southern and north boundary lines, a course which involves the necessity for increased official force and more liberal expenditure."⁵¹ Powderly did not recommend the creation of a separate force with the goal of undertaking particular policing duties along the length of both borders.

Any comprehensive understanding of the complexity of the problems involved in policing the border continued to elude the federal government. Issues of both efficiently administering and managing the rapidly growing influx of immigrants, particularly on the East coast, combined with the duties of actually guarding both borders against the smuggling of any contraband, human, narcotics, or alcohol continued to grow precipitously. Just establishing the principles of national sovereignty and making sure the "arbitrary geographical line" was respected remained indefinable.

⁵⁰ Terrence V. Powderly, "Exclude Anarchist and Chinaman," *Collier's Weekly*, December 14, 1901, 5, 7.

⁵¹ *Annual Report of the Commissioner-General of Immigration for the Fiscal year Ended June 30, 1902* (Washington, D.C.: Government Printing Office, 1903), 59.

Powderly argued, as did many in Congress that greater legal sanctions, not only on the part of the United States but also by Canadian and Mexican legislatures would ultimately inhibit the illegal traffic flows across the borders. Blame was, therefore, attached to foreign governments for not exercising more control. In his final report, Powderly noted what would become a constant refrain throughout every subsequent report of Commissioners General. "The chief obstructions, however, to the efficient enforcement of the law arise, on the one hand, from the unscrupulous character of some American citizens and others who find a large profit in smuggling..."⁵² Again, the failure to comprehend both the history of the borderland regions and of the geographic challenges with so few men committed to enforcing a host of laws and what must be seen as a sardonic surprise that individuals would prefer to flout laws to make money smuggling over the border.

Powderly also confronted rampant corruption within the Customs Service particularly at the newly opened Ellis Island facility and in San Diego. He took extensive steps to investigate the complaints. The resulting investigations documented in his last report as Commissioner-General resulted in some firings of personnel. But it also led to his departure, as a result of a slanderous campaign led by Edward McSweeney, a victim of the investigation at Ellis Island. President Roosevelt refused to reappoint Powderly when his term expired in 1902.⁵³

⁵² Ibid., 71.

⁵³ President Roosevelt became persuaded that Powderly was conspiring with one of the president's political rivals Senator Thomas C. Platt, U.S. Senator from New York and "boss" of the state's Republican Party and that Powderly himself was corrupt. Powderly refused to give in meekly and waged a four-year campaign to clear his name. Following

Sargent's Bureau

Powderly's successor was another labor man Frank P. Sargent. Born in East Orange, Vermont in 1851, Sargent apprenticed as a photographer, and in his mid-20s left the northeast for the southwest for his health. At the relatively late age of 28, Sargent joined the U.S. Army in 1879 and served for two years. Assigned to D. Company of the 6th U.S. Cavalry stationed at Fort Apache in the Arizona Territory, Sargent took part in numerous skirmishes against the Chiricahua Apache including the Cibecue Creek incident in late August 1881.⁵⁴ Most of D Company's Apache Scouts mutinied and turned on the cavalrymen. Sargent's commanding officer, Captain E.H. Hentig, was shot in the back standing beside him. Having survived the engagement, Sargent and the remainder of his company made it back to Fort Apache after which they were involved in the day-long Battle for Fort Apache on September 1.

Sargent's two years service on horseback in the Arizona Territory, and along the border with Mexico afforded him an experience of life along the border and first-hand the

an investigation, the president realized his error of judgment and appointed Powderly as a Special Immigration Inspector within the newly created Department of Commerce and Labor. From this position, Powderly was to have a significant influence on overall immigration policy. Ultimately he was appointed Chief of the Bureau of Immigration's Division of Information in 1907 and would serve in that office until 1921 continuing to be a key play in the development of overall immigration policies and policies aimed at border protection and policing. Interestingly no major biographies of President Roosevelt carry any mention of the Powderly relationship. For the San Diego investigation see Jeffrey Scott McIllwain, "Bureaucracy, Corruption, and Organized Crime: Enforcing Chinese Exclusion in San Diego, 1897-1902," *Western Legal History*, Vol. 17 No. 1, Winter/Spring 2004, 83-128.

⁵⁴ For on both the Cibecue Creek attack and the attacks against Fort Apache, see John P. Clum, "Apache Misrule: A Bugling Indian Agent Sets the Military Arm in Motion" *Arizona Historical Review*, Vol. 4, No. 3, October 1930, 56-68.

difficulties of policing a vast border region with a small force. This experience led him to be one of the first to suggest the establishment of a new separate force within the Bureau of Immigration whose mission would be to police the borders, a border patrol.⁵⁵

Sargent's proposal for a new force coincided with the views of yet another union member who had joined the Bureau of Immigration in 1895. Robert Watchorn was appointed as an Immigration Inspector and quickly rose through the leadership ranks from Supervising Immigration Inspector to Commissioner in Charge of the Canadian Frontier by 1900. Watchorn, a recent immigrant himself from England,⁵⁶ brought with him both a desire to see many of the labor abuses such as child labor and sweatshops eradicated, but also a determination to see the country's immigration laws fairly and legally enforced. To those ends, he was also in favor of immigration and became a staunch advocate of allowing all peoples to enter the United States and disparaged those who saw threats where no threats existed.

During his tenure as Commissioner in Charge of the Canadian Frontier Watchorn sought to bring greater efficiency to the force of Immigration Inspectors working the

⁵⁵ Life of F.P. Sargent, Grand Master, *Souvenir of the 14th Annual Convention of the Brotherhood of Locomotive Firemen, 1888* (Terre Haute) 11,13,15 & 17. Sargent joined the Southern Pacific Railroad Company on leaving the Army. He became active in the Brotherhood of Locomotive Firemen union rising rapidly through the union ranks. He moved back east playing an active role in railroad strikes in the 1890s. His obituary in the New York Times on September 5, 1908, noted that he was known as being "a conservative voice in union affairs, not prone to aggressiveness in labor disputes—a tendency which gained him the nickname "Safety Valve." Sargent turned down the offer from President McKinley to be the head of the Bureau of Engraving and Printing in 1897. Sargent opposed an "open door policy" with regards immigration.

⁵⁶ Watchorn migrated to the United States in 1881 and worked in the coalmines in the Pittsburgh area. Almost immediately he became an active union member rising to the ranks of leadership within the National Miners' Union and ultimately within the United Mine Workers of America.

northern border. In a period of nine months from September 1901 to June 1902, he implanted many administrative changes along the border. Aside from reinforcing the Bureau's presence at the major ports of entry, Watchorn ordered all immigration inspectors to begin routine patrols along the land border between Sault Ste. Marie in Michigan and Eastport, Maine.

The net result was a relative tightening of the control of the border. The overall impact, however, was simply to shift smuggling operations across the border further west. Winnipeg quickly became a major conduit for smuggling operations. And as fast as Watchorn responded the smuggling operations continued to move west. Marian Smith notes over a six-year period – 1902-1908 – the Bureau of Immigration would continually place new immigration inspectors at heavily trafficked land border crossing points only to discover that the operations "simply moved farther west or to some new unguarded point."⁵⁷

In every annual report of the Commissioner-General from 1902 onwards one theme continues to resonate: the immigration bureau appears to be holding its own when it comes to managing the flow of immigrants through major ports of entry and specific entre ports such as the newly opened facility at Ellis Island, this despite the Powderly investigations into corruption. But the frustration level with regards the yawning gaps in enforcement along the land borders and lack of qualified personnel becomes palpable. In his last annual report, Powderly complained about the lack of "officers of a high grade

⁵⁷ Marian L. Smith, "The Immigration and Naturalization Service (INS) at the Canadian Border, 1893-1993: An Overview of Issues and Topics," *Michigan Historical Review*, Vol. 26, #2 (Fall 2000), 130.

and ability." In his mind this was a major weakness arguing "the strength practically of the guard established on our boundaries, land, and water, to defend us from the ingress of diseased, morally perverted, pauperized, and degenerate aliens, the social exuviae of foreign governments, is little better than that of its weakest point." Powderly argued for "some modification of the literal rigor of the rules of the classified civil service to meet the conditions would be of value in enabling the Bureau to obtain the best available officers and still not conflict with the advancement of a genuine merit standard of appointment to the public service." In Powderly's view, until the Civil Service Commission got around to creating an examination geared towards the type of personnel needed to work on the border, "were it possible to secure, without the mental examination, temporary emergency appointees who, even though they might not be able to cipher, spell, compose, or show a knowledge of history, geography, or political science to the prescribed minimum limit, have yet shown, by that only conclusive test, efficiency in the actual discharge of the duties of the position to be filled, that they measure up in both letter and spirit to the true "merit system."⁵⁸

The same report included an updated assessment from the office of the Commissioner of Immigration for the port of New York. In focusing on the border with Canada, Commissioner Williams noted: "the work of this office will be partly frustrated so long as it is easier for immigrants to enter the United States by Canada than through

⁵⁸ *Annual Report of the Commissioner-General of Immigration for the Fiscal year Ended June 30, 1902* (Washington, D.C.: Government Printing Office, 1902), 54. Even when appropriations for the Border Patrol finally were authorized in 1924 within the Department of Labor, the Civil Service Commission still did not have an exam in place for potential border patrol agents.

New York." Arguing that those immigration inspectors working the land border are "engaged in excellent work" he laments the "hundreds of roads which cross the frontier" all of which appear to be known by "the English [steamship] lines running to the Canadian ports," from Europe, and called for "adequate means to be adopted, no matter what the cost, to remedy the existing conditions along the Canadian border."⁵⁹ Canadian companies, such as the Beaver Line that ran a route from Liverpool to Quebec and Montreal, were also a target of the Commissioner's ire because [they] "have not the slightest regard for our immigration laws, and always are quite willing to assist in bringing here any number of diseased people or paupers if they can only secure payments in advance of their ocean fares." He went on, "some other adequate means should be adopted, no matter at what cost, to remedy the existing conditions along the length of the Canadian border."⁶⁰

Commissioner-General Sargent's first *Annual Report* issued in June 1903 carried on the Powderly theme of the need for more men, particularly on the land borders. "As regards the difficulties to be surmounted, it was found that the inspection along the land boundaries is far more of a problem than at the seaports." Noting that the U.S.- Canadian border slowly was being secured where possible, the focus in Commissioner Sargent's view was now the southern border and the constant game of chess that operated between smugglers and the Bureau of Immigration.⁶¹ Securing the northern border inevitably meant "it may be reasonably anticipated that the next means to be resorted to will be the

⁵⁹ Ibid., 58-59.

⁶⁰ Ibid., 59.

⁶¹ On June 30, 1902, the Bureau of Immigration had a total force of 116 stationed on the entire northern border with Canada.

Mexican boundary—a point of weakness in our defense from undesirable immigration that has already been discovered and utilized by the most resourceful of alien peoples—the Chinese." Sargent's conclusion, "To strengthen this line will be one of the immediate necessities, involving the assignment of active, young, and intelligent officers, under capable and experienced general control, to guard the long stretch of the Pacific coast to the Gulf of Mexico."⁶²

In his concluding remarks for the 1903 report, Sargent made clear in his view the overall problem confronting the Bureau. "The Bureau is confronted with the following dilemma: how to transact its large and rapidly increasing business with the official force provided by Congress when that business was comparatively small and stationary." One solution was employing more "men of experience in the enforcement of laws confided to it, and it must have enough of such men to meet and overcome the work which is now accumulating much more rapidly than can be disposed of with the greatest display of efficiency and endurance."⁶³

The Commissioner-General reiterated in each of the four *Annual Reports* issued between 1903 and 1906 concerns about several areas of operation of the Bureau. Sargent and the staff of the Bureau represented the front line and, as is so often the case with a

⁶² *Annual Report of the Commissioner-General of Immigration for the Fiscal Year Ended June 30, 1903* (Washington, D.C.: Government Printing Office, 1903), 62-63.

⁶³ *Ibid.*, 115. The enormity of the issue of immigration and controlling access to the United States was reflected in the size and make-up of individual Annual Reports. By 1905 the reports included detailed immigrant location maps, numerous tables breaking down entrance figures and location, an increase in actual size with the 1905 report coming in over 115 pages, photographs of Bureau facilities and selected individual immigrants representing various nationalities, and for the first time including a detailed index of all the topics covered in the annual report.

beleaguered bureaucracy struggling to administer and enforce laws in a rapidly evolving environment, it became clear to Sargent that many politicians in Washington still did not understand the enormity of the problems the Bureau was confronting. It was also clear to Sargent that two distinct fields of operation were evolving. The first dealt with the efficient management and administration of moving large numbers of immigrants through chokepoints such as Ellis Island and eventually Angel Island and other ports of entry. The second dealt with not only enforcement of immigration laws along the land borders but also the general task of preserving the legal sanctity of the overall land borders.

The issue now slowly beginning to emerge, and one which would remain at the core of the debate on the establishment of the future U.S. Border Patrol twenty-five years later, should Bureau of Immigration inspectors riding the line along both land borders, also be responsible for the enforcement of other federal laws, such as those dealing with narcotics, public health, customs, even agricultural laws? Such a mandate did not exist legislatively. Arguably, the U.S. Marshals Service remained the only federal agency charged with enforcing federal laws. The question developing was, should it be the only agency with such a mandate? The resolution to the answer remained a distant concept in the early years of the twentieth century. It would prove to be central, however, in the eventual establishment of the U.S. Border Patrol.⁶⁴

⁶⁴Among his overall concerns were the need for additional means of enforcing existing restrictions; a more precise definition of Bureau responsibilities; the strengthening of both immigration and naturalization criteria; the better distribution of immigrants throughout the United States; the desirability of having a physical inspection of aliens abroad before embarkation for the United States; addressing the apparent fraud and carelessness occurring in the naturalizing of aliens; and the perennial problem of the increasing difficulties regarding the Mexican border.

In the spring of 1903, the U.S. Congress established the Department of Commerce and Labor.⁶⁵ Created as a result of the business sector pressing its case for representation in the cabinet and government, the new department represented a compromise with those seeking labor representation at the same levels of government. A responsibility to further both the interests of business and labor, frequently antagonistic to each other, would prove to be a significant challenge for the new department.

A myriad of federal agencies were transferred from other federal departments, and new units were formed within the department. Many of the agencies transferred were either statistical collections agencies or performed very narrow service functions.⁶⁶ One of the agencies transferred from the Treasury Department was the Bureau of Immigration because the primary focus of the Bureau was on foreign contract labor and the enforcement of immigration laws, both designed to protect American workers and wages. The law also strengthened the administration and enforcement of immigration laws and the powers and duties of the Commissioner-General. The Commissioner was assigned

⁶⁵ An Act of Congress February 14, 1903, creating the Department of Commerce and Labor (32 Stat. 825-830; 5 U.S.C. 591). 57th Cong., sess., II, 1903.5-830The department's mandate stated "it shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishing interests, the labor interests, and the transportation facilities of the United States."

⁶⁶ Also from the Treasury Department came the Lighthouse Board, Lighthouse Establishment, Steamboat Inspection Service, Bureau of Navigation, United States Shipping Commission, National Bureau of Standards, Coast and Geodetic Survey, and the Bureau of Statistics. The Department of the Interior yielded the Census Office, Bureau of Labor, Fish Commission, and Office of the Commissioner of Fish and Fisheries. The Department of State transferred the Bureau of Foreign Commerce.

responsibilities for all laws relating to immigration, authority for the control, direction, and supervision of all immigration employees, and all rulemaking power.⁶⁷

Sargent wasted little time in endeavoring to bolster the immigration inspectors along the Canadian and Mexican borders as the bureaucracy was being centralized and expanded. In 1904, Sargent assigned a small group of Immigration Inspectors, never totaling more than 75-80 men, to form a new mounted unit with the task of riding the line along the Mexican border. This move represented a small part of what many in the Bureau felt was necessary to police the borders.

The mounted force that Sargent oversaw could best be described, however, as a somewhat motley force. Much like the Texas Rangers and earlier Customs Bureau personnel and “Chinese inspectors” under the Treasury Department, the ‘line riders’ represented the best available for the revenue expended by the Bureau. They had no institutional training and, much like the first Customs authority implementing the collection and oversight of revenue tariffs on cross-border traffic, probably exhibited little real appreciation or understanding of the federal laws they were enforcing. Patrolling the southern border from El Paso to the Colorado River for illegal Chinese remained the primary objective.⁶⁸

⁶⁷ Ibid.

⁶⁸ John M. Myers, *The Border Wardens* (Englewood Cliffs: Prentice-Hall, 1971) 16-17, 23; Mary Kidder Rak, *Border Patrol*, (New York: Houghton & Mifflin, 1938), 6; Clifford Alan Perkins, *Border Patrol: With the US Immigration Service on the Mexican Boundary, 1910-1954* (El Paso: Texas Western Press, 1978) xii, 6. In January 1906, President Roosevelt issued Executive Order No. 403 exempting the mounted unit from any Civil Service status. The president, who had served as head of the Civil Service Commission in 1895, and prided himself on his acumen of the outdoors, had long since

One of the leading supporters of a more active overall approach to policing the borders was Marcus Braun. In his position as a Special Immigrant Inspector, the Commissioner-General had dispatched him on a fact-finding mission across Europe in late 1904 into 1905. His purpose was both to discern European attitudes towards immigration to the United States but also to observe and report back on methods employed to police internal European borders. His observations and suggestions subsequently were communicated to the House of Representatives in January 1906. Among his recommendations, the government should "maintain abroad a secret service surveillance of undesirable emigration similar to the one established by the Treasury Department for the surveillance of smugglers." Braun "could not urge too strongly this feature to the attention of the Bureau" arguing the threat posed from "the entry of objectionable and undesirable emigration" is "a far greater menace to the United States than smuggled goods." Braun also recommended the "force of immigrant inspectors on the Mexican border be considerably increased and mounted."⁶⁹

taken issue with the original classification of customs officers as part of the Civil Service, explicitly classifying the original mounted officers as clerical.

⁶⁹ Reports made by Immigrant Inspector Marcus Braun, 59th Cong., 1st sess., January 17, 1906, *House Document* 384, 36, 37. Braun's extensive fact-finding mission around the capital of Europe was not without incident. European diplomats, most notably those of the Austro-Hungarian Empire, complained to various American embassies about him, American embassy staffs complained to the Secretary of State in regards his attitude and apparent behavior in seeking out information on immigration patterns and views and opinions. A Report by the Secretary of State with accompanying papers, with regards the case of Special Immigration Inspector Marcus Braun, 59th Cong., 1st sess., February 16, 1906, *House Document* 482.

Nonetheless, in his 1905 *Annual Report*, Sargent tried to strike an optimistic note all the while appreciating the reality of the problem confronted along the southern border, a critical viewpoint lost on many Washington policymakers. Sargent took note with regards the Mexican border, "notwithstanding the natural difficulties to be surmounted; it is growing more difficult each year for Chinese persons to secure unlawful residence in this country by crossing the boundary line between the United States and Mexico at some unguarded point." He put the apparent success down to "the efficiency of the officers stationed along the said boundary, and to the cooperation and organization of said officers." Given the distance and remoteness from both local offices located in places such as El Paso, and from the home office in Washington, D.C. it is highly likely that Sargent was hoping what he had written in his report was at least partially correct. "While it is not reasonable to anticipate in the early future such perfect control as that established on the Canadian border, yet the Bureau is sanguine of establishing ultimately almost as efficient service on our southern border."⁷⁰

Sargent continued to advocate a policy of enhancing the security of the northern border by encouraging the government of the Dominion to pass federal laws tightening the overall process of immigration to Canada, a process he also continued to advocate on the part of the Mexican government. This step, he felt, would draw Canadian laws more into line with overall American immigration laws. Sargent had successfully negotiated an agreement with the privately owned Canadian Pacific Railway Company in February 1903. The company agreed to more aggressively enforce Canadian immigration laws,

⁷⁰ Annual Report of the Commissioner General of Immigration for Fiscal Year ending June 30, 1905 (Washington, D.C.: Government Printing Office, 1905), 94.

provide greater cooperation with Bureau of Immigration inspectors particularly in delivering manifest lists of all Chinese, and undertake the repatriation of all those Chinese adjudged to be illegal by American immigration authorities. In return “similar obligations [will] be imposed upon and enforced by the Government against steamships bringing Chinese persons direct to United States seaports.”⁷¹

Sargent conveyed in his *Annual Report of 1906* the apparent success of the application of an overall layered approach to security along the northern border. This success had also been facilitated by a hardening of attitudes in Canada against immigration and growing effort on the part of Ottawa to bring enforcement policies, at least against Chinese, into more of a standardized approach. "With the Dominion of Canada, and with the various land and water transportation companies of that country, the Bureau has arrangements that make it possible to handle in a more satisfactory manner the large numbers of aliens who come to Canadian ports destined for the United States..." He notes, "It shows that the law is being enforced along our northern boundary with the same diligence and success as heretofore. It would, of course, be extravagant to claim that no aliens enter unlawfully from Canada; but it is believed that the evil is reduced to the minimum considering the long border line that must be guarded." ⁷²

Once again the focus was on the southern border. "It is known that many aliens who have been rejected on former occasions at the seaports of the United States proceed to Mexico to again try to enter despite our objection. Because of the length of the

⁷¹ *Annual Report of the Commissioner-General of Immigration for the Fiscal Year Ending June 30, 1903* (Washington, D.C.: Government Printing Office, 1903), 100-101.

⁷² *Annual Report of the Commissioner-General of Immigration for the Fiscal year Ending June 30, 1906* (Washington, D.C.: Government Printing Office, 1906), 68, 69.

borderline and the natural impediments to a sufficiently close patrol of it to ensure even to a reasonable certainty that it is successfully guarded, and the ease with which the operations of the promoters can be continued in Mexico, the problem is one which, in the Bureau's opinion, could not be solved even by doubling the present considerable force of officer there stationed."⁷³

On March 1, 1905, President Roosevelt appointed a commission to “investigate and report upon the subject of naturalization in the United States.”⁷⁴ Commission recommendations included the “establishment in the Department of Commerce and Labor [of] a bureau of naturalization to supervise the execution of the naturalization laws”⁷⁵ On June 29, 1906, the Congress passed legislation mandating a change in designation of the Bureau of Immigration to the Bureau of Immigration and Naturalization, broadening the overall mandate of the Bureau to include “all matters concerning the naturalization of aliens.”⁷⁶ The federal government now had, for the first time, an agency dedicated to the supervision of the naturalization of aliens and the maintenance of naturalization records. In his *Annual Report for 1907*, Frank Sargent noted that the procedures of the

⁷³ Ibid., 69. One of the more interesting ideas that Sargent supported was an idea put forward by President Roosevelt the previous year in which all non-Mexicans not even be allowed to approach the border. In short, the creation of a no-go zone whereby anyone who wanted legal access to the United States had to come in through a maritime port of entry. How to enforce the policy on the part of the Mexican government was, naturally, left unclear. But as Sargent wrote, "That some drastic measure is required is obvious."

⁷⁴ *Report to the President of the Commission on Naturalization*, designated by executive order March 1, 1905. (Washington, D.C.: Government Printing Office, 1905), 1-115, 7.

⁷⁵ Ibid., 29.

⁷⁶ Department of Commerce and Labor, Immigration and Naturalization Bureau, 59th Cong., sess., I, Ch. 3592, 596, June 29, 1906.

Naturalization Division [of the Bureau] constituted “wide departure from the lax naturalization proceedings in operation heretofore.”⁷⁷

With the growing emphasis of the Bureau's enforcement policies concentrated on the southern border the work of the immigration inspectors in the field became even harder with the passage of the 1907 Immigration Act.⁷⁸ The Congress responding to demands, once again, that the growth in the number of immigrants gaining access to the United States had reached overwhelming proportions passed new restrictive legislation yet, once again, did nothing to enlarge the staff of the Bureau. It seemed a commonly held belief that the imposition of additional restrictions would be of sufficient deterrence. The actual result of the new legislation was a significant upturn in smuggling mainly across the southern border almost overwhelming the Bureau's limited resources.

Under the 1907 legislation, the overlap of authority with local and state law enforcement continued. Section 31 of the Act allowed "for the preservation of the peace and in order that arrests may be made for crimes under the laws of the State and Territories...proper State and municipal officers charged with enforcement of such

⁷⁷ *Annual Report of the Commissioner-General of Immigration, 1907*, 114.

⁷⁸ The Immigration Act of 1907 Ch. 1134, 34 Stat. 898. This legislation repealed the Immigration Act of 1903 Ch. 1012, 32 Stat., 1213 except for section 34. This section kept in place all the provisions with regards the restriction and exclusion of Chinese. Twenty-three districts were created covering the continental United States, Hawaii, and Puerto Rico each with either a Commissioner of Immigration or an Inspector in charge placed in overall authority. 69-70. The Act also called for the establishment of a joint Commission on Immigration, know as the Dillingham Commission after its Chairman, Senator William P. Dillingham (R-VT).

laws...the jurisdiction of such officers of the local courts shall extend over such [Immigration] stations."⁷⁹

The 1907 *Annual Report* published in late 1907 – Sargent’s last because of his untimely death in office in September 1908 – continued to emphasize the growing overall dangers along the southern border in comparison to the northern border.⁸⁰ “Evasions of law on the Canadian borders are serious enough, but when compared to those on the Mexican borders they sink almost into insignificance.”⁸¹ The U.S. Congress still did not demonstrate any desire for appropriating any additional funds to employ any more inspectors or line riders along either border. The new Division of Information within the Bureau received the majority of any new supplementary funding. The goal of the new unit, a Sargent inspired project, was to promote a "beneficial distribution among the States of aliens immigrating" to the United States.

The eight-year period between 1909 and 1917 witnessed the Bureau undergo a series of structural changes. Arguably they reflected the nation’s changing economic and

⁷⁹ Ibid.,18. The legislation also laid out in detail the uniform for all immigration inspectors "stationed at ports of entry or places of entry into the United States" which presumably referred to the land borders. While on duty they were required to wear uniform suits "made of dark blue cloth." Each inspector, however, had to buy his uniform. They also had to purchase their caps "the cost of the cap being two dollars." The insignia for the caps would be provided free of charge by the Bureau of Immigration, however.

⁸⁰ Sargent was only 57 when he died. *The New York Times* reported on September 4, 1908 "While stomach trouble was the immediate cause of Mr. Sargent's death, the former labor leader had had three strokes of paralysis in the last six months. These, together with a bad fall attending his first seizure, had greatly weakened him." The 1908 Report was published after his death and was signed off on by the Acting Commissioner-General of Immigration F.H. Larned who noted that the 1908 Report was essentially all of Sargent's work, but the "final draft was not finished until after his death in September.

⁸¹ *Annual Report of the Commissioner-General of Immigration for Fiscal Year Ended June 30, 1907* (Washington, D.C.: Government Printing Office, 1907), 110

social problems and the growing determination on the part of the Congress to meet the new administrative and enforcement challenges. In 1909, the Congress moved those US attorneys operating in the field dealing with immigration issues under the auspices of the Department of Justice under the management of the Bureau of Immigration and Naturalization.⁸² A second legislative move established an independent appropriations stream for the Bureau designed to defray the overall costs of all aspects of regulating immigration.⁸³

On March 4, 1913, President Taft signed the legislation creating the new and separate Department of Labor. The bill transferred the Immigration and Naturalization Bureau to the new department.⁸⁴ The division of labor between the three integral parts of the Bureau – Immigration, Naturalization, and Information - was also solidified and, arguably, distinct silos of authority created. The Immigration Bureau was relieved of all matters relating to naturalization and became a stand along Bureau of Immigration. Anthony Caminetti in his *Annual Report* for 1913 – his first as Commissioner-General – noted that since the "Bureau proper, at any rate, never took an active part in the enforcement of those laws, but left the conduct of the division almost entirely to the

⁸² Ch. 299 35 Stat. 982 60th Cong., sess., II March 4, 1909.

⁸³ Ch. 299 Stat. 945, 60th Cong. sess., II, March 4, 1909. On June 25, 1910, the Congress passed legislation to "further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls and other purposes." This legislation was more commonly referred to as suppression of the white slave trade. Ch. 395 Stat. 825-826, June 25, 1910.

⁸⁴ The legislation establishing the Department of Labor, splitting it from the Department of Commerce, was signed into law by a reluctant President Taft on March 4, 1913, hours before handing over power to incoming President Woodrow Wilson. The creation of the department was the result of some 50 years of campaigning by labor organizations for a "voice in cabinet," and an indirect effect of the Progressive Movement. An Act to create a Department of Labor, Ch. 141, 37 Stat. 736-738, 62nd Cong., sess., III, March 4, 1913.

supervision of the chief thereof, the provision of law constituting the division, a separate bureau is welcomed as a wise adjustment of the public business."⁸⁵

Canada steps forward and Mexico steps back.

Canadian attitudes towards immigrants coming into the country, even if they are passing through to the United States, begin to harden and assume racial overtones by the turn of the 20th Century. Following the findings of a Royal Commission on Immigration, the Canadian parliament enacts a series of restrictions. A dedicated border agency within the Canadian Department of the Interior is also created with a principal objective to work in conjunction with Northwest Mounted Police.

Along the southern border, the Diaz government in Mexico City continues to struggle to control their side of the border. Increasing American business ties with Mexico results in continued economic integration particularly in the growing agricultural industries in the southwestern United States. Mexico signs an agreement with China allowing for virtual unlimited immigration into Mexico. A substantial percentage end up moving towards and over the border into the United States creating further enforcement pressures on the American side of the border, exacerbated by the onset of the Mexican Revolution.

⁸⁵ Annual Report of the Commissioner-General of Immigration for Fiscal Year ending June 3, 1913 (Washington, D.C.: Government Printing Office, 1913), 18-19.

Canada

Following the granting of Dominion status in 1867 through to the mid-1880s, the Canadian immigration policies as such were decidedly of the "open-door" variety. Prime Minister John MacDonalld viewed an open immigration policy as the central key to encouraging settlement in the Canadian West. The country's first specific immigration legislation, passed in 1869, therefore, focused primarily on ensuring the safety of immigrants during their passage to Canada and, having once set foot on Canadian soil, protecting them where possible from exploitation.⁸⁶

The powerful lure of the United States, accessible simply by crossing a land border that lacked any real enforcement on either side proved too strong. The Statistical Year Book of Canada for 1890 noted "While there is such a long line of open frontier there must always be a considerable movement of population on both sides, of which it is

⁸⁶ The legislation limited the number of passengers aboard each vessel to one passenger for every ton of the weight of the ship. Ship captains were to provide Canadian Customs officials with an accurate passenger inventory and to document every passenger's medical health status. For every person listed as "lunatic, idiotic, deaf, dumb, blind or infirm" a financial penalty was assessed on the ship's captain. Canadian immigration agents were authorized to order any such individual back to their original port of embarkation. Upon arrival, passengers were allowed to disembark at a reasonable hour, stay onboard for the first 48 hours after arrival. Their luggage would be offloaded free of charge, and all businesses and lodging establishments catering to newly arrived immigrants had to obtain an operating license from the federal government initially and clearly post all their rates of operation. For more on the overall Canadian immigration policies see Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 1998) and Reg Whitaker, *Canadian Immigration Policy since Confederation* (Ottawa: Canadian Historical Association, 1991).

impossible to obtain any record...The greatest care is taken by the Department [Agriculture] and by the agents, that all returns shall be as accurate as possible, but the only ones that can be thoroughly relied on...are those of arrivals at the principal seaports, as Quebec and Halifax."⁸⁷

Macdonald's goal of large-scale immigration from predominantly northern Europe that settled permanently in Canada failed to materialize. Macdonald did not want to see large-scale inflows from Asia of Eastern Europeans. He reflected on the ongoing massive immigration from Southern and Eastern Europe into the United States in the 1890s, a movement Macdonald deplored and did not want for Canada, describing the United States "as a great country, but it will have its vicissitudes and revolutions. Look at the mass of foreign ignorance and vice which has flooded that country with socialism, atheism and all other isms."⁸⁸The rate of emigration, primarily to the United States, remained well above immigration rates throughout the last three decades of the nineteenth century.

The inflow of Chinese immigrants into Canada, ostensibly to work on the western section of the Canadian Pacific Railroad during the early 1880s, prompted the same form of backlash from politicians, trade union members and whites as was found in the

⁸⁷ *The Statistical Year Book of Canada for 1890* (Ottawa: Department of Agriculture, 1890), 87. Robert Bothwell pointed out "no records were kept of early cross-border travel. Even in 1900 most Americans and other people could and did cross the border without anyone paying the slightest attention." *Canada and the United States: The Politics of Partnership* (Toronto: University of Toronto Press, 1992) 87.

⁸⁸ Donald Avery, "*Dangerous Foreigners: European Immigrant Workers and Labor radicalism in Canada, 1896-1932*" (Toronto: McClelland and Stewart, 1979), 40.

western states of the United States.⁸⁹ A Royal Commission on Chinese Immigration was formed in 1885 to address the growing backlash. It ostensibly had one purpose in mind, to establish the necessity of imposing some legislative restrictions. The Royal Commission did not recommend complete exclusion of Chinese along American lines but did support the imposition of a head tax of ten Canadian dollars paid by for those Chinese seeking to gain entry to Canada.

The recommendation of ten dollars failed to satisfy many in the Canadian Parliament, it having been deemed insufficient. The Chinese Immigration Act passed after the Commission's findings were made public imposed a fifty-dollar head tax payable on arrival by every Chinese person seeking entry into Canada. This legislation represented the country's first step towards overall restrictive legislation and began the process of drawing both American and Canadian law into a similar orbit. While not representing the type of blanket restriction imposed by Washington through the 1882 Chinese Exclusion Act and the 1885 Alien Contract Labor Act, the Canadian legislation was a sustained effort to mitigate the flow of Chinese immigrants. Interestingly,

⁸⁹ Upon joining the Canadian Federation in 1871, British Columbia demanded that no Chinese laborers were to be employed on the construction of the Canadian Pacific Railway. Ottawa rejected the demand. British Columbia and Saskatchewan passed legislation banning Chinese from voting in all elections. For more on Chinese immigration to Canada see Jin Tan and Patricia E. Roy, *The Chinese in Canada* (Ottawa: Canadian Historical Association, 1985) and Harry Con et al., *From China to Canada: A History of the Chinese Communities in Canada* (Toronto: McClelland and Stewart Limited, 1982).

subsequent amendments to the original law did not overly tighten the entrance requirements.⁹⁰

Sustained economic growth in British Columbia continued to create a demand for cheap labor, however, and by the late 1890s, there was a new surge of Chinese entering Canada. In 1881 4,400 Chinese were recorded entering Canada. The figure fell to a few hundred per year after the passage of the 1885 legislation dropping to a low of 124 in 1887, and then commenced climbing, once again, until over 17,000 were recorded in 1901.⁹¹ The surge resulted in new demands for comprehensive restrictions. The Liberal government of Wilfrid Laurier in response passed the 1900 Chinese Immigration Act that raised the head tax to \$100, but once again this initially failed to curb the flow. Two years later subsequent legislation increased the head tax to \$500.⁹² This time the impact

⁹⁰ Initially, there was a sustained drop in the number of Chinese immigrant coming into the country. In 1882 there were c. 8,000 per year. By 1887 that figure had dropped to 124. The 1887 Amendment expanded the list of individuals exempted from the head tax. Chinese women married to non-Chinese men were considered the same nationality as their husbands and excluded from paying tax. Any Chinese passing through Canada via the railroad were also excluded although this did raise concerns in the United States that potentially these individuals were indicating their plans to move to Canada but were only getting off the train and making for the border with the United States. A second amendment passed in 1892 required every Chinese resident leaving Canada on a temporary basis to register with a Canadian immigration official before departure.

⁹¹ Jin Tan and Patricia E. Roy, *The Chinese in Canada* (Ottawa: Keystone Printing, 1985), Canadian Historical Association, Booklet No.9. For more on the overall patterns of Chinese immigration to Canada, see Barry Edmonston, "Canada's immigration trends and patterns," *Canadian Studies in Population*, 43, 1-2 (2016) 78-116; N. Kelley and M. Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy*, (Toronto: University of Toronto Press, 1998); M. Boyd and M. Vickers, *100 years of immigration in Canada, Canadian Social Trends* (Toronto: Statistics Canada, 2000), No.11-008.

⁹² During the period 1901 to 1918, the Canadian government raised c. 18 million from the head tax on Chinese immigrants and spent 10 million during the same period promoting immigration to Canada in Europe.

temporarily stemmed the flow of Chinese entering Canada. The result was Chinese once again saw Mexico and crossing the Mexican-American border as the most viable option reflected in the analysis of the situation provided by the annual reports of the Commissioner-General of the U.S. Bureau of Immigration.

The calls for even stricter restrictions against all potential immigrants, not just Chinese, continued to resonate throughout Canada. In 1906 the Laurier government successfully promulgated new immigration legislation that in many respects began to mirror already enacted American law in both its restrictive nature and powers of enforcement. Frank Oliver, the Minister of the Interior and Superintendent-General of Indian Affairs, said the legislation was designed "to enable the Department of the Interior to deal with undesirable immigrants by providing a means of control."⁹³

The 'means of control' translated partly into the formation of a new agency within the Department of Interior. In 1908 a Border Inspection Service was established within the Department of Interior. Inspectors, much like their American counterparts, were stationed at 37 points of entry along the Canadian side of the border in an area classified as the Central Canada District that stretched from Toronto to Sprague in Manitoba.⁹⁴

And, in a similar manner to American efforts, the new Border Inspection force was

⁹³ The 1906 Immigration Act expanded the categories of "prohibited" immigrants. Also, the Act gave the government legal authority to deport immigrants with two years of landing. Grounds for deportation were very similar to American with becoming a public charge, insanity, infirmity, disease, physical disabilities, convicted felons and those suspected of committing crimes of "moral turpitude." Deportations had taken place before the passage of the 1906 legislation but without the benefit of legal grounds. After 1906 the levels of removal increased dramatically.

⁹⁴ Before 1908 the Canadian government did not maintain any record of who entered Canada from the United States. The duty of Canadian inspectors could be as dangerous as their American counterparts.

immediately confronted with tight federal budgets, little real appreciation for the actual costs of implementing and enforcing Canadian immigration and border policies, the scale of the work involved, and having to have officers in the force conjointly undertake the task of being both an immigration and customs inspectors.

There also appeared to be an underlying perception among the growing vocal anti-immigrant movement in Canada whose vitriol targeted first and foremost immigrants from Asia and Eastern Europe that the United States, in fact, caused many of the country's immigration problems. One Canadian immigration inspector, H.G. Herbert, reflected in a 1910 report, "It must be remembered that the neighboring republic has enormously increased and is increasing its population by the immigration of people whose racial customs and habits are thought totally unsuited to Canada." Driving home his point he concluded, "These enter the United States with comparative freedom and, attracted in considerable numbers towards our country by its superior advantages, attempt to enter Canada at the "back door," so to speak."⁹⁵

William Scott, Superintendent of Immigration in Canada, spoke to the growing sentiments that Canada needed to exercise greater restriction on specific immigrant

⁹⁵ Cited in Valerie Knowles, *Strangers at Our Gates: Canadian Immigration Policy, 1540-2015* (Toronto: Dundurn Press, 2015), 122. Ironically Herbert was to suffer the ultimate fate for his views. He was shot to death on July 26, 1912, while a passenger on the Windsor-Detroit ferry. His assailant was a disgruntled would-be immigrant to Canada who had been turned back at the border as an "undesirable." *The Detroit Free Press* reported William Ferguson was told he "would have to return to the United States because of physical trouble. He has but one leg." Herbert had the unfortunate bad luck to be in the same immigration office when Ferguson was rejected. "Herbert happened to take the same boat back to Detroit with Ferguson, and when the latter recognized him, he instantly drew a revolver and shot him dead." *Detroit Free Press*, "Herbert Killed by Immigrant on Windsor Ferry," July 26, 1912, 1.

groups coming to Canada and to enforce Canadian immigration laws more assiduously. Commenting on the parliamentary debate in Ottawa on the 1910 Immigration Act, Scott observed, "The discussion which took place upon the bill showed that Canada, in common with other young countries, whose natural resources attract the residents of the overcrowded communities of Europe, is fully aware of sifting 'the wheat from the chaff' in the multitudes who seek her shores." ⁹⁶

Before the end of his tenure as Minister of Interior in 1911, Frank Oliver was part of a Canadian delegation to Japan that resulted in an agreement whereby the Japanese government would voluntarily limit emigration to Canada. Moreover, he oversaw the implantation of the 1910 Immigration Act that extended significant discretionary power to the federal government to regulate immigration that included "belonging to any race deemed unsuited to the climate or requirements of Canada, or of immigrants of any specific class, occupation or character." Oliver also took the lead in promoting an Order in Council drafted shortly before he left office prohibiting the landing of "any immigrant belonging to the Negro race, which race was deemed unsuitable to the climate and requirements of Canada." While the order was never officially promulgated it discouraged many African-Americans moving north from parts of the South where they struggled under Jim Crow laws and overt prejudice and racism.⁹⁷ When he stepped down

⁹⁶ Ruth Cameron, "The wheat from the chaff: Canadian restrictive immigration policy, 1905-1911" (master's thesis, Concordia University, Montreal, 1976), 1.

⁹⁷ During the timeframe 1896 to 1911, an estimated one million Americans immigrated to Canada. Of that figure less than 1,000 were African-American. Immigration agents of the Canadian government were dispatched to states such as Oklahoma and in town hall meetings actively discouraged African-Americans from immigrating citing the "strict interpretation" of Canadian immigration laws and the equally strict medical and character

from office, Oliver asserted that the 1910 immigration policy was more "restrictive, exclusive and selective" than any earlier Canadian legislation. In the same year, all of the US northern border crossings from Canada were closed off to all ⁹⁸Chinese immigrants limiting the only access from Canada was through Halifax to Boston.

Lord Bryce's appointment as British Ambassador to Washington in February 1907 introduced a key figure into not only Anglo-American relations, but also the tripartite relationship with Canada. Lord Bryce's goal was to make sure that US-Canadian disputes over the border did not "spill over" into the evolving relationship between Washington and London. This understanding of the border situation was particularly crucial at a time in European and international affairs generally when London could well see the turbulent times on the horizon.

Lord Bryce commenced an intensive series of negotiations to resolve all remaining border disputes between the US and Canada. Part of this objective was met through early 20th Century "shuttle diplomacy" between Washington, DC, and Ottawa. Testimony to the work of Lord Bryce can be found in the eight major agreements signed between Canada and the United States in a four-year period 1907-1911. These resolved virtually all the remaining disputed issues in a way in which both Washington and Ottawa

examinations. See R. Bruce Shepard, "Diplomatic Racism, Canadian Government, and Black Migration from Oklahoma, 1905-1912," *Great Plains Quarterly*, Winter 1983, 5-16, 13.

⁹⁸ K. Tony Hollihan, "A Brake Upon the Wheel:" Frank Oliver and the Creation of the Immigration Act of 1906," *Past Imperfect*, Vol. 1, 1991, 93-112; K. Tony Hollihan, "We Want Not Your Money But Your Citizenship," The Immigration Policies of Frank Oliver (master's thesis, University of Alberta, 1989)

felt they had secured significant gains.⁹⁹ The creation of the International Boundary Commission (IBC), and the International Joint Commission (IJC) in 1908 and 1909 respectively, both designed to institutionalize and depoliticize future border issues, finally signaled American-Canadian border relations from a strategic level were settling into a peaceful pattern.¹⁰⁰

Enforcement of immigration laws along the northern land border remained a core task of the Bureau albeit still encountering frustrating obstacles and active and well-organized smuggling operations.¹⁰¹ Daniel Keefe complained in his *Annual Report* for 1910 about the underlying friction along the border particularly among communities situated near the border. He ventured "some friction could be obviated were our friends of the press on both sides of the line to realize that United States immigration laws apply to all aliens, including Canadian citizens, precisely as the Dominion immigration laws are intended to reach all aliens, including citizens of the United States."¹⁰²

By the beginning of the 20th Century life along the international border "emerged not as a continuum of local to regional to national to international experiences, but as a

⁹⁹ For more on the diplomacy of Lord Bryce see Alvin Gluek, "Pilgrimages to Ottawa: Canadian-American Diplomacy, 1903-1913", *Historical Papers*, 31 (1968) 65-83; Peter Neary, "Grey, Bryce, and the Settlement of Canadian-American Differences, 1905-1911", *The Canadian Historical Review* Vol. 49 No.4, December 1968, 357-380.

¹⁰⁰ Treaty Between the United States and the United Kingdom Concerning the Boundary Between the United States and the Dominion of Canada from the Atlantic Ocean to the Pacific Ocean. April 11, 1908, United States Statutes at Large 35 Stat. 2003: Treaty Series 497; The Boundary Waters Treaty Between the United States and the Dominion of Canada. January 11, 1909, United States Statutes at Large 36 Stat, 2468 Treaty Series 548.

¹⁰¹ *Annual Report of the Commissioner-General, 1909*, 130.

¹⁰² *Annual Report of the Commissioner-General, 1910*, 142.

decidedly local experience with integrated transnational components.”¹⁰³ Cooperation between both American and Canadian immigration authorities steadily improved, but the simple lack of a credible number of enforcement personnel along the vast border precluded real enforcement except at certain, mainly urban locations. The historical permeable border between the two countries would persist well into the 20th Century.

Mexico

The period 1880 to 1911 was one of relative tranquility between the United States and Mexico in comparison to the period from the onset of the Mexican-American War in 1846 through the assumption and eventual consolidation of political power under Porfirio Díaz in the latter half of the 1870s. Indeed, in the first years of the Díaz government, the problems of lawlessness along the border had continued. At times it verged on a full-scale conflict between the two countries. More than once, both sides stepped back from the brink. There had also been a struggle over the issue of recognition of the Díaz government within the Hayes administration, but *de jure* recognition had been extended in 1878 with Mexico having fulfilled "the requirements of international comity and law for the purpose of recognition by our government."¹⁰⁴

The retirement of General Ord and the rescinding of the General Order No. 1 — which had allowed U.S. troops to cross the Mexican-American border — removed two significant impediments to improving security conditions along the length of the border. Díaz, who was seeking routes forward to improve the dismal Mexican economic situation

¹⁰³ Victor Konrad, "Common Edges," in Robert Lecker, ed., *Borderlands: Essays in Canadian-American Relations* (Toronto: ECW Press, 1991).

¹⁰⁴ *House Journal*, 45th Cong., 2nd sess., 636-637.

and levels of economic development, particularly in the border regions, abruptly changed his position with regards American railroad companies building lines that would connect Mexico with the United States. Before stepping down from office in 1880 and being replaced by his handpicked successor, Manuel González Flores, he extended his approval for the building of two lines planned to ultimately link to American railroads and taking the first significant step in opening the Mexican economy to American investment.¹⁰⁵

Apart from continuing the Díaz economic program, President González moved forward on a proposed bilateral agreement allowing troops of both nations to cross the international border while in pursuit of primarily Apaches. Ironically, as Washington and Mexico City dragged their diplomatic feet on agreeing to the proposed measure, local army commanders, both American and Mexican, were concluding unofficial tactical agreements to cooperate.¹⁰⁶ Eventually, the two governments agreed to terms. On July 29, 1882, an agreement was signed providing "that the Regular federal troops of the two republics may reciprocally cross the boundary line of the two countries when they are in close pursuit of savage Indians."¹⁰⁷

¹⁰⁵ For more on this early phase of Mexican-American economic development see Daniel Villegas, *The United States Versus Porfirio Díaz* (Lincoln: University of Nebraska Press, 1963), 144, 219.

¹⁰⁶ Robert D. Gregg, *The Influence of Border Troubles on Relations Between The United States and Mexico, 1876-1910* (New York: Da Capo Press, 1970), 147-148.

¹⁰⁷ Reciprocal Right to Pursue Savage Indians Across the Boundary Line, July 24, 1882, Papers Relating to Foreign Relations of the United States (Washington, D.C.: Government Printing Office, 1883), 396-397. For more on the treaty and its impact see Daniel Villegas, *The United States Versus Porfirio Díaz*, 207-209, 218-219; Linda Hall and Don Coerver, *Revolution on the Border: The United States and Mexico, 1910-1920* (Albuquerque: University of New Mexico Press, 1988), 10. For a fascinating overview of the legal implications and definitions of the concept of "hot pursuit" across the land

The agreement was not applicable to the length of the entire border just to individual sections, and those were primarily "in the unpopulated or desert parts of said boundary line."¹⁰⁸ The treaty was to last for two years. President Arthur, while welcoming the final agreement, still voiced his concerns regarding the "prevalent lawlessness upon the borders and to the necessity of legislation for its suppression."¹⁰⁹ While the primary focus for both Mexico City and Washington remained Native Americans, the ever-present smuggling, cattle rustling and, increasingly, the passage of peoples – primarily Chinese from 1882 onwards – across the border into the United States undoubtedly figured into President Arthur's overall sense of "lawlessness upon the borders."¹¹⁰

The 1882 agreement was not, however, a model for cooperation when it came to enforcing controls aimed at the Chinese migration. At the time of the promulgation of the Exclusion Treaty, the U.S. Customs Service still only deployed 25 mounted inspectors to cover the entire length of the Mexican-American border. They were tasked with enforcing sovereign laws such as customs regulations, tariffs and, from 1882 with the

boundaries see Amos S. Hershey, "Incursions into Mexico and the Doctrine of Hot Pursuit" *The American Journal of International Law*, Vol. 13, no. 3, July 1919, 557-569.

¹⁰⁸ *Ibid.*, 397.

¹⁰⁹ *Ibid.*, vi.

¹¹⁰ For the US Army stationed along the most volatile sections of the border, primarily the Arizona Territory the treaty was a longed-for agreement. Major General O.B. Wilcox, commanding the Arizona Territory, wrote to Secretary of War Robert Lincoln extolling the virtues of the treaty. "Our troops and the people of Arizona hail with rejoicing the recent treaty effected between the two governments on this subject. It is what all military commanders along the line have long contended for." Annual Report of Major General O.B. Wilcox, Commanding Department of Arizona, August 31, 1882, in Report of Secretary of War for 1882, 149. Cited in Gregg, *The Influence of Border Troubles on Relations Between the United States and Mexico*, 153-154.

restrictive immigration legislation with no additional resources and indeed no reciprocal agreement with Mexico. Compounding the efforts of the Customs Service to enforce customs and immigration laws the US Army, operating now under the constraints of the 1878 Posse Comitatus Act, was legally constrained in providing application of assistance to civilian authorities.

The Mexican authorities likewise struggled when it came to policing the border outside of raids by Native Americans. Complaints from border counties in Texas that the Mexican authorities were not doing enough to address the criminal problems along the Rio Grande brought forth the counterclaim from the Mexican government that it "watched constantly and with especial care the boundary line of the Rio Grande with municipal and police officers, federal troops and revenue guards."¹¹¹

Porfirio Díaz returned to power in 1884 and would remain in power until the Mexican Revolution of 1910, oversaw an intensification of the economic development program that would result in a knock on effect particularly concerning the border with the United States. Underpinning a substantial segment of the economic development was the employment of cheap domestic labor and increasingly foreign immigration. But many of the immigrants did not settle in Mexico choosing instead to cross the border into the United States contributing to the growing pressures along the border. The passage of the 1882 Exclusion Act, meant Chinese immigrants who chose to come through Mexico quickly became the leading smuggled human commodity.¹¹² An agent for a steamship

¹¹¹ Cited in Gregg's *The United States and Mexico, 1876-1910*, 169.

¹¹² Peter Andreas, *Smuggler Nation How Illicit Trade Made America* (New York: Oxford University Press, 2013), 218.

company moving Chinese passengers to the northern Mexican port of Guaymas, connected by one of the new railroads to the border town of Nogales, was reported to have told a U.S. Customs official “For all I know they may smuggle themselves into the United States and if they do I do not give a d-n, for I am doing a legitimate business.”¹¹³

Arguably, the growing American reaction to increased border crossings by Asian immigrants manifesting itself in policies from Washington would link the two borders more explicitly with each other. The Canadian politicians would, albeit belatedly in the minds of many Canadians who were anti-immigration, start to enact legislation mirroring the increasingly restrictive American law and efforts at controlling the border. The Mexican government, encouraged by many Mexican and American organizations and individuals profiting off of the immigrant traffic on both sides of the border, was not so accommodating.

In his second Annual Address to Congress in December 1890, President Benjamin Harrison noted the impact of continued economic growth in Mexico, stimulated on by railroad construction. “The friendship between our country and Mexico, born of a close neighborhood and strengthened by many considerations of intimate intercourse and reciprocal interest, has never been more conspicuous than now nor more hopeful of increased benefit to both nations.” But he was also aware of the associated impact of burgeoning immigration flows coming into Mexico and their long-term impact on the US southern border. Based on the findings of the Select Committee on Immigration and Naturalization published in 1889 in the same address he proposed “to the Governments of

¹¹³ Quoted in Lee *At America's Gate*, 181.

Mexico and Great Britain to consider a conventional regulation of the passage of Chinese laborers across our southern and northern frontiers.”¹¹⁴

The Díaz government did conclude various agreements resolving many disputes about both maritime and land border demarcation. An international commission established in 1889 ultimately resulted by 1898 in joint agreements deciding all the key maritime boundaries. By 1906 even the dispute concerning the division of the waters of the Rio Grande was finally settled.¹¹⁵ The government also took steps to encourage greater immigration into Mexico.

The Treaty of Amity and Commerce signed between China and Mexico in 1899 allowed for virtually unlimited immigration of Chinese into Mexico.¹¹⁶ In 1902 the establishment of a direct steamship line between Hong Kong and Mexican ports subsequently provided the logistical vehicle to move Chinese across the Pacific Ocean and implement the 1899 agreement. Within ten years the number of Chinese immigrants in Mexico had climbed from a few thousand to over 60,000, many of whom the final objective was always the United States.

Marcus Braun, the US Immigration Inspector who would testify to Congress about the growing problem of unchecked immigration along both borders of the United

¹¹⁴ Benjamin Harrison: "Second Annual Message," December 1, 1890. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=29531>.

¹¹⁵ In 1883 Mexico had also granted the United States a twenty-year lease to establish a coaling station and naval gunnery range in Magdalena Bay. In 1903 the lease was extended once again. James Callahan, *American Foreign Policy in Mexican Relations* (New York: Macmillan, 1932), 418, 445.

¹¹⁶ John V.A. MacMurray, editor, *The Treaty of Amity and Commerce, December 14, 1899, Treaties and Agreements With and Concerning China, 1849-1919* (New York: Oxford University Press, 1921), 214-220.

States, spoke to the issues from the Mexican side. He was detailed to investigate the problem on the Mexican side of the border. In a report submitted and included in the 1907 Annual Report of the Commissioner-General, Braun detailed that "On their arrival in Mexico I found them to be provided with United States money, not Mexican coins; they had in their possession Chinese-English dictionaries; I found them in possession of Chinese-American newspapers and American railroad maps." Frank Sargent noted in the same report, "These evasions of the law on the Canadian border are serious enough, but when compared with those in the Mexican border they sink into insignificance."¹¹⁷ The El Paso *Herald-Post* warned, "If this Chinese immigration to Mexico continues it will be necessary to run a barb wire fence along our side of the Rio Grande."¹¹⁸

Keefe's tenure as Commissioner General of the Bureau of Immigration coincided with the abrupt change in Mexican-American relations due to the onset of the Mexican Revolution in 1911. In his report of 1911, he noted: "a great many aliens of the Mexican race migrated to the United States in order to avoid the hardships incident to the unsettled conditions in Mexico." The Bureau's enforcement personnel continued to confront a significant movement of other people trying to cross the border illegally. Keefe referred to the report of the supervising inspector of the Mexican border who now had responsibility for both immigration and Chinese-exclusion laws.

With regards enforcement personnel along the Mexican border, the report spoke of the ongoing difficulty "in securing officers suitable and willing to undergo the hardships of a considerable number of assignments in this district in connection,

¹¹⁷ *Annual Report of the Commissioner-General of Immigration, 1907*, 100-111.

¹¹⁸ Quoted in Ettinger, *Imaginary Lines*, 93.

especially, with the enforcement of the Chinese-exclusion laws, and for that reason there has been a lack of permanency of personnel on this border, which of necessity seriously impaired the general efficiency." A solution was offered and was accepted by the Bureau to create "a third-grade civil service register from which to make the selection of eligible men for appointment to the position of mounted inspector." The register formed one of the critical assets for finding personnel to fill the immediate openings for the Border Patrol following the designation of funding in 1924.

Conclusion

The Mexican Revolution is outside the scope of this dissertation. Not so the impact of American actions along the southern border concerning internal Mexican affairs. President Taft in the second half of his administration declared both a policy of "patient non-intervention," and rigorously enforced American neutrality laws no doubt conscious of the historical precedents when it came to Mexico and American filibusters. Enforcement of the neutrality laws was clearly outside the capabilities, and arguably jurisdictional realm, of the scattered and operationally stretched customs inspectors and ad hoc force of immigration inspectors, however.¹¹⁹

¹¹⁹ Interestingly, the US Marshal Service, established under the 1789 Judiciary Act, (First Cong., sess., I, Ch. 20, 87) was the only federal force, external to the US military, obligated to "seal the American border against armed expeditions aimed at foreign countries." Simple logistics dictated, however, that there would never be a sufficient number of US Marshals or deputy US Marshals to enforce the laws along the length of either US land borders. Fredrick Calhoun, "The Lawmen: United States Marshal and Their Deputies" *US Marshal Service* (Washington, D.C.: Government Printing Office, 1987), 3. President Díaz had threatened war with the United States if American forces

The question of “overlapping and intermingling of state and federal responsibilities” once again became an issue where Texas was concerned. Hall and Coerver point to a meeting between President Taft and Governor Oscar Colquitt in September 1911. The result was an agreement whereby “the Texas Ranger force would be expanded, with help from federal funds, and would in turn work with federal authorities in enforcing federal neutrality laws and providing protection for the border.”¹²⁰

The former governor of Nuevo León, Bernardo Reyes, planned an invasion of Mexico through Laredo. On the orders of Governor Colquitt, a combined force of Texas Rangers, in cooperation with U.S. Army regulars, quickly broke up the filibuster force although Reyes escaped across the border back into Mexico. Despite the apparent success, “no one involved quite understood what the nature of federal-state cooperation was supposed to be.”¹²¹

In the chaotic months following President Díaz's flight from Mexico President Taft ordered the U.S. Army to implement various precautionary steps with regards the border. Various independent regiments were formed into a "Maneuver Division" and trained for a possible incursion into Mexico.¹²² This preemptory move was designed to

crossed the border into Mexico. “War If You Cross Rio Grande” Díaz Sends Ultimatum to U.S. *The Call*, March 11, 1911, 1.

¹²⁰ Linda B. Hall and Don M. Coerver, *Revolution of the Border. The United States and Mexico 1910-1920* (Albuquerque: University of New Mexico Press, 1988), 21.

¹²¹ Ibid. Interestingly Hall and Coerver point out that Governor Colquitt was quick to take all the credit for the success of the Nuevo León operation “despite an initial reluctance to follow the lead of federal authorities in dealing with the conspirators.”

¹²² John D. Eisenhower, *Intervention! The United States and the Mexican Revolution, 1913-1917* (New York: W. W. Norton & Co., 1993), 6. While it is unclear what deterrent

protect the American border forcibly and was welcomed by many. An editorial in *Outlook* noted “it was right for President Taft to assemble troops on the Mexican border that he might be prepared, on the one hand, to prevent bodies of Americans crossing over into Mexico with the intent to take part in an insurrection against a government with which we are at peace, and on the other hand, to protect the border from peril threatened alike by Mexican insurrectionists and the Mexican regular troops.”¹²³ President Taft, once again, cognizant of the history of US military incursions into Mexico, explicitly forbade any US military or National Guard forces to cross the border into Mexico for purposes of “hot pursuit” forays without direct White House permission.

The initial success of Francisco Madero appeared to vindicate President Taft’s policy. The War Department methodically disbanded the Maneuver Division. Governor Colquitt continued to complain that the border was still far from secure, however. Incidents in areas such as the El Paso-Juárez region prompted him to move units of the Texas National Guard to points along the border to reinforce the Texas Rangers. Madero’s assassination in February 1913 by forces loyal to Victoriano Huerta initiated a new period of significant internal instability in Mexico that threatened to spill across the border into the United States.

effect the formation of the Maneuver Division had on Mexican politics, the impact on the U.S. military was far-reaching. Brigadier General Tasker Bliss used the mobilization to advance some reforms about mobilization procedures subsequently employing them for mobilization of the American Expeditionary Force in 1917. Tasker Bliss, "Mobilization and Maneuvers," *Journal of the Military Service Institution* (March-April 1912), 173-195; Thomas F. Burdett, “Mobilizations of 1911 and 1913: Their Role in the Development of the Modern Army” *Military Review* (July 1974), 65-75, 71-72

¹²³ “Protecting the American Border,” *Outlook*, April 29, 1911, 97, 17. President Taft also ordered an arms embargo leveled against all Mexican forces other than those of the internationally recognized Madero government.

CHAPTER SIX

“The situation was equivalent to a circle of locked doors with no connecting wall between them.”¹

Anthony Caminetti’s first report as Commissioner General of Immigration in 1913 made clear that the “lack of funds, men, and facilities to properly and humanely enforce the [immigration] laws” seriously impacted the efforts of the Bureau. Caminetti also expressed his concerns regarding the long-term viability of using revenues from the ‘immigrant fund’ to supplement annual appropriations. The ‘immigrant fund’ “did not quite pay expenses in some of the early years of Federal control of immigration, [but] the Immigration Service has always on average been more than supported by the fund.” But the Bureau had already expended over \$3 million for the enforcement of Chinese-exclusion laws, a financial outlay not contemplated following the establishment of the immigrant fund in 1894. For Caminetti funding and manpower to enforce the immigration laws became his challenge, and constant refrain in his Reports, for the next nine years as Commissioner of the Bureau. The U.S. Congress meanwhile continued to add additional restrictive legislation.

¹ I.E. Wixon, Deputy Commissioner of Immigration and Naturalization “*The Mission of the Border Patrol*” (Lecture Series #7), U.S. Department of Labor Immigration and Naturalization Service, Washington, D.C., March 19, 1934.

The sixth chapter addresses the continued struggles of the Bureau of Immigration to efficiently enforce new and more stringent restrictive legislation enacted by the U.S. Congress through the early 1920s, and the eventual emergence of a dedicated land border force within the Bureau. Ironically, the land border force is not created but evolves from the ad hoc arrangements the Bureau has to put in place to enforce the laws. The U.S. Congress, finally responding to demands from Caminetti's successors, appropriates funding within the overall Department of Labor appropriations, to begin the process of formalizing some form of a dedicated land border patrol.

The enforcement powers of the Border Patrol are initially vague. Are they to have arrest powers? Of more significant concern to other agencies operating on the borders, will the Border Patrol have jurisdiction and enforcement capabilities concerning other federal laws? This issue underpins the bureaucratic struggle that subsequently ensues after 1924 between the Department of Labor and the Department of the Treasury, as the Treasury seeks to convince the Congress that a new U.S. Border Patrol under the control of the U.S. Coast Guard under Treasury is by far the most efficient and effective bureaucratic organization.

The House of Representatives agreed and passed the legislation. The Senate only has to approve. The U.S. Senate does not act, and the bill dies at the end of the 71st Congress. The Department of Labor retains control of the Border Patrol until another bureaucratic reorganization necessitated by national security concerns on the eve of World War Two, sees the Border Patrol shifted to the Department of Justice where it finally assumes the sobriquet of the U.S. Border Patrol.

Tipping point

“There is no field of endeavor in which “standing still” would be “moving backward” more truly than in the enforcement of statutes regulating immigration.”²

President Woodrow Wilson nominated William Wilson to be the first Secretary of Labor in March 1913. William Wilson had been a founding member of the United Mine Workers of America in 1890. When the Democrats won a majority in the House of Representatives in the 1910 off-year elections, Wilson, then a Democrat congressman representing Pennsylvania’s 15th District was appointed as Chair of the House Labor Committee. He led the successful campaign for the creation of a separate Department of Labor during his tenure as chairman.³

Among his first actions, the new Secretary of Labor recommended the appointment of Anthony Caminetti to succeed Daniel Keefe as Commissioner-General.

² *Annual Report of the Commissioner General of Immigration for the Fiscal Year ending June 30, 1913* (Washington, D.C. Government Printing Office, 1913), 176-177.

³ Establishing a different federal department focusing specifically on labor issues had been advocated since the end of the Civil War. In June 1884, the Bureau of Labor was established within the Department of Interior via the Bureau of Labor Act (48th Cong., sess., 1, 23 Stat. 60) along with the position of Commissioner-General of Labor. Carroll D. Wright became the first person to be appointed to the position. The fundamental objective of the office was to collect data on employment and labor in general. Within four years the Department of Labor Act (50th Cong., sess.1, 25 Stat. 182) the Bureau was elevated to the status of an independent department but still a sub-cabinet ranking. With the establishment of the Department of Commerce and Labor February 1903, (57th Cong., sess., II, 32 Stat. 826) the Bureau of Labor was formally incorporated into the new federal agency. In March 1913, a separate Department of Labor with full cabinet rank was finally established. (62 Cong., sess., III, 37 Stat, 737.) President Taft signed the legislation into law hours before officially leaving office on March 4, 1913. In his message to Congress on March 4, 1913, he wrote, "I sign this bill with considerable hesitation. . . . I forbear, however, to veto this bill, because my motive in doing so would be misunderstood. . . ." *New York Times*, March 4, 1913, 1.

Caminetti, a California attorney, brought an end to the series of prominent former union officials serving as Commissioner General of Immigration.

Caminetti's first report as Commissioner General included a report from the Supervising Inspector of District 23 covering the vast majority of the southern border. The supervising inspector noted the continued movement of Mexicans across the border because of the ongoing Mexican Revolution. The refugees were viewed as people who would with "relatively few exceptions ultimately return to their native land." On the northern border, the concern remained the flow of Chinese across the border. The supervising inspector writing "in its efforts to enforce the exclusion laws along the Canadian border, the bureau has on its hands a task of gigantic proportions demanding very serious consideration."⁴

In his concluding remarks for the *1913 Annual Report*, a report that he noted was largely the work of his predecessor Daniel Keefe, Commissioner General Caminetti wrote, "There is no field of endeavor in which "standing still" would be "moving backward" more truly than in the enforcement of the statutes regulating immigration."

⁴ *Annual Report of the Commissioner General of Immigration for Fiscal Year ending June 30, 1913* (Washington, D.C.: Government Printing Office, 1913), 250, 176-177. The 1914 report (Appendix IV) also included a report from Dr. Kate Waller, President of the National Council of Women and the National Florence Crittenton Missions. Dr. Waller had traveled to Europe for a six-week fact-finding mission from April 15 to June 30 to 15 countries. Ostensibly her purpose was to attend the International Council of Women's annual meeting in Rome, but she also met with other women's groups and organizations and with various European government agencies to discuss the movement of female immigrants to the United States. The 1914 report included a section entitled 'Proposed Plan for Treatment, Arrest, and Return to their Native Countries of Women and Girls Excluded or Ordered Deported.' Dr. Waller, given the title Special Agent of the United States Immigration Service for the trip. Having a female represent the federal government overseas when Dr. Waller still did not have the right to vote in her own country must be regarded as a significant move on the part of the federal government.

Caminetti noted, in his opinion, there had been no “standing still” or “marking time.” The Report, however, conceded “that the accomplishments of the past... have fallen far short of the ideal.”⁵

The Bureau of Immigration continued to confront the same logistical disconnect scenario that it had faced from its inception. Congress imposed additional restrictions but did not provide sufficient resources in either manpower or financial outlays allocated to implement the laws on the books or proposed laws of the land particularly concerning enforcement along the land borders.⁶

The Dillingham-Burnett immigration bill of 1913 continued the trend. The proposed legislation, based on the conclusions and recommendations of the Dillingham Commission established in 1907, reflected a determination by leading Congressional critics of unchecked immigration, such as Congressman Augustus Gardner, and pressure groups such as the Immigration Restriction League and the A.F. L., to implement further drastic steps to stem the flow of immigration into the United States.⁷ One of the objectives of the commission was to seek to stop immigrants even leaving their respective countries. “No adequate means have been adopted for preventing the immigration of criminals, prostitutes, and other morally undesirable aliens,” it warned.

⁵ Annual Report of the Commissioner General of Immigration for Fiscal Year Ended June 30, 1913 (Washington, D.C.: Government Printing Office, 1913), 35.

⁶ Section 40, The 1907 Immigration Act 59th Cong., 2nd sess., 34 Stat., 909-910.

⁷ The Commission, established under Section 39 of the 1907 Immigration Act, called for a nine-man panel. It was to consist of three Senators, three Congressmen and three external members all selected by the president. The goal was to “study the immigration problem in all of its phases and report on the same.” Senator William Dillingham (R-VT) and Congressman John Burnett (D-AL) were appointed the co-commission chairs. 59th Cong., 2nd sess., 34 Stat., 898.

“In spite of the stringent law, criminals or moral defectives of any class, provided they pass the medical inspection can usually embark at European ports and enter the United States without much danger of detection.”⁸

Establishing some form of layered approach to deal with the flow of immigrants starting with the European ports of departure had been a key recommendation in the reports of Special Immigrant Inspector Marcus Braun to the US Congress in 1906. And yet, the Dillingham-Burnett legislation contained no additional language about administration or enforcement either overseas or on the land borders or US maritime ports of entry. The central focus of the proposed legislation was the imposition of a literacy test on every immigrant over 16 years of age. It required reading a portion of the Constitution either in English or a native language or dialect.

President Taft vetoed the bill on February 14, 1913. The primary reason was the literacy test requirement. Charles Nagel, the Secretary of Commerce and Labor, pointed out not only the legal defects in the legislation, the unfairness of the literacy test as constructed in the legislation, but he warned considerable embarrassment to the Bureau of Immigration would ensue in attempting to enforce the law. Delays would be inevitable without a substantial increase in the number of interpreters and administrative staff. The result would be more people seeking to gain entry illegally across the land borders that

⁸ *Report of the U.S. Immigration Commission* (Washington, D.C.: Government Printing Office, 1911) Vol. 1, 32.

were also significantly understaffed when it came to personnel assigned to patrolling the borders.⁹

The day after the veto, the On February 14, 1913, the U.S. Senate overrode it by a vote of 72-18. The vote of 213 to 114 in the House of Representatives fell five votes short, however. Congressman Burnett quietly reintroduced the legislation within three months of President Wilson taking the oath of office.

Among Caminetti's first actions had been an attempt at the reorganization of that part of the Bureau that focused on patrolling the land borders. The force, as it existed, continued to consist primarily of a small group of irregulars undertaking the Bureau's enforcement duties only when resources, especially Bureau funding, permitted.

In his first annual report following a year-plus in the position, Caminetti drew attention like all of his predecessors to both the mismatch in simple logistics when it came to patrolling the land borders, and the ongoing failure on the part of the Congress to appreciate fully the complexity and sophistication of the smuggling networks operating on both sides of the international borders. "Enforcement of the exclusion laws along the borders and even the coastlines and along the lakes and rivers near our boundaries has always been and still is a difficult undertaking," he reported. "With the best methods that can be devised and the best force that can be selected it will continue so long as the Government has to deal with men who make a profession of smuggling and also with people so desirous of entering the country without inspection that to attain their object

⁹ *Congressional Record*, 63rd Cong., 3rd sess., February 14, 1913, 49:3269-70. Secretary Nagel in a letter to President Taft regarding the need for a veto described the literary tests as "a test which is not calculated to reach truth, " and that was conceived in an effort "to find relief from a danger which does not exist."

they will readily assume any risk and pay high prices for the services rendered to them, no matter how trivial." He continued, "And yet comparatively few inspectors were assigned to the herculean task of guarding these frontiers..."¹⁰

Caminetti described the implemented changes while promoting a particular border force concluding, "the changes were not complete, nor extensive enough to cope with the organized effort on the part of those who engage in the business of bringing aliens into this country contrary to law. This contraband traffic and illegal entry can only be broken up by a general and complete organization of a border patrol and by active measures calculated to seek out, arrest and deport all who are in the United States in violation of law, treaties, and agreements." Seeking Congressional understanding, support and, appropriations, Caminetti advocated, "the present organization should be made to cover all sections and places where conditions permit access to our boundary."¹¹

Throughout 1913-14, the Bureau contributed suggestions for improvements in the enforcement regime. The reintroduced Burnett bill, H.R. 6060, included all the recommendations. Sustained pressure from the American Federation of Labor contributed to the successful passage, yet again, of the Burnett bill in the House of Representatives in February 1914. In his concluding remarks for the 1914 Annual Report Caminetti recorded that incorporation of "many new provisions and administrative features suggested by the Department of Labor from the experience of this bureau in dealing with

¹⁰ *Annual Report of the Commissioner General of Immigration for Fiscal Year ending June 30, 1914* (Washington, D.C.: Government Printing Office, 1914), 20-21.

¹¹ *Ibid.*, 22. Amongst his proposals was the creation of an Immigration Service Signal Corps based on the template of the US Army's Signal Corps. Any expansion of the Bureau's capabilities and manpower was entirely dependent on securing additional appropriations.

many phases of immigration which if enacted will materially aid in solving many of the vital problems and settling many questions which have impeded the department and bureau in administering and executing the laws.”¹²

The summer and fall of 1914 witnessed sustained pressure on the U.S. Senate to pass H.R. 6060. President Wilson made clear his opposition to the literacy qualification citing statements he made on the campaign trail in 1912 to "groups of our fellow citizens of foreign extraction whom I wished to treat with perfect frankness and for whom I had entire respect." In a letter, President Wilson sent to Senator John Sharp Williams the president wrote of finding "myself in a very embarrassing situation about that bill. Nothing is more distasteful to me than to set my judgment against so many of my friends and associates in public life..." informing the Senate that inclusion would result in his veto of the legislation. The Senate passed the Burnett bill by a vote of fifty to seven on January 2, 1915, ignoring the President's warning.¹³

President Wilson was subjected to "harrowing crossfire" from both sides of the debate during the next three weeks.¹⁴ In the end, President Wilson vetoed the Burnett bill. He gave "other reasons for his decision than considerations of political expediency." In his veto message, he declared "If the people of this country have made up their minds to limit the number of immigrants by arbitrary tests...it is their right to do so. I am their

¹² *Annual Report of the Commissioner General of Immigration for Fiscal Year Ended June 30, 1914* (Washington, D.C.: Government Printing Office, 1914), 24.

¹³ Arthur Link viewed the action of the U.S. Senate as representing a "turning point in federal policy." Arthur S. Link, *Wilson The New Freedom* (Princeton: Princeton University Press, 1956), Vol. 2, 275-276.

¹⁴ *Ibid.* 276.

servant and have no license to stand in their way. But I do not believe that they have. I respectfully submit that no one can quote their mandate to that effect."¹⁵

Vetoing the Burnett bill also doomed those sections included in the legislation bolstering the enforcement capabilities of the Bureau of Immigration. To provide some additional enforcement capabilities, the appropriations bill for FY16 for the Department of Labor included language specifically authorizing money for other mounted inspectors. This time, however, the mounts were "motor-propelled passenger-carrying vehicles."¹⁶

Once again, Caminetti's efforts to continue improving enforcement along the land borders ran into another bureaucratic hurdle. Denied "sufficient funds to justify the purchase of enough motor vehicles" to provide mobile patrols along stretches of the border, Caminetti had signed off on allowing officers to "procure suitable equipment," that is hiring vehicles. This action was found to be in contravention of rules put in place by the Comptroller of the Treasury. Following a finding by the Comptroller's office on March 17, 1915 "it became necessary to order the discontinuance of all automobile patrol

¹⁵ Woodrow Wilson: "Veto Message," January 28, 1915. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=65386>. The House of Representatives sustained the veto on February 4, 1915, by a vote of 261 to 136. Congressional Record Vol. LII, Part VI, 3077, 3078.

¹⁶ Digest of Appropriations for the Support of the United States for the Service of the Fiscal Year Ending June 30, 1916 (Washington, D.C.: Government Printing Office, 1915), 470. A total of \$13,500 was transferred by authority of Legislative Act of March 4, 1915, for the expenditure for this service under the title "Contingent expenses, Department of Labor, 1916."

service except such as could be rendered by two such vehicles which are owned by the Immigration Service on the Mexican border."¹⁷

The decision had a far-reaching impact as Caminetti noted in his report. The patrols along the coast undertaken in conjunction with the U.S. Coast Guard and the Customs Bureau of the Treasury Department had had a significant impact. "The construction placed upon the law comes at an unfortunate time, as the excellent work being done by patrol launches has made smuggling by boat a difficult and dangerous proceeding, and the enforced discontinuance of the only method of transportation that effectively meets the means of conveyance used by smugglers operating on the land frontiers is correspondingly fatal to the success of all other efforts to break up this nefarious traffic."¹⁸

The inauguration of the Wilson administration in March 1913 brought with it a drastic change in US policy towards Mexico and by default operational capabilities along the southern border. Grieb maintains Wilson saw a golden opportunity to enact an aggressive liberal policy "that if the United States swept away the current *caudillo* away, the Mexican people would rejoice at his removal, establish an elective government, and be eternally grateful to the United States."¹⁹ A more democratic Mexican government would, in Wilson's mind, also be far more receptive to, among other issues, dealing with the flow of immigrants and cross-border smuggling.

¹⁷ *Annual Report of the Commissioner General of Immigration for Fiscal Year ended June 30, 1915* (Washington, D.C.: Government Printing Office, 1915), 22.

¹⁸ *Ibid.*, 22-23.

¹⁹ Kenneth Grieb, *The United States and Huerta* (Lincoln: University of Nebraska Press, 1969), 41-42.

The internal chaos in Mexico, including increasing anti-Chinese sentiment wrapped in an explosion of Mexican nationalism, significantly impacted the flow across the border. The issue became not one of crossing the border but reaching the border from the Mexican side. The figures listed in the 1916 Annual Report detailed “53 Chinese” as having “checked out of El Paso through the immigration office during the past year, the smallest number in the history of the border service.” The impact on others trying to cross either legally or illegally likewise varied.

The Supervising Inspector for the El Paso District noted in his report for the 1916 Annual Report, "Demoralized industrial conditions in Mexico are forcing ever increasing tides of undesirables toward this country." With regards, those categorized as refugees, those of "a political character seeking asylum during the past year has unquestionably diminished." He attributed this to “the elimination from territory adjacent to the border of rival factions contending for supremacy and the consequent concentration of control within the hands of a central and recognized authority.” But, “The volume of refugees of a nonpolitical stripe has greatly increased.” A major factor driving the flow was "a general revival of industrial activity throughout the Southwest and even in regions more remote from the border, has created a strong demand for unskilled labor." The ramping of American war industries was leading the expansion.²⁰

²⁰ *Annual Report of the Commissioner General of Immigration Fiscal Ended June 30, 1916* (Washington, D.C.: Government Printing Office, 1916), 227. For the period covered by the 1916 report, a total of 108,030 applications were received for the southern border. This represented a 55% increase on the year covered by the 1915 report's parameters. A total of 99,964 were legally admitted to the United States.

President Wilson's policies towards the Huerta regime and overall towards Mexico seriously boomeranged. The occupation of Mexico's main port Vera Cruz in April 1914, designed to instigate what Wilson believed would be a quick and bloodless coup d'état against Huerta, failed miserably. American troops were not welcome by Mexicans, and the nationalistic backlash almost saved Huerta. In November 1914, American forces were withdrawn in conjunction with an agreement that a severely weakened Huerta would step down. The ensuing anarchy and chaos that enveloped Mexico for the next three years, however, evolved into a major diplomatic and military test of strength for President Wilson.²¹

President Wilson within weeks of the recall of the Pershing Expedition to capture Pancho Villa in January 1917 confronted the passage of the Immigration Act of 1917.²² Congressman Burnett resubmitted his legislation for the third time. Both Houses of Congress once again passed the bill with resounding majorities. Once again President Wilson praised the bill before issuing his veto of the bill: "In most of the provisions of the bill I should be glad to concur, but I cannot rid myself of the conviction that the

²¹ The competing factions within Mexico at various times attacked American settlements along the length of the southern border. Hall and Coerver contend these raids were probably part of the so-called Plan of San Diego operationalized over the 18-month period of January 1915 to June 1916. Whether all of the Carrancistas supported these tactics remains unclear, the period from July 1915 to July 1916 alone witnessed 30-plus raids across the Rio Grande into Texas alone resulting in the deaths of 21 Americans, civilians, and American military personnel. The January 1916 attack on Columbus, New Mexico led by Pancho Villa resulting in the death of 17 Americans ultimately forced President Wilson to act ordering an expedition into Mexico under the command of General Pershing with the objective of capturing Pancho Villa. The size of the expeditionary force was virtually negated by the sheer geographic region it was required to search. Like so many cross-border forays time and space were the ultimate victors. The expeditionary force was ordered back in early 1917 having failed in its mission.

²² The Immigration Act of 1917 64th Cong., sess., II, 39 Stat. 874

literacy test constitutes a radical change in the policy of the Nation which is not justified in principle.”²³ Both the House and Senate voted overwhelmingly to override the veto.²⁴

Anthony Caminetti welcomed the passage of the Immigration Act. “The bureau indicated in its last two reports the principal respects in which the then proposed new legislation would work improvements. Even the short experience already had with the new statute has fully demonstrated that the bureau’s anticipations are to be completely realized.”²⁵ Caminetti’s ongoing efforts to improve and enhance the capabilities of those immigration officers ‘riding the line’ received substantial reinforcement following the declaration of war on the Central Powers in April 1917. U.S. Army cavalry units were assigned to patrol the southwest border to augment both Bureau of Immigration and Bureau of Customs interdiction efforts. The Army’s mission, however, was one of deterrence towards enemy combatants and spies rather than those smuggling Chinese, contraband goods, or others seeking to avoid the legal entry points.

On July 26, 1917, the Secretary of State and Secretary of Labor had issued a “joint order requiring passports and certain information from aliens who desire to enter the United States during the war.”²⁶ The information needed, other than a passport, was a visa issued by a United States consular official. Both State and Labor viewed the joint

²³ Arthur S. Link, Editor, *The Papers of Woodrow Wilson* (Princeton: Princeton University Press, 1983), Vol. 41, 52-53.

²⁴ The House of Representatives voted 287 -106 and the U.S. Senate 62 – 19 to override the veto. Arthur Link wrote, “Thus the open door to America—long the gateway of opportunity for countless millions—was partially closed for the first time in general legislation.” Arthur S. Link, *Wilson: Campaigns for Progressivism and Peace, 1916-1917* (Princeton: Princeton University Press, 1965), 328.

²⁵ *Annual Report*, 1917, xii.

²⁶ *Reports of the Department of Labor 1918 Reports of the Secretary of Labor and Reports of Bureaus* (Washington, D.C. Government Printing Office, 1918) 169.

order's issuance as a temporary fix until the Congress enacted appropriate legislation. The Immigration Bureau bore the brunt of the additional work without any significant increase in either budget or manpower resources and had to wait almost a year for Congressional action.

The Wartime Measure Act, signed into law by President Wilson on May 22, 1918, included an additional legal obstacle to crossing the country's borders in either direction. The primary objective was "to prevent in time of war departure from or entry into the United States contrary to the public safety." The President was vested with the power to impose restrictions on entry and departure of persons within the jurisdiction of the United States during a period of war.²⁷ Section II of the Act made it "unlawful for any citizen of the United States to depart from or enter or attempt to depart from or enter the United States unless he bears a valid passport."²⁸

Immigrants flowing into the country had steadily decreased from 1915 to 1917. But the combination of the enactment of the 1917 Immigration Act and the 1918 Wartime Measure Act, American entry into World War One, and an ongoing flow of Mexican labor across the southern border placed incredible pressure on the resources of the Bureau of Immigration.²⁹ Commissioner General Caminetti, in his report for 1918, noted how the

²⁷ The Wartime Measure Act of 1918, 65th Cong., sess., II, 40 Stat. 559. The legislation allowed for an unlimited time span for application and enforcement during the time of war involving the United States. On July 26, 1917, the Secretary of State and Secretary of Labor had issued a "joint order requiring passports and certain information from aliens who desire to enter the United States during the war."

²⁸ Ibid.

²⁹ The demand for labor rose dramatically in 1918. Public pressure on Congress and from the Bureau of Immigration to use Mexican workers to fill the labor void resulted in the Congress amending the rules of the 1917 Act. The amendments included temporarily

Bureau's Immigration officers and that personnel providing ad hoc protection along both borders had risen to the challenge, however. "It can be readily understood that even without any particular or direct effort upon their part such officers in the regular course of their duties would have come into contact with many cases arising under the statutes that have been enacted from time to time during the past year with the object of protecting the country against schemes or conspiracies of enemies or agents of the enemy."³⁰

Caminetti also noted how the Bureau had commenced regular cooperation and interaction with several other federal departments including State, Treasury, War, Navy, and Justice to enforce federal laws.³¹ Smuggling across the borders, while significantly reduced, continued. "The activities of the smugglers have not wholly ceased, nor is it to be expected that they will, so long as contraband aliens are willing to pay a high price for assistance in evading or setting at naught the terms of the law."³²

Caminetti was already looking to a post-war environment with the understanding that cessation of hostilities in Europe could well result in a significant resumption of large-scale smuggling of people particularly with the application of the new literacy test under the 1917 Immigration Act. The legislation had also finally brought into focus a distinction in duties of Immigration Inspectors and Immigration-patrol inspectors. The

suspending the literacy test, payment of head-tax and contract-labor provisions for aliens wishing to enter the United States from Mexico for necessary war work including agricultural work, railroad labor, federal construction programs and mine labor. The workers gained admission under the authority of the ninth proviso of Section Three of the 1917 Act. Authority for this admission was terminated on March 2, 1921. Between 1917 and 1921 over 72,000 workers in this category were admitted to the United States primarily across the southern border. *Annual Report, 1921*, 7.

³⁰ *Annual Report, 1918*, 14-15

³¹ *Ibid.*, 15.

³² *Ibid.*, 32.

option of creating a separate force dedicated to law enforcement along the country's borders gained momentum.

Caminetti leads the charge for a land border force

"The expenditure of vast energy and huge sums of money in guarding portals at Ellis Island against the entry of the prescribed seems a vain and futile thing so long as the back-yard gate swings loosely on its hinges."³³

Robe Carl White, Assistant Secretary of Labor, described the situation on the land borders of the United States shortly after the end of World War One. "It became apparent that it was useless to close our seaports to the entry of aliens and leave our land borders open and unprotected, for the reason that aliens who could not come in regularly at our seaports under the quota could proceed to contiguous foreign territory and enter by walking across our unprotected land boundaries."³⁴ Supervising Inspector Frank W. Berkshire, in charge of the Canadian Border from the Atlantic seaports to the Montana line, in his annual contribution to the Commissioner General of Immigration Report for 1918, wrote: "Notwithstanding the excellent results obtained from the repressive measures maintained, the menace [smuggling and cross-border violations] persists and representations have been made to the bureau looking to the organization of a closely knit

³³ Supervisor, El Paso District in the *Annual Report of the Commissioner General of Immigration to the Secretary of Labor, Fiscal Year Ended June 30, 1923* (Washington, DC: Government Printing Office, 1923), 19.

³⁴ Statement of Robe Carl White, Assistant Secretary of Labor, hearing before the Committee on Interstate and Foreign Commerce, House of Representatives, April 24 and 25, 1930, 28.

border patrol to work in conjunction with the existing immigration officers, with a view to effectually close up the gaps in the line of defense."³⁵

Caminetti agreed, recommending a patrol service to guard the borders and the coastlines of the country and the insular possessions against smuggling and similar violations of the law." Describing the current state of affairs he noted, "the bureau now has a small forces doing effective work along the lines of the borders of Canada and Mexico and on our coasts, but this needs to be materially increased."³⁶

Caminetti's subsequent rationale for such a proposal finally put into words what all his predecessors in the position, Stump, Powderly, Sargent, and Keefe, had obliquely advocated in their Annual Reports: a dedicated force with law enforcement powers separate from Immigration officers stationed at land and coastal points of entry but a part of the overall Immigration Bureau. "In advocating specialized effort in work of this nature, it may be pointed out that regular immigration officials, who are charged with the enforcement of the general phases of the immigration law, cannot give sufficient time from other duties to make effective effort to entirely overcome the studied and devious methods practiced by those who seek to enter the country surreptitiously. This class of work needs experienced officers who will devote their entire time and all their energies to the task." Caminetti reinforced his argument pointing out the immediate benefits of being able to reassign men from the northern border to the southern border as a result of American and Canadian military authorities guarding the border so closely "as to make it practically impossible for even the most ingenious smuggler to operate successfully.

³⁵ Annual Report, 1918, 319.

³⁶ *Ibid.*, 26.

"During the last year [1918] when it was possible for a time to patrol certain sections of the Mexican border, the supervising inspector in charge of the district was able to report that more progress was made in enforcing the law than had been the case for ten years previously," he reported.³⁷

In July 1919 with the publication of the Commissioner General's Annual Report was, eleven separate federal agencies exercised some degree of control and application of federal enforcement policies along the land and maritime borders of the United States. The Department of Agriculture fielded the majority all of which targeted specific scientific-related issues.³⁸ The Department of Treasury oversaw the operations of the U.S. Coast Guard,³⁹ the mounted inspectors of the Customs Service, U.S. Public Health

³⁷ Ibid.

³⁸ The Department of Agriculture managed the Bureau of Plant Industry (BPI). Established in the Patent Office by an act of March 3, 1839 (5 Stat. 354), and re-designated the Department of Agriculture by an act of May 15, 1862 (12 Stat. 387). The BPI was established effective July 1, 1901, by the Agricultural Appropriation Act (31 Stat. 926), March 2, 1901; the Insecticide and Fungicide Board. Established by General Order 143, Department of Agriculture, December 22, 1910, to administer the Insecticide and Fungicide Act (36 Stat. 331), April 26, 1910; the Federal Horticultural Board. Established to enforce federal regulations under the 1912 Plant Quarantine Act; the Bureau of Chemistry. Established May 15, 1862 (12 Stat.387) Designated a Bureau effective July 1, 1901, by the Agricultural Appropriation Act (31 Stat.930), March 2, 1901; the Bureau of Soils. Designated a Bureau effective July 1, 1901, by the Agricultural Appropriation Act (31 Stat.930), March 2, 1901; the Bureau of Animal Industry (BAI). Established in the Department of Agriculture by an act of May 29, 1884 (23 Stat.31) combining the research and enforcement functions of the Veterinary Division of the Department of Agriculture, and the enforcement responsibilities of the Treasury Cattle Commission; the Biological Service. In 1885–1886, the Division of Economic Ornithology and Mammalogy (in 1885 it was the Section of Economic Ornithology) was established within the Department of Agriculture In 1896 it became the Division of Biological Survey.

³⁹ Created by the act of January 28, 1915, merging the Revenue Cutter Service and the Life-Saving Service (36 Stat. 800)

inspectors, and the Bureau of Narcotics.⁴⁰ The Bureau of Immigration, within the Department of Labor, managed the ad hoc force of mounted inspectors on both borders. Within less than a year an additional force operating along both borders was established. The Prohibition Unit was created as a unit of the Bureau of Internal Revenue to enforce the National Prohibition Act of 1919.⁴¹

Each of these agencies operated within their bureaucratic lane, generally aware of other federal enforcement laws but not necessarily willing to prioritize them over their own agency's enforcement objectives. No organization was willing to necessarily give up a mission for the sake of overall law enforcement efficiency. Yielding the responsibility for an enforcement task ran the risk of losing appropriated funds. The Department of Agriculture viewed the specialized and technical nature of many of the laws and policies enforced as an impediment to the creation of any federal force responsible for enforcing broadly based federal exclusion laws.

In the 1919 Report, both Supervising Inspectors who managed the two most significant border regions added their weight to the evolving argument focusing on the creation of a dedicated border police force.⁴² They both shared the Commissioner

⁴⁰ Created in March 1915 as a part of the Miscellaneous Division of the Bureau of Internal Revenue to enforce the Harrison narcotic law (38 Stat. 785), December 27, 1914.

⁴¹ The Volstead Act (41 Stat. 305), passed over the veto of President Wilson, banned alcoholic beverages, as well as their production and distribution. House Judiciary Chairman, Congressman Andrew Volstead, (R-MN), defended the legislation stating "The American people have said that they do not want liquor sold, and they have said it emphatically bypassing almost unanimously the constitutional amendment."

⁴² District One comprised the Canadian Atlantic Seaports and the Canadian Border East of the Easterly Line of Montana, with Headquarters at Montreal. District Twenty-Three included Texas (Except District Nine), New Mexico, Arizona, and Southern California, with Headquarters at El Paso.

General's concern regarding an anticipated surge of smuggling across their respective borders without sufficient resources, particularly manpower, to meet the challenge. "The force in southern California, though efficient, is wholly inadequate to handle the situation as it should be handled and the force in other parts of the district, at time small in proportion to the area covered, was so greatly reduced at the close of the fiscal year [1919] as to make any transfers therefrom to southern California an impossibility without letting down completely all bars to the ingress of undesirables generally over the balance of the border."⁴³

The Supervising Inspector for District Twenty Three, headquartered in El Paso with jurisdiction over the majority of the southern border, likewise pointed to the apparently never-ending enforcement tasks confronting the Bureau but without the corresponding increase in manpower or appropriations. "If the district is supplied with only a sufficient number officers to man the ports of entry and no employees are provided to guard the border and thereby compel aliens to apply for admission at the proper places, the purposes of the law not only fail of accomplishment but the work performed at ports of entry is nullified...Obviously, without officers to compel aliens to present themselves at regular points, undesirable aliens can and will cross the frontier where and when they please. It should be borne in mind that the act of February 5, 1918 [Wartime Measure Act], increases at least fourfold the work incident of aliens compared with the act of February 20, 1907. [Act to regulate the immigration of aliens into the United States.]"⁴⁴

⁴³ *Annual Report, 1919*, 409.

⁴⁴ *Ibid.*, 411.

It was not only the lack of future requirements to meet the Bureau's tasks along the border that frustrated District Twenty Three's Supervising Inspector. Historically, a failure to provide sufficient resources or to appreciate the enormity and complexity of the issues confronting Bureau personnel on the part of the Congress underpinned much of the problem. "The failure of proper inducements of a financial nature has brought about a dearth of efficient eligibles. Brains are at a premium, and the Government does not pay the premium...The difficulty is met by accepting lower standards of efficiency. The inefficient employee does only from one-half to one-third (or even less) the work performed by the efficient and does that fraction poorly and often in a manner calculated to bring the service into disrepute." The Supervising Inspector, once again, focused primarily on the geographic logistics. "When consideration is had of the fact that there are 44 stations in this district, 20 of which are regular ports of entry and there is a frontier of 2,000 miles to be covered, extended discussion seems hardly necessary to demonstrate that with 151 inspectors upon whom the bulk of the work must necessarily fall, they will have their hands full."

For his part, the Supervising Inspector for District One along the northern border called for the substantial increase in the number of help employed, as well as higher salaries. The Supervisor Inspector summed up his frustration, that of the Commissioner-General and the Bureau as a whole. "At a time when the Nation is crying for deliverance from the anarchist, the Black Hand, the bomb thrower, and the slayer of public officials the immigration service, which now, if ever, should possess a personnel capable of

enforcing any laws enacted for the protection of our people, is surely shown to be deteriorating and becoming more impotent."⁴⁵

The 1918 mid-term elections gave control of the House of Representatives to Republicans largely hostile to immigration. Congressman Albert Johnson, a Republican from Washington State, assumed the chairmanship of the House Immigration Committee, a position he would hold for the next decade. Known for his anti-radical and anti-immigrant attitudes, in 1912 he had warned that: "The greatest menace to the Republic today is the open door it affords to the ignorant hordes from Eastern and Southern Europe where lawlessness flourishes and civilization is ebbing into barbarism."⁴⁶ And in 1913, he had written that: "The character of immigration has changed, and the newcomers are embedded with lawless, restless sentiments of anarchy and collectivism. They arrive to find their hopes too high, the land almost gone and themselves driven to crowd into cities and struggle for a living. Then anarchy becomes rife among them."⁴⁷

⁴⁵ Ibid., 393-94. The Bureau of Immigration assigned the duties of enforcing the 1918 Wartime Measure Act was another example of the disconnect between legislative goals and objectives and the reality on the ground. Immigration inspectors of the Bureau of Immigration represented the Department of State as permit agents for the examination of aliens seeking to depart the United States, and as control officers for incoming travel at all ports of entry and outgoing travel on both land borders. The Bureau was granted an appropriation of \$500,000 from the President's fund for national security and defense to create a temporary organization of inspectors and clerical workers to enforce the laws. In the 1919 Annual Report Commissioner Caminentti described the passport system in glowing terms and advocated its retention on a permanent basis along with the appropriate funding for sufficient Bureau personnel to continue its enforcement. The visa system was also retained. No new appropriations were forthcoming, however.

⁴⁶ Steve Willis, "Henry McClearly and the Land of the Rising Sun," *McClearly Museum Newsletter*, Vol. 11 No. 3 (September 2001).

⁴⁷ Albert Johnson, "Put Up the Bars," *The Home Defender* September-October 1913, 2.

From 1913 to 1918 Johnson served as a member of the minority on the House Immigration Committee and became an enthusiastic supporter and champion within the Congress of various racist ideologies including eugenics. Johnson was also a commensurate politician and worked hard at establishing and maintaining bipartisan relationships, an undertaking that would serve him well when he took over the chairmanship of the Immigration Committee. Under his chairmanship, the process began immediately to formulate a new immigration policy designed to implement even stricter restrictions on immigration entry into the United States.

In his final Annual Report as Commissioner General of Immigration, issued against the backdrop of new evolving Congressional legislation on immigration, Anthony Caminetti once again spoke of the challenges the Bureau confronted endeavoring to enforce current immigration laws along both land borders and at seaports. Once again, he advocated the creation of a dedicated enforcement unit with police powers with abilities and legal authority to operate not only along the borders but also within an interior zone back from the borders. "The immensity of the task to prevent smuggling and illegal entry—involving as it does guarding the coastlines east, west, and south and extensive land boundaries north and south, and searching for violators of the law within the country—is apparent, and in the absence of a sufficient force at the boundaries and in the interior to prevent illegal entrance and apprehend violators, it has become a difficult

undertaking to maintain such defensive measures as will even partially stop operations of this character."⁴⁸

Caminetti lamented the ad hoc arrangements currently in place concerning both manpower and appropriations arguing, "the service, to be effective, must be continuous. Cessation of work, even for a brief period, means a resumption of smuggling and illegal entries, as those engaging in such activities are constantly on the alert to gain an advantage of the law." Predicting an inevitable surge in both legal and illegal immigration Caminetti wrote: "Accordingly, what is needed is not only a strong border and coast guard but also a thorough follow-up system acting in conjunction therewith, with officers in various cities, which will make the interior unsafe for those who have succeeded in illegally crossing the boundaries. Prevention of illegal entrance has always been one of the great problems of the Immigration Service, and as our immigration laws have become more rigid, effective control has been increasingly difficult."⁴⁹

To "provide a reasonably adequate service for the coming year" Caminetti advanced a budget request of \$6,000,000, arguing "unless an appropriation for the next fiscal year reaching or approximating that amount is secured it will be impossible to properly enforce the immigration laws and meet all requirements of administration." Increasing the size of the Bureau's workforce was viewed as a "growing necessity," noting "a material increase is now unavoidable and it is estimated that a personnel of

⁴⁸ *Annual Report, 1920*, 26. The Commissioner suggested that a classification system for employees, including efficiency ratings, was necessary to equip the Bureau better. Additional personal issues included a request for law examiners to deal with Bureau work in Washington, D.C. that required knowledge of immigration laws and regulations as well as laws covering constitutional, international and municipal questions.

⁴⁹ *Ibid.*

2,500 [an increase from 1,700] will be required.” Along with the increase in manpower “there must be considered an increase in pay.”⁵⁰ The majority of the proposed increase in manpower was intended “to increase the force on the two borders, on the coastlines as well as at seaports, for the prevention of illegal entry of aliens; and to maintain a follow-up system to guard against violations of the law and regulations in a general sense...”⁵¹

And yet, despite the logistical challenges faced by the Bureau, Caminetti also advocated for stricter immigration laws. Once again, using the continuation of the post-war surge in immigration as a basis, Caminetti wrote, "this consideration of the matter has forcibly suggested to it the need for further legislation, both selective and restrictive in nature, and it is believed that the early passage of such legislation is advisable."

Clearly, the Commissioner-General was adept at employing a ‘carrot and stick’ approach towards proposed policy: implement tighter controls but provide the Bureau with sufficient means to apply those restrictions or face the consequences.

On April 11, 1921, Chairman Johnson introduced H.R. 4075 entitled the Emergency Quota Act of 1921. The objective was to temporarily limit the numbers of

⁵⁰ Ibid., 54-55.

⁵¹ Ibid. The *Annual Report for 1920* once again included reports from the supervising inspectors from all 23 districts. And, once again, the reports of the two largest districts, the first and the twenty-third, included calls for a dedicated border force but also the inherent difficulties in attracting and retaining qualified personnel. One example, among many offered by both Supervising Inspectors, was from the Detroit office. "The enforcement of immigration laws and regulations at Detroit demand a much larger staff of employees. The situation is such as should have earnest consideration." 421. The officer in charge of the Los Angeles station wrote: "The difficulty is found in the lack of sufficient men to station at strategic points and to cover all railroad trains leaving the vicinity of the border....The logical procedure, of course, is to increase the force to such an extent as to render it possible to continue covering these strategic points and thus ‘bottling up’ negotiable routes from the border." 443.

immigrants gaining access to the United States by the imposition of quotas based on country of birth. The three percent of the total number of foreign-born persons from that country in the 1910 census formed the basis for calculating the individual country quotas. On April 22, H.R. 4075 passed the House of Representatives without a recorded vote, arguably a testament to the persuasive personal powers of Chairman Johnson.⁵² The legislation passed the U.S. Senate by a vote 78 to 1 on May 3, 1921, guided through by Senator Cabot Lodge.⁵³ President Harding signed it into law on May 19, 1921.⁵⁴

The legislation was scheduled for immediate enactment and enforcement and would continue through June 30, 1922. While the language of the act contains provisions delegating to the Commissioner of Immigration operational control of enforcement, nowhere in the act is there language providing for the expansion of the force as advocated by Commissioner Caminetti in his 1920 annual report, his last. Enlargement of the workload is clear with monthly reporting of admissions "of aliens of each nationality," and comparisons with previous months and years.

Caminiti's successor was William W. Husband who was from Vermont.

Following a stint as a journalist, he joined the staff of Senator William Dillingham from

⁵² Alfred J. Hillier quotes William Irvine on the individual efforts of Congressman Johnson. "To his very ability to meet attacks in the way of numerous amendments offered and his skill in parliamentary maneuvers is due to the very splendid support which the bill received...Congressman Johnson, however, was willing to accept to a great part the Senate features...in order to get the bill in force as early as possible." Alfred J. Hillier, "Albert Johnson, Congressman" *The Pacific Northwest Quarterly* Vol. 36, No. 3 (July 1945) 193-211, 205.

⁵³ The sole dissenting vote was from Democratic Senator James Reed of Missouri. A total of 47 Republicans and 31 Democrats voted for passage. Twelve Republicans and five Democrats did not vote

⁵⁴ An Act to limit the immigration of aliens into the United States, 67th Cong., sess., 1, (42 Stat. 5).

Vermont. Husband was appointed the Clerk of the Senate Immigration Committee. In 1907, he became the executive secretary of the U.S. Immigration Commission, named after Senator Dillingham, where he served until 1912 before moving to the Department of Commerce and Labor. Husband traveled to Europe on behalf of the department to study emigration. Following his return to the United States, he founded and began publishing *The Immigration Journal*. In 1921, following Husband's appointment by President Harding, he was viewed as one of the nation's leading experts on issues of immigration. Husband's boss as Secretary of Labor was James J. Davis, himself an immigrant from England who arrived in 1881 at the age of eight. Davis, who saw himself as both "a laboring man and had been an iron "puddler" and an active union member" had become most well known for his work as the Director-General of the Loyal Order of Moose. An anti-Gompers man, a staunch backer of Harding in the 1920 presidential race, and a dedicated Republican Party activist won him the cabinet position. Senator James Wadsworth of New York was far from convinced of the soundness of choice remarking: "The appointment was regarded as suitable. I do not think any of us had the idea that the appointee was a great statesman."⁵⁵

In his first *Annual Report as Commissioner General of Immigration* Husband noted, "the fiscal year 1921 has added a particularly interesting chapter on the history of immigration to the United States." With regards the ability of the Bureau to enforce the laws, Husband wrote, "Our border officers, however, have had a busy and trying year in endeavoring to prevent the surreptitious entry of unvisaed and otherwise inadmissible

⁵⁵ Robert K. Murray, "President Harding and His Cabinet" *Ohio History*, Vol. 75, 108-125, 119.

aliens from certain of the countries of Europe who chose this indirect route of travel...”⁵⁶ Speaking of the impact of the new emergency quota legislation Husband anticipated "a large increase in the exodus of admissible European and other aliens for Mexican ports, the ultimate destination of whom will be the United States." Husband then proceeded to add his voice to the ongoing campaign of all his predecessors to get the Congress to fully appreciate the enormity of the task confronting Bureau personnel in the field particularly about the southern border with Mexico. "Without a special border patrol composed of a sufficient number of mounted officers to be really effective, it can not be expected that a complete check can be put upon the surreptitious crossing of the anticipated horde of aliens determined to effect entry.”⁵⁷

Once again, a Commissioner General conveyed the simple challenge of the logistics of policing the border. "It should be borne in mind that there are some 2,000 miles of border to guard, that the settlements are comparatively few and far between, and that with the limited force of officers available, the Immigration Service is able to maintain stations at only about twenty places along the line." Husband continued with the now familiar theme: "Aliens desirous of entering surreptitiously quite naturally avoid endeavoring to cross in the immediate vicinity of one of our stations, the line on each side of which for as great a distance as possible is guarded as closely as the circumstances will permit.”⁵⁸

⁵⁶ *Annual Report of the Commissioner-General for Fiscal Year Ended June 30, 1921* (Washington, D.C. Government Printing Office, 1921), 5-6.

⁵⁷ *Ibid.*, 12.

⁵⁸ *Ibid.*

Focusing on the appropriations aspect of policing the border Husband complained that, "the Immigration Service has been allotted such a small appropriation for the coming fiscal year as to preclude the appointment of additional officers on either border." Husband advocated making smuggling as "unprofitable as possible to the smuggler, the smuggled and the surreptitious entrant," if Congress failed to provide additional funding. To achieve this objective, Husband wanted all those arrested who had entered the country illegally deported, not back to Mexico or Canada "where they doubtless would rather go in order to be in an advantageous position to repeat the performance," but back to their original countries of origin. Interestingly, Husband did not seek additional appropriations to financially underpin such an operation which, had it been implemented, would have resulted in an even more considerable strain on the Bureau's resources.

Congressman Johnson was not satisfied with the promulgation of the Emergency Quota Act, scheduled to expire on June 30, 1924.⁵⁹ His principal complaint being the law

⁵⁹ In December 1920, the House of Representative passed a bill that provided for suspending practically all immigration for a period of 14 months. The U.S. Senate, after extended hearings adopted a modified version of the Dillingham plan for per centum limits as a substitute for total suspension. This version passed the Senate almost unanimously. Senator Dillingham had first proposed legislation limiting the number of immigrants admitted to the United States in 1913. Under that version the number admitted in any fiscal year would have been limited to 10 percent of the number of persons of such nationality resident in the United States, according to the census of 1910. The newest version of the Dillingham legislation reflected the changed attitudes towards restriction in the immediate post-war environment with the limit fixed at three percent rather than 10 percent. The original legislation had called for the number of immigrants to be limited to three percent of foreign-born individuals of such nationality resident in the United States as determined by the 1910 census. The proposed law was scheduled to remain in effect for one year with an estimated 355,000 immigrants being allowed to enter the United States. In one of his final acts as president, Woodrow Wilson issued a pocket veto of the legislation. The legislation was again introduced in the special session of Congress that followed the inauguration of President Harding. It passed both Houses

failed to limit immigration to 355,00 per annum as he had initially advocated simply because of the many loopholes in the legislation and the numbers of non-quota immigrants were also showing a steady increase. Johnson also expressed his frustration with the more than half a million aliens crossing both borders because of the freedom accorded Canadian and Mexican citizens. He did not, however, put forward any legislation in any format to increase the size of the Immigration Bureau or respond to calls from Commissioner Husband and others for the creation of a dedicated border patrol force.

The lack of Congressional support for the concept of a border patrol stymied Husband's efforts. He now confronted the genuine possibility of a new, even more restrictive, immigration policy being put forward by Johnson in the 68th Congress. In his *Annual Report for 1922* Husband once again reiterated the dual threat of significantly increased smuggling across both borders and now into Florida from Cuba, and the total incapacity of the present force on the ground to counter the problems. "Of course, smuggling across our land borders has not been confined to the year just passed, as previous annual reports of the bureau will show; but the stringency of the existing passport regulations and immigration laws has served to accentuate it...others who have desired to evade the restrictions of the "quota" act have proceeded to both Canada and

without opposition, and President Harding signed it into law on May 19, 1921. It was intended that it should remain in effect for only one year, during which time Congress was expected to work out a permanent immigration policy. In May 1922, the legislation was subsequently reauthorized for an additional two years.

Mexico in large numbers, and it is those who have endeavored, and are endeavoring, to gain admission by stealth, usually with the aid of hired smugglers."⁶⁰

The supervising inspector of District 23 along the southern border, once again, agreed: "The experience of the past two years in dealing with Europeans unable to secure entry at our seaports who look to the back door of this country as a favorable means of ingress has demonstrated as nothing else could the ever-existing and increasing need of a strong border patrol." In his view, allocating vast sums of money to entrance points such as Ellis Island seemed "a vain and futile thing so long as the back-yard gate swings loosely on its hinges."⁶¹

Disputed jurisdiction

"As the bureau knows, the many miles of winding river afford ample opportunities for aliens to cross almost at will. Only in rare instances is it possible to apprehend aliens as they cross the river. This could not be accomplished unless there was a man for every hundred yards of riverfront, and this would require an army."⁶²

The problem Commissioner Husband confronted in advocating for a border patrol was two-fold: Would any proposed border patrol be responsible for enforcing all federal

⁶⁰ *Annual Report of the Commissioner General of Immigration for Fiscal Year Ended June 30, 1922* (Washington, D.C.: Government Printing Office, 1922), 13. Husband referred to a report from the Bureau of Immigration's representative in Montreal to highlight both the variety and lucrativeness of the smuggling business across the Canadian border into the United States. "It is fully appreciated that dope, liquor, Chinese, and alien smuggling has become a lucrative business and is being carried on by international gangs in which there have been found the hardest, most daring, and cleverest criminals, backed by no limit of funds and possessed of the highest powered vehicles, boats, etc."

⁶¹ *Ibid.*, 14.

⁶² Report of District Director from District No. 22 at San Antonio, Texas included in the *Annual Report of the Commissioner-General of Immigration Fiscal year Ended June 30, 1924* (Washington, D.C.: Government Printing Office, 1924), 16.

laws not just immigration laws in relation to the country's international borders and therefore be a U.S. border patrol force? An answer in the affirmative would mean the creation of a federal force and not merely a new adjunct force attached to an already existing federal department concerned with border issues. If a new federal authority to police the borders were created which federal agency would oversee its operations? Arguably, the U.S. Department of Treasury with its force of Customs Riders dating back to the 1850s certainly had precedence, but would departments such as Agriculture, Labor and Justice yield enforcement authority and with it the all-important budgetary line items in their appropriations.

Even before Commissioner Husband had an opportunity to advance any form of preliminary planning and discussion of a possible new force, the Commissioner of Customs, sensing an opportunity for the acquisition of both enhanced power and federal funding, appealed to representatives of the newly created Bureau of the Budget conveniently located within the Department of Treasury.⁶³ In January 1922, the Commissioner of Customs appealed to one of the area coordinators of the Bureau of the Budget⁶⁴ Pointing out the duplication that existed along the Canadian border, he noted:

⁶³ The Budget and Accounting Act of 1921 (67th Cong., sess., 1 42 Stat.20) required the president to submit a budget proposal to Congress each year. It also created the Bureau of Budget, initially housed in the Department of Treasury, to assist the president in formulating the budget proposal.

⁶⁴ Under Executive Order 3578—Preparation and Submission of the Budget, signed by President Harding on November 8, 1921, the office of Chief Coordinator reporting to the Director of the Budget was established. The goal was to promote coordination amongst two different agencies of the Federal Government undertaking a task in a variety of ways primarily where the budget was concerned. The Chief Coordinator was assigned a number of area coordinators reporting back to the Assistant Chief Coordinator. The first Chief Coordinator was Colonel H.C. Smither.

"There were agents of three or four separate establishments operating within a few yards of each other, and each one charged with the enforcement of some particular law, all of which in many cases could have been done by one man."⁶⁵

In the summer and fall of 1922, Commissioner Husband initiated three inter-departmental conferences. Representatives from the Departments of Agriculture, Justice, Labor, and Treasury were present. The final report of the inter-departmental committee, issued on November 7, 1922, recommended the creation of a unified border patrol. "In the opinion of the committee, the foregoing facts and the obvious inability of the Government agencies concerned to cope successfully with the situation clearly suggests the necessity of creating a unified border patrol for service along practically all of the Mexican and at least a part of the Canadian frontiers." The committee concluded, "this belief is shared by officers of long experience on the Mexican border, that such a patrol, properly manned, equipped, and directed, would prevent the illegal entry of persons or merchandise and force traffic into the regular channel, thereby ensuring the collection of the revenues."⁶⁶

No action resulted from the report issued by the Husband Committee despite the agreement in principle of the necessity of establishing a border patrol force. The primary reason cited, not surprisingly, the lack of necessary cooperation between the various departments. In the *Annual Report* for 1923 Husband, referring back to the three interdepartmental meetings and the conclusions drawn, made clear "the bureau and its

⁶⁵ Hearing Before the Committee on the Judiciary. To Establish a Border Patrol, 69th Cong., sess., 1, April 12 and 19, 1926, (Washington, D.C.: Government Printing Office, 1926), 19.

⁶⁶ Ibid.

officers in charge of the various districts concerned are united in the conviction that the creation of a force of well-paid men, especially qualified for police work of the peculiar nature, is the only solution of the border problems, at least so far as the Immigration Service is concerned.”⁶⁷

Warren Harding had won the 1920 presidential election with a promise to slash federal budgets. From 1921 to 1923 – the year of his death – the federal budget was cut from \$6.4 billion to \$3.1 billion. The estimates for FY 24 contained further across the board reductions. The Department of Labor submitted a budget of \$3.5 million for FY 24, a \$200,000 increase on FY 23. The Bureau of the Budget subsequently cut the request to \$3 million, a reduction of \$300,000 from FY23.⁶⁸

Assistant Secretary of Labor Henning voiced his frustration at further departmental budget cuts. “We have felt more the shortage of appropriations in the Immigration Service, I would say, than we have in any other branch of our service in the past year,” he attested. “You must handle all the business that comes, and going on strike

⁶⁷ *Annual Report, 1923*, 27. The reports from District Supervising Inspectors incorporated in the 1923 Annual Report included the views of the San Antonio District inspector in charge who wrote, "If this traffic in contraband aliens is to be checked to any great degree, we will have to concentrate our attack in the immediate vicinity of the border, and to do this will require just one more thing—more men." 17; the El Paso District Supervisor recalling the loss of two Mounted Guards during 1922-23 as a result of an ambush wrote, "it is probable that none of these unfortunate occurrences would have happened had there been a sufficient force to permit the sending of more than two mounted men on a detail. It is not right to subject the mounted guards to that unnecessary hazard, which a few dollars judiciously expended for salaries of additional officers would make preventable in large measure; and in simple justice, to them, a larger force should be provided."

⁶⁸ Departments of Commerce and Labor Appropriations Bill, 1924, Hearing Before Subcommittee on Appropriations, 67th Cong., sess., 4, November 24, 1922 (Washington, D.C.: Government Printing Office, 1922) 306.

for better pay and conditions is clearly not an option for the folks of the Immigration Bureau.”

Henning's sense of frustration at the apparent enduing naivety of congressional committee members with regards primary bureaucratic organization and agency missions likewise became readily apparent. Asked by Congressman Anthony Griffin, "How about the smuggling of booze?" Endeavoring to maintain a calm demeanor, Henning pointed out, once again, "We are not in that game if our men catch anyone bringing in booze, they take them and turn them over to the revenue forces."

Likewise, a suggestion from Congressman Ogden that rather than a panoply of federal agencies operating along the border "one of two men could represent all these services," was diplomatically rebuffed. "One or two men would not be enough," Henning countered, "our own force of field men there [El Paso] consists probably of eight or ten men." In the same reply, he rebuked the notion that the agencies operating along the borders did not cooperate with one another. By their very organizational nature, they had to cooperate. "You will find that the revenue man does not know about immigration law and the immigration man does not know about revenue law." Striking an even more somber tone, Henning also pointed out "they are poorly paid men and not high school or college graduates."⁶⁹

The appropriations bill for the Department of Labor for FY 24 passed the House of Representatives with the Bureau of Budget request for \$3 million. Secretary Davis and Commissioner Husband continued to lobby against further cuts with some success. The

⁶⁹ Ibid., 308, 309.

conference report for FY 24 appropriations between the House and the Senate did result in the restoration of the \$300,000 to the overall operating budget for the Department of Labor.⁷⁰ No action was taken, however, concerning the calls for a specially designated border force, one that would involve new hires of personnel. Restoration of the cuts made by the Bureau of the Budget was victory enough at this point. The issue of a dedicated border patrol would have to wait for the next budget cycle.

In February 1924, just over halfway through the fiscal year 1924, the legislative process was underway for appropriations for federal government operations in FY25. Commissioner Husband, along with several senior Immigration Inspectors, testified before the House Appropriations Committee. Husband methodically laid out the problems confronting the Bureau when it came to enforcement along the two borders and in the hinterland of the various seaports of entry "against the surreptitious entry of aliens." "Pressure is greatly increased. It has come because the legal avenues of admission have been shut off through the quota-limit law and very naturally that has resulted in greatly increasing the number of aliens who seek to enter surreptitiously," he noted. "We are trying to control the situation on the borders, particularly, with the same force that we had in the past when there was open immigration, and we are not able to do it properly," he opined.⁷¹

⁷⁰ An Act Making Appropriations for the Departments of Commerce and Labor for the fiscal year ending June 30, 1924, and for other purposes. 67th Cong., sess., IV, Stat. 24, 1110, Jan. 5, 1923.

⁷¹ Department of Labor Appropriation Bill, 1925, Hearing Before the Subcommittee of House Committee on Appropriations, 68th Cong., sess., 1, February 14, 1924 (Washington, D.C.: Government Printing Office, 1924), 27.

In listening to the vivid descriptions of the lack of necessary manpower to confront rapidly increasing smuggling operations, Congressman William B. Oliver (D-AL) responded by asking the one fundamental question: "What number of men should you have added to that forces so that you can in a measure protect against surreptitious entries?" Commissioner Husband played the perfect negotiating gambit calling for a number he anticipated would be frowned upon as too large with the goal of at least securing some number of increased personnel. The Commissioner answered first by noting that the problems along the borders were not merely immigrants alone. "In my opinion, the border situation is no longer primarily a question of immigration. There are other services of the Government—the prohibition unit, the customs, the animal industry, the narcotic squad; I think there are eight different activities of the Government which are more or less interested in guarding the border. Immigration, customs, narcotics, and the prohibition unit probably are the most important." Turning to the Bureau of Immigration Husband noted: "Well, for foreigners alone—and this is a random statement—if we had a force of 1,500 men on the Canadian border, and a like number on the Mexican border, we could enforce the law very much more efficiently than it is being enforced at present." When asked what increased in appropriations he anticipated he answered, "probably \$4,000,000."⁷²

Commissioner Husband, once again, noted that the restrictive Johnson-Reed legislation pending before the Congress if passed, would only "increase attempts to enter surreptitiously. It is part of immigration restriction. It has got to be faced. It is part of it."

⁷² Ibid., 33-34.

Congressman Oliver continued to press Husband on the numbers and cost holding out the potential for increased funding by telling Husband, "in the last [Congressional] session, they did manifest considerable interest in items affecting your appropriation."⁷³

Eventually, Congressman Oliver asked, "What would be necessary in the way of an appropriation to supply you with an additional 500 men?" Commissioner Husband responded, "About \$2,000 per man. That would be \$1,000,000 in round numbers."⁷⁴

The deciding factor in finally securing Congressional approval was the issue of a potential reallocation of manpower resources. The Appropriations Committee chairman cited the fact that everyone was aware of the need to reduce Government expenditures. The Commissioner was asked, "Is your organization such that you can easily allocate this increased number of guards if you were given this increased appropriation?" His response: "Oh, absolutely. It would take a little time to recruit a force of course." Congressman Oliver pressed him. "If Congress should conclude to give you a further appropriation to employ additional guards could you use that appropriation effectively if made immediately available?" The Commissioner appeared to be caught off guard with the word "immediately," answering, "Absolutely; within, I should say, roughly speaking three months we could organize a very effective force. You did not mean available for this fiscal year [FY25]?" Congressman Oliver only answered: "Yes."⁷⁵

⁷³ Ibid., 31.

⁷⁴ Ibid., 35.

⁷⁵ Ibid., 37.

Chairman Shreve then asked the Commissioner about the revenue brought into the Government by the Bureau of Immigration through the head-tax.⁷⁶ "My recollection in your testimony is that the Bureau of Immigration brings back to the United States Government more money than it costs for its operation; am I right?" Commissioner Husband responded, "Yes sir; last year there was slightly over a million dollars more than we expended."⁷⁷

On May 28, 1924, the U.S. Congress passed the Department of Labor appropriations bill for the fiscal year 1925. Under the sub-section of the Bureau of Immigration it was directed that "for enforcement of the laws regulating immigration of aliens into the United States," a budget of \$4,500,000 was approved: "*Provided*, That at least \$1,000,000 of this amount shall be expended for additional land-border patrol of which \$100,000 shall be immediately available."⁷⁸ A specific border patrol force, under the auspices of the Bureau of Immigration within the Department of Labor, had finally been established. What was significant, however, is this was not a United States Border Patrol, not yet. It was simply a new unit, working alongside other governmental units on the borders, focusing primarily on illegal immigration. Nonetheless, a border patrol was now officially authorized, and in the early part of FY 1925 its first officers, drawn from

⁷⁶ Imposed initially in the 1882 Immigration Act for 50 cents per head. The 1917 Immigration Act levied a sum of eight dollars per head. Combined with other administrative fines and penalties, the Bureau of Immigration by 1924 was an exceptionally profitable government bureaucracy contributing significant annual revenues to the Department of the Treasury without a commensurate increase in the Bureau's overall budget allocation.

⁷⁷ Ibid.

⁷⁸ Appropriations, Estimates, Etc. Statements for the 68th Congress, First Session, (December 3, 1923, to June 7, 1924), (Washington, D.C: Government Printing Office, 1924), Title IV Department of Labor, 241.

the register established in 1911 were recruited into active service. The ad hoc nature of the border force had finally come to an end. The lingering arguments, however, with regards overall responsibility with regards border enforcement of all the pertinent laws was about to enter a decisive period.

Despite the District Director of District No. 22, headquartered in San Antonio Texas, writing in the 1924 Commissioner-General's *Annual Report* about the requirement of an army to actually police the length of the Rio Grande in his district, he also expressed his delight that "Happily, Congress has awakened to the seriousness of the situation and had appropriated a very substantial sum for the purpose of protecting the land boundaries of the United States." He continued: "This is most encouraging to the officers on the border who devoted many years in a patriotic but obviously vain effort to prevent smuggling with a small force of men and a limited appropriation, realizing all the time that they were powerless to cope with the situation under that handicap." Finally, expressing his delight in looking forward to "the increased force and appropriation," he erred on the side of caution noting, "Time alone will show the results."⁷⁹

Secretary Davis applauded the establishment, finally, of a dedicated border patrol agency. "The second outstanding feature of immigration activities during the fiscal year [1924] is the inauguration of the new land border patrol for which an appropriation of \$1,000,000 was made," he noted in his *Annual Report for 1925*. Encouraged as he was, Davis used his report to immediately advocate for a yet larger force and increased appropriations for operational capabilities. In his mind, the \$1 million was simply the

⁷⁹ Ibid., 17.

first step. “The small force of border guards, hastily chosen and organized into units is a marked achievement,” he wrote. “The striking results already achieved...will be proportionately increased by increased personnel with the necessary provision of operating expense.”⁸⁰

Commissioner Hull, in his first annual report, echoed the comments and urgings of Secretary Davis.⁸¹ Likewise, Hull adroitly played to congressional egos. He extended to the Congress praise for undertaking the first vital step in the creation of the border patrol deftly making it look like the original idea had been that of the Congress alone. “Congress apparently intended, and the situation demanded, the immediate establishment of such a force; and viewed in the light of difficulties overcome, a history of the organization presents features of marked interest, representing as it does, the accomplishment of a great purpose,” he wrote.⁸²

Both men knew finally acquiring the appropriations now meant turning to the task of standing up the border patrol: the prospect was daunting. No civil service register of eligible candidate for the position of patrol inspector even existed. The Civil Service

⁸⁰ *Annual Report of the Secretary of Labor for Fiscal Year Ended June 30, 1925* (Washington, D.C: Government Printing Office, 1925), 57-58.

⁸¹ William Husband stepped down as Commissioner General of Immigration on May 15, 1925. Arguably, he did more than anyone to convince the Congress of the need for a permanent land border force. President Harding named him the American delegate to the International Conference on Immigration and Emigration in Rome. Husband continued as an Assistant Secretary of Labor until retirement in 1935. Hull, nominated by President Coolidge in the spring of 1925, was a five-term Republican Congressman representing the Second District of Iowa. In the summer of 1924, Hull was defeated by a Republican primary challenger and left Congress on March 3, 1925. Interestingly, Hull was one of the 50 representatives to vote against the resolution authorizing a declaration of war against Germany in April 1917.

⁸² *Annual Report of the Commissioner for Immigration for Fiscal Year Ended June 30, 1925* (Washington D.C. Government Printing Office, 1925),14.

Commission allowed the border patrol to select men from the ranks of railway postal clerk and immigrant inspector “until such time as an examination could be held.” It proved hard to recruit many of the immigrant inspectors already employed by the Bureau of Immigration simply because the position of patrol inspector ranked at a lower grade. Jurisdictional lines of authorities likewise had to be resolved among the various agencies operating along the borders. Hull attacked the issue head-on. "While the primary duty of this force is to prevent the unlawful entry of aliens, the very nature of the work of the officers comprising it throws them into contact with the lawless element that infects the borders and other outlying points such as the Florida peninsula," he argued, "where smuggling is prevalent, and their efforts are not confined to the suppression of alien traffic but extend to the enforcement of all Federal laws designed to protect the country from unlawful introduction of contraband."⁸³

The alarm must have sounded to the Customs Service and the Prohibition Bureau, and to the Treasury Department in general. Hull's comments had all the underpinnings of a broader federal border patrol centered on the Department of Labor's recently created border agency. To many in Treasury this translated into potential 'mission creep,' ultimately moving the Department of Labor towards a hypothetically substantially more extensive portfolio of authorities and appropriations. The question now became how the Treasury Department would react? Within a year the answer was forthcoming. It was not to capitulation.

⁸³ Ibid., 16. Hull also noted that, at least initially, the Bureau's "New patrol inspectors were greatly handicapped by their lack of uniforms, as there was nothing aside from their badges to distinguish them from the ordinary citizen." A quick resolution resulted in the supply of the appropriate uniforms.

Within a year the question was brought forward. Congressman Grant Hudson introduced legislation in the early spring of 1926 designed to establish an overall federal border patrol.⁸⁴ Congressman Hudson's bill - H.R. 9731- called for: "That in order to more effectively enforce the laws applicable to the international and maritime borders of the United States, its Territories, and possessions subject to its jurisdiction, there is hereby created an agency to be known as the United States Border Patrol." Section Two stated: "The United States border patrol shall consist of such border patrol police as is now or may hereafter be authorized." Also, "any existing border police to whatever department or establishment accredited, together with their existing appropriations, equipment, and appurtenances, may at the decision of the President be transferred to the United States border patrol." Section Three stated the United States border patrol, under such regulations as the President may prescribe, shall perform such patrol and police duties for all departments and Federal establishments as may be necessary for connection with the enforcement of all laws applicable to the international and maritime borders of the United States." Section Nine placed the United States border patrol "within the Department of Labor, " and the Secretary of Labor was "authorized to make such rules and regulations as may be necessary to carry out the provisions of this act."⁸⁵

⁸⁴ Republican Congressman Grant Hudson represented Michigan's 6th congressional district following his election in November 1922. In the 69th Congress, he was the Chairman of the Committee on Alcoholic Liquor Traffic and had been endeavoring to seal the borders from prohibition smuggling effectively.

⁸⁵ "To Establish a Border Patrol," Hearing before the Committee on the Judiciary, House of Representatives 69th cong., sess., 1, April 12 and 19, 1926 (Washington, D.C.: Government Printing Office, 1926), 2.

Lincoln Andrews, Assistant Secretary of the Treasury, whose portfolio included the Customs Service, the Coast Guard, and the Prohibition Bureau, advocated two positions neither of which saw the nascent border patrol remaining within the Department of Labor. The first position he advanced was "an independent body of policemen that works for the U.S. government, for all the interest of the U.S. government without any special leaning towards any one department." The second position was simply a rationale as to why the border patrol should not remain within the Department of Labor. "There has arisen on the part of the collectors of customs all over the country a very earnest opposition" to the Secretary of Labor having control and oversight over any proposed federal border patrol.

Congressman Montague pressed Andrews to explain "earnest opposition." "They cannot believe that this is going to be an independent force: they have the feeling that it will belong to the Department of Labor in spite of whatever we say," was his retort. Andrews then took the 'anywhere but Labor' tact and proposed that any federal border patrol should be allocated to the Department of Justice, and urged that the new force employ the model of the Royal Canadian Mounted Police.⁸⁶

Captain John Jackson of the Bureau of Budget in his testimony pointed to research conducted by the Bureau on the option of creating an independent federal force.⁸⁷ Citing the Bureau's findings, Jackson argued against the stand-alone option

⁸⁶ Ibid. 4, 5, 7.

⁸⁷ Captain Jackson's rank was from the United State Navy. He had been seconded to the Bureau of Budget and worked in the Office of Chief Coordinator. The objective of the office was to act as third-party arbitrators in authority and budgetary disputes between federal departments.

because "it would require building a completely new organization from bottom up." Instead, Jackson advocated that the border patrol, recently established in the Department of Labor through language in the FY 1925 appropriations bill meant "there is already a force that is operating efficiently. And so, we proposed to leave it in the Department of Labor."⁸⁸

On the question of the broad authority of the proposed border patrol, Jackson noted: "This is to be a federal patrol and looking out for one enforcement priority the same as the other. At present it is hard, and there are legal difficulties in the way. I do not think that an immigration officer, for instance, has the legal right to stop a man who is bringing in diseased animals or trying to smuggle plants in which may have insects that harmful. I would have a border patrol authorized to enforce all the laws." Driving his point, Jackson concluded: "If this spirit of this bill is carried out, the Commissioner-General of Immigration, who is at present in charge of this patrol, should consider himself in charge of the border police and he must consider [that] he is charged with the execution of laws for customs just as he is with the execution of laws in regard to immigration."⁸⁹

Commissioner Hull insisted, "if it were put anywhere else you would increase the overhead expenses, and you would destroy the morale of the patrol now in the Immigration Bureau." He went on: "If additional authority were given to use, of course, we would be more effective in arresting and confiscating; there is no doubt about that.

⁸⁸ Ibid.,10.

⁸⁹ Ibid.

And, as I say, along 90 percent of the borders there is no reason why we should have more than one service functioning."⁹⁰

Congressman Hudson made clear his purpose for authoring the legislation was to combat smuggling in general. "I am introducing it simply because in Michigan we have the border situation extenuated to the highest degree, especially in the labor and prohibition end of it. Also, of course, in the customs end," he noted. "There is no question but what there are literally hundreds of thousands of dollars of merchandise smuggled across the Detroit and St. Clair Rivers in the course of every year and you can not stop it until you create a border patrol, which is nothing more than the United States police that is operating between those ports of entry," he argued.

Hudson then turned to the question of the legal lines of authority; he noted, "they [The Bureau of Immigration] have established a very efficient patrol. But it is not a United States border patrol in any sense of the word. It can only function in the matter of immigration. When it functions beyond that it is going beyond the authority it has under general law." Hudson viewed the legislation as "path-finding legislation to meet the facts we find on the border," and referring to the increasing numbers of people crossing into the United States in violation of federal laws, he concluded, "We cannot stop them, and they won't be stopped until we have an effective border patrol."⁹¹

Congressman Albert Johnson actively supported the creation of a federal border patrol. He also favored leaving any new agency within the overall confines of the Department of Labor. Where he differed with Hudson was on the granting of

⁹⁰ Ibid., 15.

⁹¹ Ibid., 21, 22.

enforcement powers to border patrol officers under the legislation. “We do not want to establish here in the United States anything that might expand to a great national constabulary. We want these men to be the patrol officers, so that when they arrest men for violations of the immigration laws, the customs laws, the quarantine laws, or the animal and plant quarantine laws and regulations, or for any one of the other several acts which need to be made effective at the borders, they shall conduct their prisoner to the proper official,” he argued.⁹²

Johnson then provided an analogy to reinforce his point. "You would have your border patrol, and they would work exactly as the police force of the city of St. Louis or this city [Washington, D.C], in protecting the United States in the enforcement of its laws that apply to people who break the laws on the border. Then the due process of law would come under the provisions of this law." In Johnson's mind, any federal border patrol force was to act as a conduit, a veritable trip-wire and nothing more; other agencies would undertake the enforcing of the laws.⁹³

Hudson pushed back. “The reason for this bill is to do away with this overlapping and inefficiency, and seemingly great number of people on the border, and to protect the border and enforce Federal laws. But this does create a police department for the border, and that is all it does,” he reiterated. He acknowledged that the "Labor Department had created, without any specific instructions from Congress, a border patrol, but it is not a United States patrol; it is a patrol of the Labor Department." There was no need, in his

⁹² Ibid., 24-25

⁹³ Ibid., 26.

mind, to "reinvent the wheel in another department," Congress should merely build on what already exists.⁹⁴

One of the more interesting arguments against the Hudson proposal came from the American Association of Nurserymen. The proposed amalgamation of the Department of Agriculture's Horticultural Board into any new federal border patrol was viewed as "most undesirable." During the Association's Annual Convention held in June 1926, the formal proceedings, as adopted, included the plank: "It is not humanly possible for a man trained as a Customs Officer, a Prohibition officer, a Narcotic inspector, and an Immigration officer, or a Public Health inspector, to enforce the Plant Quarantine Act, and it is equally impossible for an entomologist intelligently to enforce the laws governing other branches of government. If this type of consolidation is contemplated, then the legislative committee should be authorized to take all proper steps to preserve the integrity of the Inspection Force of the Federal Horticultural Board."⁹⁵

Ultimately, it was the anticipated expense associated with any reorganization of the border patrol within the Bureau of Immigration to assume the mantle of the United States border patrol that doomed the bill to failure. During the April hearings, Congressman Johnson reminded the committee that the existing the border patrol cost only \$1 million per year. "It sprang into existence with no law, and it has worked effectively well." Now the Congress was being asked to both legally establish a unified federal border patrol and to provide regular appropriations of at \$2,000,000 per year.

⁹⁴ Ibid., 36.

⁹⁵ American Association of Nurserymen, *Proceedings*, 51st Annual Convention, June 23-25, 1926, Vol. 47-53, 112-113.

The Committee on the Judiciary, faced with a call for increased appropriations during a period of additional cuts in federal spending across the entire budget, and an unresolved issue of precisely which federal department would ultimately oversee any United States border patrol, demurred and did not report the bill out of Committee. For the time being the border patrol would remain just that, a border patrol under the auspices of the Bureau of Immigration within the Department of Labor.

Despite the failure to move the legislation forward Congress gradually increased funding for the border patrol, particularly in comparison to other federal enforcement entities operating along the borders. An additional \$500,000 was appropriated in FY 26.⁹⁶ This was followed by another \$100,000 for FY 27.⁹⁷ The increase of \$155,000 in FY 28 brought the total appropriations for the border patrol to \$1,755,000 in FY 28.⁹⁸ And yet, even with an increased appropriation in FY 1929 for \$1,918,440, the border patrol budget's had still not reached the \$2 million figure Captain Jackson of the Bureau of the Budget had recommended as a minimum during his testimony in April 1925.

Congress also gave the border patrol increased jurisdiction. In the appropriations legislation for the Department of Labor, passed on February 27, 1925, "any employee of the Bureau of Immigration was empowered (1) to arrest without warrant any alien who in his presence or view, is attempting illegal entry and to take such alien immediately for

⁹⁶ April 29, 1926, Ch. 195, title IV, 44 Stat. 371, 69th Cong., sess., I.

⁹⁷ February 24, 1927, ch. 189, title IV, 44 Stat. 1223, 69th Cong., sess., II.

⁹⁸ February 15, 1928, ch. 57, title IV, 45 Stat. 107, 70th Cong., sess., I.

examination before an immigration inspector and (2) to search for aliens in any vehicle, or conveyance, or any vessel within the territorial waters of the United States.”⁹⁹

In their respective *Annual Reports for 1926*, both Secretary Davis and Commissioner Hull extolled their parts in the establishing of the border patrol. Secretary David boasted: “The border patrol is the greatest deterrence of alien smuggling that has ever been devised, and besides its activities devoted to immigration ends it has made a substantial contribution to the cause of law enforcement in other departments of the Government, notably the prohibition and customs units.”¹⁰⁰ Likewise, Hull pointed out that the border patrol “do not confine their efforts to the prevention of alien smuggling, but engage in the enforcement of all Federal laws which have to do with the unlawful introduction into this country of contraband.”¹⁰¹

Successfully sustaining a new agency required increased budgets. The establishment of a force of 472 dedicated men was the first step in Hull's mind. The force had grown to 632 officers by the end of FY 1926, but this still represented the lower end of the manpower scale required in Hull's mind. "As efforts to thwart the purpose of the immigration laws are constantly increasing it has become more and more apparent that

⁹⁹ February 27, 1925, ch. 364, title IV, 43 Stat. 1049, 68th Cong., sess., II.

¹⁰⁰ *Annual Report of the Secretary of Labor for the Fiscal Year Ended June 20, 1926* (Washington, D.C.: Government Printing Office, 1926), 53.

¹⁰¹ *Annual Report of the Commissioner-General for Immigration for Fiscal year Ended June 30, 1926* (Washington, D.C.: Government Printing Office, 1926) 17, 18.

Commissioner Hull wrote of the approximately "400,000 quarts of illegal liquor was seized by border patrol agents in a three-month period – April, May, and June of 1926 – and "was turned over to prohibition officers and other agencies engaged primarily in the enforcement of the prohibition law." 18. On April 1, 1927, the Prohibition Bureau, formerly a unit of the Bureau of Internal Revenue became an independent entity within the Department of the Treasury. Renamed the Bureau of Prohibition, in 1930, the Bureau moved from the Department of the Treasury to the Department of Justice.

the immigration patrol force must extend its operations, and consequently constant efforts have been made to increase the number of officers with it," he argued. "I do believe that there is a pressing necessity for a force of at least 1,000 [officers] in the border patrol."¹⁰²

Congress listened and continued to expand the force. By 1927, the patrol employed 781 agents, who slept in new barracks, worked in new office quarters and deployed additional equipment, such as automobiles and even two aircraft. Hull then described the appeal of the new force in heroic terms: "The border patrol is a young man's organization; it appeals strongly to the lover of the big outdoors—the primeval forests, the sun-parched deserts, the mountains, and the plains; the business upon which it is engaged calls for manhood, stamina, versatility, and resourcefulness in the highest degree. "Honor first" is the watchword; privatisations and danger but serve as a challenge which none refuse...The uniform is sacred; it not only symbolizes authority, the law's majesty and all the power of the Federal Government, but it entails obligations upon the wearer in the way of deportment which are intuitively recognized and scrupulously observed."¹⁰³

Hull wanted still more. He called for a budget for FY 29 of \$2 million. But even that would not be enough. "Even if this sum is supplied it will fall far short of producing a complement of 1,000 employees in the border patrol, in fact, after making due

¹⁰² Ibid.

¹⁰³ *Annual Report of the Commissioner General of Immigration for the Fiscal Year Ended June 1927* (Washington, D.C.: Government Printing Office, 1927), 16, 17.

allowances for vacancies, sick and annual leave, we would have a paper strength of 924 employees, and an average actual effective strength of but 784 members.”¹⁰⁴

Davis likewise presented the work as an incomplete success. He provided an array of statistics on apprehensions, seizures of automobiles, boats, and aliens smuggled across the borders. He noted, “increased efficiency of the border patrol results from several outstanding causes, principally the increase appropriation, thereby permitting of larger personnel and more and better equipment.” Secretary Davis promoted what he viewed as the evolving professionalism and *esprit de corps* of the border patrol. "In the three years of its existence it has been necessary for it to go through a sifting process, for the purpose of weeding out the undesirable members who were totally unfit either morally, mentally, or physically for service of this nature and filling their places, in the hope of finally securing, as near as possible, a 100 percent complement of the proper type of men." He then concluded by repeating verbatim "with a good conscience" his conclusion from the section on the border patrol from his 1926 Annual Report. "The border patrol is the greatest deterrent..."¹⁰⁵ Amazingly, Secretary Davis repeated the verbatim statement for the third time in his Annual Report for 1928.¹⁰⁶

¹⁰⁴ Ibid., 18.

¹⁰⁵ *Annual Report of the Secretary of Labor for the Fiscal Year Ended June 20, 1927* (Washington, D.C.: Government Printing Office, 1927), 88-89.

¹⁰⁶ *Annual Report of the Secretary of Labor for the Fiscal Year Ended June 20, 1928* (Washington, D.C.: Government Printing Office, 1928), 70. Commissioner General Hull's Annual Report for 1928 was far more circumspect than the previous three years. There was no language describing the border patrol as the "young man's organization" as there was in his 1927 report. This one was a basic presentation of statistics from the past year's operations. The only call for more funding for the border patrol came in the very last paragraph of the final section entitled Legislation Recommended. "That Congress sufficiently increase its appropriation to the bureau to make possible stricter enforcement

Endgame.

Presidential candidate Hoover had campaigned in 1928 against the repeal of the 18th Amendment. While he had been less than enthusiastic with the adoption of the Amendment, primarily because of his doubts about the efficacy of coercion, he campaigned on improving efforts, specifically in law enforcement, of compliance.¹⁰⁷ President Hoover's Inaugural Address on March 4, 1929, showed his determination to improve not only compliance with regards prohibition but law enforcement in general. "Justice must not fail because the agencies of enforcement are either delinquent or inefficiently organized. To consider these evils is to find their remedy is the sorest necessity of our times," he declared.¹⁰⁸ President Hoover followed up with another comment on the need for a commission to study law enforcement at his first press conference on March 5. "One other question relates to the time I shall appoint the commission I mentioned yesterday. I notice it is referred to as a prohibition matter. It is not. It's a question of the whole problem of law enforcement."¹⁰⁹

of the immigration laws, inasmuch as in recent years the immigration question has become one of the Nation's greatest problems...a large force would be in a better position to enforce this very popular law. [The Immigration Quota Act of 1924]" Annual Report of the Commissioner General of Immigration for Fiscal Year Ended June 30, 1928, 31.

¹⁰⁷ As a young child, Hoover had been taken along by his mother, and then by his aunts to fervid anti-saloon meetings. "The psychological imprint of Demon Rum and his depredations was deep." Eugene Lyons, *Herbert Hoover: A Biography* (New York: Doubleday & Co., 1964) 181.

¹⁰⁸ Herbert Hoover: "Inaugural Address," March 4, 1929. Online by Gerhard Peters and John T. Woolley, The American Presidency Project.
<http://www.presidency.ucsb.edu/ws/?pid=21804>.

¹⁰⁹ Herbert Hoover, The President's News Conference (Mar. 5, 1929), available at <http://www.presidency.uscb.edu/ws/print.php?pid=21915>

In 1929, the issue of establishing a unified federal border patrol reemerged, although it was not a proposed development welcomed by the Bureau of Immigration and the Department of Labor. In his Annual Message to Congress on the State of the Union, delivered on December 3, 1929, President Hoover talked about the topic of Departmental Reorganization. "First, all administrative activities of the same major purpose should be placed in groups under single-headed responsibility." Subsequently, in the section on Prohibition, President Hoover said: "Technical defects in these statutes that have been disclosed should be cured. I would add to these recommendations the desirability of reorganizing the various service engaged in the prevention of smuggling into one border patrol under the Coast Guard."¹¹⁰ It was clear that the Treasury Department had continued to push its case for control of all border enforcement activities after the end of the 1926 Congressional hearings.

The issue was given further prominence by President Hoover's Special Message to Congress on January 13, 1930, "Proposing Administrative Reforms in Federal Law Enforcement and Judicial Machinery."¹¹¹ The Special Message to Congress related to the findings of the Commission on Law Observance and Enforcement, commonly known as the Wickersham Commission.¹¹² President Hoover in his Message pointed to "the

¹¹⁰ Herbert Hoover: "Annual Message to Congress on the State of the Union," December 3, 1929. *Public Papers of the Presidents: Herbert Hoover, 1929* (Washington, D.C.: Government Printing Office, 1930) 25-27.

¹¹¹ Herbert Hoover: "Special Message to the Congress Proposing Administrative Reforms in Federal Law Enforcement and Judicial Machinery," January 13, 1930.

¹¹² President Hoover established The Wickersham Commission on May 20, 1929, under the First Deficiency Act, the fiscal year 1929. Former Attorney General George W. Wickersham chaired the Blue Ribbon Commission. Its purpose: "A thorough inquiry into the provisions of the enforcement of prohibition under the provisions of the Eighteenth

development of the facts shows the necessity for certain important and evident administrative reforms in the enforcement and judicial machinery..." He listed six proposals. The third called for "Consolidation of the various agencies engaged in prevention of smuggling of liquor, narcotics, other merchandise, and aliens over our frontiers."

The Wickersham Commission, however, did not endorse the President's specific proposal for a unified border patrol, although it considered a variety of programs for "better organization of enforcing agencies."¹¹³ The Commission also rejected two other approaches to improve interagency coordination and border control: a special secretary to the president to strengthen the coordination among the enforcement agencies, which the Commission viewed as increasing the burdens of the Chief Executive, and a unified federal police force, which was considered antithetical to American democratic traditions.¹¹⁴

Congressman Albert Johnson, Chairman of House Committee on Immigration and Naturalization, commenced hearings on President Hoover's recommendation on border enforcement within two days of President Hoover's Message to Congress. He did not

Amendment to the Constitution and laws enacted in pursuance thereof, together with the enforcement of other laws." The Commission's legal standing was renewed under the Second Deficiency Act, the fiscal year 1930. *National Commission on Law Enforcement Report No. 2. Report on the Enforcement of the Prohibition Laws of the United States* (Washington, D.C.: Government Printing Office, 1931), 1.

¹¹³ *U.S. National Commission on Law Observance and Enforcement. Report of the Enforcement of the Prohibition Laws of the United States* (Washington, D.C.: Government Printing Office, 1931) 63-64 and 83-84.

¹¹⁴ *Ibid.*

specifically mention the U.S. Coast Guard as the preferred department under which consolidation through “single-headed responsibility” would take place.

A letter from Secretary of the Treasury Mellon to President Hoover opened the hearings. It was read out and entered into the record. “Mr. President: The Treasury has been considering for some time the creation of a unified border patrol, in order that the execution of the customs, immigration, prohibition, and other laws regulating or prohibiting the entry into the United States of persons and merchandise may be made more effective.” Secretary Mellon recommended: “A unified border patrol should be created to patrol the border and prevent illegal entry,” and “The unified border patrol should be a part of the Coast Guard.”¹¹⁵

The only two witnesses, Commissioner Hull and the Assistant Commissioner of Immigration, George J. Harris, then proceeded to answer a battery of administrative, operational and logistical questions about the land border patrol of the Bureau of Immigration. It was clear from the questioning of Chairman Johnson that his primary concern was the same as his testimony in 1926, the legal powers of border patrol inspectors and whether the larger goal was a federalized police force. Two of the issues of particular concern to Congressman Johnson was who would issue warrants for arrest and how far into the interior of the United States would immigration border patrolmen be allowed to pursue without a warrant, “a violation of our immigration laws?”

Commissioner Hull argued that a single force, run by the Bureau of Immigration, would be the most efficient. He cited its efficiency of operations over the previous five

¹¹⁵ Committee on Immigration and Naturalization, House of Representatives, 71st Cong., sess., 2. January 15, 1930 (Washington, D.C.: Government Printing Office, 1930), 1.

years, and argued, contrary to the President's stance, that all other enforcement agencies be amalgamated into the Bureau of Immigration's land border force and for the Department of Labor to exercise the "single-headed responsibility" for overall federal border enforcement.

Hull initially argued for an operating budget of "at least \$4,000,000, to bring it up to the point where it would ensure an entirely complete barrier to the entry of aliens attempting to smuggle in other than by air." Sensing an opening to 'go for broke' he added: "If there were added to the responsibilities of the patrol, operating and organized substantially as it is at the present time, the duty of preventing and detecting violations of all Federal laws arising from illicit traffic into the United States, in areas between the channels created by law or regulations for inspection, including the tariff acts, prohibition act, laws against the introduction of infested products of the soil, quarantine regulations against persons and animals, neutrality laws and so forth, I believe that at least a 50 percent increase in the estimates I have made would be necessary, that it to say, an organization operating on the basis of not less than \$6,000,000 annually."¹¹⁶

But Treasury and its allies kept pressing for Treasury to lead the new force. On March 27, 1930, Congressman Hudson introduced "A Bill – H.R. 11204 - to regulate the entry of persons into the United States, to establish a border patrol in the Coast Guard, and for other purposes." In the congressional hearings on April 24 and 25, 1930 representatives of the Departments of Labor and Treasury went toe-to-toe over the bill. Treasury officials applauded the proposed legislation arguing that the Coast Guard was,

¹¹⁶ Ibid., 9.

in President Hoover's words, the appropriate agency to effectively offer "single-headed responsibility" not the Labor Department.

Ogden Mills, Under Secretary of the Treasury, argued that Coast Guard already possessed the right blend of military and civilian skills. "One of the essentials of an effective border patrol is that it be organized on a military basis," he elaborated "with an enlisted and commissioned personnel, and with military training and discipline. What I mean by that it is essentially a police force and that we are likely to get probably better men, a higher standard of morale, build up more rapidly a tradition of service, if we have a semi or military organization, than if we attempt to operate under civil service laws."¹¹⁷ The template for the military organization, of course, was the Coast Guard.

"We do not propose to make policemen of our sailors," he conceded. "But we do want to avail ourselves of their central organization"¹¹⁸ Taking direct and a condescending shot at the Bureau of Immigration's border patrol Mills said: "The present system was established a good many years ago when travel over the land borders must have been unimportant. What we ought to do is to build an up-to-date administrative system along our land borders to meet these new conditions; not attempt to administer entry into the United States in 1930, 1931, or 1932 with a 1900 machine; not attempt to deal with millions of motors and travelers with the same machine and organization which

¹¹⁷ Hearing of the House Committee on Interstate and Foreign Commerce on H.R. 11204. 71st Cong., sess., 2, April 24 and 25, 1930, 3.

¹¹⁸ *Ibid.*, 5.

existed when we had horse-drawn vehicles and when most of the travel was necessarily by railroad.”¹¹⁹

Undersecretary Ogden Mills subsequently testified again for the Department of Treasury in the hearings in the U.S. Senate. He remained brutally frank in his support of the unified border patrol built around the Customs Service patrols but under the auspices of the Coast Guard. Citing tradition as central Mills argued: “For over 140 years the Treasury Department has been charged with the duty of protecting the integrity of the land and sea borders of the United States in time of peace. That has been on their primary functions. To be sure, it has been connected with the protection of the revenue and the enforcement of the customs laws. But nevertheless they have been the ones charged with that responsibility both on our land and sea borders: and compared with an organization that has come into being within the last six years, with one very limited duty, referring to one particular law, I should say that tradition was definitely on the side of the customs service.”¹²⁰

Robe Carl White, assistant secretary of labor, denied any such obsolescence. He methodically laid out what the Bureau of Immigration’s border patrol force had achieved since its official inception in FY 1925. He cited the number of people arrested and

¹¹⁹ Ibid., 6. Where cost was concerned, Mills made clear that the proposed unification under the Coast Guard "will cost the Government more than the present system in two ways—increased appropriations will be required for the customs and immigration stations, and the cost of the new patrol will greater than the combined cost of the present patrols." Mills did promise, however, "we shall obtain infinitely greater efficiency and an administrative system adequate to meet present-day conditions on our land borders." 6.

¹²⁰ Hearing before the Committee on Commerce United States Senate, 71st Cong., sess., 3, H.R. 11204. (Washington, D.C.: Government Printing Office, 1931), Part 1, December 18, 1930,17.

detained, the number of vehicles seized, contraband intercepted and turned over to partner agencies, and all achieved with limited manpower and relatively small federal appropriations. White then focused on the make-up the border force. "It is made up almost entirely of men who have served their country in time of war. They are now a well-trained, well-organized, disciplined and experienced body of men—loyal, zealous, and highly intelligent. No finer body of men will be found anywhere in the Government service."¹²¹

Congressman James Parker of New York and chairman of the House Committee on Interstate and Foreign Commerce supported the Treasury Department. The Committee recommended, instead of placing the Customs and Immigration border patrol directly under the Coast Guard, as President Hoover had suggested, that the Assistant Secretary of the Treasury having general supervision for the Coast Guard be responsible for any unified patrol. In the view of the committee, this would avoid "the very serious practical difficulties" that might arise from placing land-based patrols under a "sea service" and "military organization" as the Coast Guard was characterized.¹²²

The floor debate on H.R. 11204 followed a similar acrimonious path seen in the committee hearings. Congressman Dickstein of New York argued the "bill was not scientifically drawn or prepared." Citing the figure of 2,495 border patrol officers required for both land borders advocated in the report that accompanied H.R. 11204, Dickstein asked, "Did those gentlemen ever take a pencil and paper and go back to old

¹²¹ Hearing of the House Committee on Interstate and Foreign Commerce on H.R. 11204. 71st Cong., sess., 2, April 24 and 25, 1930, 29.

¹²² Committee on Interstate and Foreign Commerce, House of Representatives, 71st Cong., sess., 2, (Washington, D.C.: Government Printing Office, 1930) 1, 3.

public school arithmetic and endeavor to find out what number of men it would really take? It would take 15,000 men, placing ten men to every 25 miles."¹²³ Congressman Mead of New York, fixing on the argument that any unified border patrol would only focus on enforcing prohibition laws argued, "It is, of course in keeping with the fanaticism of the times, in keeping with the dry policy of the present Federal administration." Mead also objected to any expansion of an "armed barrier of a military nature along this otherwise peaceful frontier," referring to the US-Canadian border.¹²⁴

Congressman Albert Simms from New Mexico spoke in support of the bill. He noted that from his perspective "the several different branches of the Government service serving in our contact with the Republic of Mexico. They have not been found particularly efficient." To Simms, a unified border patrol would be "an admirable aid to our efforts to cut off indiscriminate immigration from Mexico, and is of substantial aid in the enforcement of the prohibition act, the narcotic act, as well as customs regulations."¹²⁵ Congressman Albert Johnson of Washington, boasting "I had the honor to introduce the resolution which was passed by the House in 1924 which created the immigration border patrol," now stood behind the decision to create the unified border patrol under the direction of the Treasury Department, "supporting this bill all the way through."¹²⁶

¹²³ *Congressional Record-House*, Vol. 70, June 30, 1930, (Washington, D.C.: Government Printing Office, 1930), 12219.

¹²⁴ *Ibid.* 12218-19.

¹²⁵ *Ibid.*, 12230.

¹²⁶ *Ibid.*

The House of Representatives, as a whole, also sided with Treasury. On June 30, 1930, the last day of the fiscal year, the House voted 235 in favor and 36 opposed to Hudson's plan to put the Coast Guard in charge. A total of 151 Republicans and 83 Democrats voted in favor. Interestingly, 156 congressmen did not vote including Congressman Hudson of Michigan who had got married on June 28 and was not present in Washington, D.C. Congressman Johnson voted for H.R. 11204.¹²⁷ The bill now went to the U.S. Senate on the presumption that it would gain a favorable vote.¹²⁸

In the Senate, however, the Department of Labor had a champion in the person of Senator Carl Hayden of Arizona. Believing that keeping unauthorized immigrants out was more important than stopping the smuggling of goods, Hayden wanted Immigration, and by default, the Department of Labor, not Treasury, in charge. In his testimony before

¹²⁷ The breakdown of the voting on the part of members of the House Committee on Interstate and Foreign Commerce provides a fascinating insight. The committee had 21 members -14 Republicans and 7 Democrats. 11 Republicans voted in favor of H.R. 11024; two voted no, and one did not vote. On the Democrats side, three voted in favor; two voted no, and two did not vote.

¹²⁸ Among other criticisms raised during the floor debate, the merits of the proposal and its expected impact on agencies and personnel affected by the transfers was key. Several congressmen criticized the central role of the Coast Guard in the original plan. Also, Customs and Immigration personnel, as well as the American Federation of Labor, opposed specific features of the legislation, particularly those that might adversely affect the civil service status and benefits of the individuals transferred to another agency. The AFL also expressed concern that enforcement of prohibition laws would take precedence over enforcement of immigration laws. President Hoover anticipated such a reaction from agencies and organizations that saw their interests adversely affected by any proposed amalgamation. In his State of the Union address of December 1929, during which the idea of a unified border patrol was first raised, he condemned the automatic opposition to planned reorganizations from “every official whose authority may be curtailed;” from “bureaus and departments which wish to maintain their authority and activities;” and from “citizens and their organizations who are selfishly interested, or who are inspired by fear that their favorite bureau may, in a new setting, be less subject to their influence.” *Public Papers of the Presidents: Herbert Hoover, 1929*, 431.

the Committee on Commerce, Senator Hayden began by making manifest "the necessity for this law [H.R. 11204] is to avoid duplication of effort."¹²⁹

Hayden argued that "Aliens entering the United States who are not of the proper quality have a permanently bad effect upon our country. To let in a bale of silk, to let in a quantity of narcotics or intoxicating liquor has only a temporary effect, but to allow aliens to come into the United States who are undesirable has a lasting effect; therefore to prevent their entry is more important...that fact should be stressed by having this border patrol organization under the control of the United States Immigration Service in the Department of Labor."¹³⁰

Senator Johnson subsequently demonstrated the lingering historical Congressional ignorance of the size and nature of the problem of the land borders. When informed by Senator Hayden, a man who had grown up in the border state of Arizona, that Mexican-American border was over 2,000 miles long, Senator Johnson replied: "Yes; but when you say 2,000 miles of border that does not mean men 2,000 miles where people can come across, does it really?" Senator Hayden answered: "Aliens cross anywhere they can if the border is not watched; the presence of patrolmen in the vicinity is the chief consideration."¹³¹

¹²⁹ Hearing before the Committee on Commerce United States Senate, 71st Cong., sess., 3, H.R. 11204. (Washington, D.C.: Government Printing Office, 1931), Part 1, December 18, 1930, 5.

¹³⁰ Ibid., 10. For its part, the American Federation of Labor was opposed to a unified border patrol because they feared that a combined force would concentrate on liquor rather than on enforcing the immigration laws. Senator Hayden dismissed the notion that this would happen saying "I think that their fears are unfounded."¹²

¹³¹ Ibid., 11.

Disagreements between witnesses testifying before the committee and among committee members themselves focused on the value of historical precedent and fear of abuses of power. In comparison with the six-year-old Immigration Bureau border patrol, Undersecretary Mills purposely noted, "that tradition was definitely on the side of the customs service." Congressman Robert Clancey of Michigan, a supporter of the Immigration Bureau option, argued, "there would be less abuse of power," and "feared excesses of authority" should the Treasury Department secure control over the border patrol.¹³² Hull expressed "his surprise at [the] lack of appreciation of the physical difficulties of keeping officers right on the border. You can not operate a border patrol on the entire border without an enormous expense because there are hundreds of miles of the borders of the United States where nobody can remain permanently and live."¹³³

George Harris, the assistant commissioner-general of immigration, advocated a layered defense. "Nothing pleases the smuggler better than to have patrols along the line. His spotters tell him when the coast is clear when the patrol has passed. It is a lovely idea; the trouble with it is it won't work." He proceeded to use the example of the US Army and militia being stationed only along the border before April 1917 and not in-depth from the border. "When the Army of the United States and the militia force before the World War, was on the Mexican border, with its patrols, its fixed boats going up and down that border, I do not believe, Mr. Chairman, they turned all told into the

¹³² Hearing before the Committee on Commerce United States Senate, 71st Cong., sess., 3, H.R. 11204. (Washington, D.C.: Government Printing Office, 1931), Part 1, December 18, 1930, 33.

¹³³ *Ibid.*, 47.

immigration service as many as 100 aliens. The aliens got by and our patrols a mere handful of men, got them by the hundreds."¹³⁴

In the middle of the January 1931 Senate hearings, the Wickersham Commission issued its second report on law enforcement related to the prohibition laws. It concluded: "One of the most important measures necessary to the enforcement of the prohibition of liquor importation is the creation of a competent border patrol which shall unite in one efficient force the men of the four different services." The report's authors acknowledged the difficulty of such a task, arguing, "it does not seem to be beyond accomplishment, although some legislative aid may be necessary to perfect such an organization."¹³⁵

The difficulty, however, was too great to overcome. The U.S. Senate never took any further action on H.R. 11204. It is hard to discern why the legislation never made it the floor of the Senate for a vote. It was never included on the Senate calendar in the closing six weeks of the third session of the 71st Congress. With the end of the third session on March 3, 1931, and of the 71st Congress, all unfinished legislation died. The result, nothing changed. All of those federal departments administering and operating law enforcement units along the land borders continued to do so. In his *Annual Report for the Fiscal Year ending June 30, 1931*, Commissioner Hull never even referenced either the passage of H.R. 11204 in the House of Representatives or the hearings before the Senate Commerce Committee. The section in his report on the Border Patrol acknowledges the fiscal year's appropriations of \$1,8686,440, but he continues to call for increased funding

¹³⁴ Ibid., 68.

¹³⁵ National Commission on Law Observance and Enforcement. Report on the Enforcement of the Prohibition Laws of the United States. *Report No. 2* (Washington, D.C. Government Printing Office, January 7, 1931), 35.

and an expanded force to meet growing challenges along the borders. Hull also provided figures for the seven years operation of the border patrol noting apprehensions and monetary value of seized contraband.¹³⁶

Secretary of Labor Doak in his first Annual Report echoed Commissioner Hull's praise of the border patrol adding, once again, "the immigration border patrol is without question the greatest deterrent of alien smugglers that has ever been devised." Perhaps in a subtle reference to the testimony offered in the January Senate Commerce Committee hearings, Secretary Doak concluded the section on the border patrol: "Besides the actual accomplishments shown by the statistics given heretofore, this organization has made a substantial contribution to the cause of law enforcement for various other departments of the Government."¹³⁷

At the beginning of 1932, Secretary Doak agreed to a recommendation from the Immigration Bureau to place the northern and southern land border under the immediate control of one officer who would have the title of director. It moved the border patrol into a more or less independent status with the Immigration Bureau. Commissioner Hull noted in his Annual Report for 1932: "There will, of course, be retained and maintained that

¹³⁶ Hull records that the border patrol over its seven years of existence "has apprehended 109,839 smuggled aliens and 2,612 of their smugglers. The value of automobiles and other conveyances, liquors, and additional contraband seized and delivered to the proper authorities is estimated at \$4,810,213." A total of 36,279,027 miles were patrolled in the seven years. The number of people questioned using vehicles from cars to trains totaled 4,793,677 and those on foot 1,864,779. *Annual Report of the Commissioner General of Immigration for Fiscal Year Ended June 30, 1931* (Washington, D.C.: Government Printing Office, 1931), 60.

¹³⁷ *Nineteenth Annual Report of the Secretary of Labor for the Fiscal Year Ended June 30, 1931* (Washington, D.C.: Government Printing Office, 1931), 58. William N. Doak of Virginia was selected by President Hoover to replace Secretary William Davis in 1930 when Davis won the U.S. Senate seat for Pennsylvania.

close cooperation between the patrol force and the Immigration Service proper which has been evidenced since the inception of the newer organization, and which is absolutely essential, as one service is the complement of the other.”¹³⁸ Commissioner Hull viewed the move as one designed to bring about "concentration of administration and supervision [that] will produce worthwhile results."

Commissioner Hull continued his use of statistics to prove the value of the operation of the border patrol as would be expected. Once again the Annual Report for 1932 detailed the number of apprehensions along the borders for “violations of other immigration laws.” The figures reinforced by the numbers describing how many of those apprehended were turned over to “appropriate agencies of the Federal Government or to State and municipal officers.”¹³⁹ In Commissioner Hull's view, the border patrol was just undertaking its mission on behalf of the entire federal government.

The appropriation of \$2,193,800 for FY 31 was the most significant appropriation the Immigration Bureau's border patrol had ever received for one year's operations and signaled a growing appreciation for the comprehensive results of the border patrol operations. The non-action on the part of the U.S. Senate in relation to H.R. 11204 in early 1931, the lack of any further sustained pressure on the Congress to transfer operations to any other department other than the Labor Department, and by 1932 with economic collapse threatening the United States, and a presidential election

¹³⁸ *Annual Report of the Commissioner General of Immigration for the Fiscal Year Ended June 30, 1932* (Washington, D.C.: Government Printing Office, 1932) 43. The headquarters of the Canadian border force was located in Detroit. The Mexican border force headquartered in El Paso.

¹³⁹ *Ibid.*, 44.

due in November, the border patrol efficiently and effectively kept about its business of patrolling the coast and land borders.

President Hoover, however, tried one last time during the lame duck period after the November 1932 election. On December 9, in a flurry of 11 executive orders affecting 58 government agencies, President Hoover proposed the unification of the border patrol under the direction of the Treasury Department. The executive orders had the stated purpose of being to "simplify the procedure for handling violations of the law...[to] work toward a more effective enforcement."¹⁴⁰

Once again, the unification effort failed. The House of Representatives, now with a commanding Democratic majority¹⁴¹, passed a resolution of disapproval on January 19, 1933.¹⁴² This followed the recommendations of the Committee on Expenditures in the Executive Departments.¹⁴³ The resolution rejected all the multiple reorganizations proposed by the Hoover administration.

On March 3, 1933, the U.S. Congress passed the Legislative Appropriations Act for FY 1933. Under Section 16 of the legislation entitled 'Title IV – Reorganization of Executive Departments,' the U.S Congress declared, "a serious emergency exists by reason of the general economic depression; and that it is imperative to reduce governmental expenditures drastically." The president was granted broad authority to "investigate the present organization of all executive department and administrative

¹⁴⁰ *Congressional Record*, Vol. 76, December 9, 1932, 233-251.

¹⁴¹ In the November 1932 election the Democrats gained 97 House seats to give them a dominant 313-117 majority in the second session of the 72nd Congress.

¹⁴² House Resolution No. 334, January 19, 1933.

¹⁴³ House Report No. 1833, 72nd Congress, 2nd sess., January 19, 1933, *Congressional Record* Vol. 76, January 19, 1933, 2110-2126.

agencies of the Government," to determine what reorganizations are necessary to accomplish those objectives."¹⁴⁴

President Roosevelt issued Executive Order No. 6166 on June 10, 1933.¹⁴⁵

Among the consolidations within the federal bureaucracy, the Bureau of Immigration and Bureau of Naturalization were consolidated into one bureau still within the Department of Labor. Ten days before the issuance of the Executive Order the border patrol reverted to its former plan of organization with each border immigration district was placed under the control of the respective district administrative heads, discontinuing the centralization of authority. Reflecting the economic challenges across the Federal Government confronted by the Roosevelt administration, the border patrol's appropriations were reduced back below \$2 million, and the number of patrol inspectors decreased from a peak of 983 to 938. All overtime undertaken in emergencies took place without compensation. The border patrol came under the control of the new Commissioner of the consolidated Bureau of Immigration and Naturalization who remained responsible to the Secretary of Labor. Despite the change of party and the reorganization of the Department of Labor, the border patrol continued to function as before.

Between 1933 and 1937 the Annual Reports of Secretary of Labor Francis Perkins followed the same template as all previous reports. Statistics were employed to show apprehensions of both people and contraband goods smuggled over the borders, force

¹⁴⁴ 72nd Cong., sess., II, PL. 428, 47 Stat. 1517.

¹⁴⁵ Franklin D. Roosevelt: "White House Statement Summarizing Executive Order 6166," June 10, 1933. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=14660>.

levels which fluctuated, going down to 800 in the 1937 report,¹⁴⁶ Appropriations, procedures for recruiting, evaluating and training new patrol officers, and the deployment of technologies such as radios and aircraft for operations.¹⁴⁷ The border patrol appeared to have weathered the various bureaucratic attempts to subsume its mission capture the force and its appropriations. But the border patrol confronted one last bureaucratic challenge to its status within the Department of Labor.

In 1937, a Senate Select Committee was established to “Investigate the Executive Agencies of the Government with a View to Coordination,” specifically the organization of federal law enforcement activities.¹⁴⁸ Following an extensive examination of the border patrol as one of the law enforcement assets, the report from the Select Committee concluded the border patrol should remain a part of the Bureau of Immigration and Naturalization within the Department of Labor. Referring back to the Senate hearings on H.R. 11204 in late 1930, early 1931, the Select Committee’s report presented both pros and cons of consolidating the border patrol under either the U.S. Coast Guard, as per H.R. 11024, or under the Customs Service. Noting the arguments, once again, in favor of eliminating duplication of efforts, the Select Committee findings in both options were the border patrol should remain part of the Bureau of Immigration and Naturalization under the Department of Labor.

¹⁴⁶ *Annual Report of the Secretary of Labor for the Fiscal Year Ended June 30, 1937*, 91.

¹⁴⁷ *Ibid.*, 91

¹⁴⁸ Investigation of The Executive Agencies of the Government. Report to the Select Committee No. 6 Report of the Organization of Federal Law Enforcement Activities, (Washington, D.C.: Government Printing Office, 1937) 75th Cong., sess., 1. Report prepared by the Brookings Institution.

“To the placing of the immigration border patrol under the Coast Guard it may be objected, in short, that the Coast Guard is a naval or quasi-naval organization; it automatically goes under the Navy Department in time of war; the clear-cut character of its present geographical jurisdiction should be maintained; Coast Guard personnel, training, tradition, equipment, and operations are not analogous to those of the immigration border patrol; the work of the latter is predominantly on land; alien control is the major land-border problem; and the operations of the patrol are closely integrated with the general functioning of the Immigration and Naturalization Service.”¹⁴⁹

From the perspective of a merger with the Customs Service, once again credit was given to the general concept of removing duplication of effort. But, as with Coast Guard option, the Select Committee viewed any merger or subsuming of the border patrol into Customs as potentially incredibly damaging to the goal of law enforcement on the land borders. The Select Committee’s findings employed the same logic and arguments used by supporters of a separate land border patrol over the previous nearly 40 years. “Each patrol is a means to an end. Neither could act as an independent agency. Both are established primarily for auxiliary law enforcement work.” Arguing, “coordination between the two patrol organizations was absolutely necessary,” the report recommended “it was even more necessary that coordination should be achieved between the customs

¹⁴⁹ Investigation of the Executive Agencies of the Government. *Report to the Select Committee No. 6 Report of the Organization of Federal Law Enforcement Activities*, (Washington, D.C.: Government Printing Office, 1937) 75th Cong., sess., 1, 114.

patrol and the other branches of the Customs Service, as well as between the immigration border patrol and the other branches of the Immigration and Naturalization Service.”¹⁵⁰

Noting that if the border patrol were directed by "some other authority other than the Commissioner of Immigration and Naturalization, it would be necessary at once to establish a means of coordinating the patrol with the inspection branch of the Immigration Service." Pointing out that such coordination might be even more complicated than the present problem of coordination between Customs and Immigration, the report concluded: "It would seem that, inevitably, considerable damage would be done to the continuity and unity of operations within the Immigration Service. Moreover, the Commissioner of Immigration and Naturalization could hardly be held responsible for results, if he were shorn of complete control over one of his indispensable instruments of enforcement."¹⁵¹ The border patrol had survived as part of the Department of Labor.

Despite the long-serving tenacious rearguard action of supporters of maintaining the border patrol as a force within the INS bureau, and the apparent bureaucratic victory devolved from the 1937 Select Committee's report, the victory was to be short-lived. The Secretary of Labor's Annual Report for 1939 contained a reference to the "international situation which is developing in Europe furnishes a strong reason for strengthening the Border Patrol without delay."¹⁵² Secretary Perkins' 1940 Annual Report noted the \$2 million made available to the border patrol under the Second Deficiency Appropriations

¹⁵⁰ *Ibid.*, 116.

¹⁵¹ *Ibid.*, 117.

¹⁵² *Annual Report of the Secretary of Labor for Fiscal Year Ended June 30, 1939*, 100.

Act of June 27, 1940, with the corresponding impact on hiring more personnel and buying new equipment.

Secretary Perkins report on not only the border patrol but also the Bureau of Immigration and Naturalization, however, referred to an organization no longer under her control. Under President Roosevelt's Reorganization Plan No. 5, published on May 22, 1940, the entire Bureau of Immigration and Naturalization transferred to the Department of Justice. President Roosevelt wrote that he had considered the transfer for some time but did not include it in his major reorganization plan of 1939, "since much can be said for the retention of these functions in the Department of Labor during normal times." He went on: "I am convinced, however, that under existing conditions the immigration and naturalization activities can best contribute to the national well-being only if they are closely integrated with the activities of the Department of Justice."¹⁵³

Conclusion

The tenure of the Border Patrol within the Department of Labor's Bureau of Immigration and Naturalization lasted a short 16 years. In the final annual report of the Secretary of Labor for the fiscal year ending June 30, 1940, detailing the operations of the Border Patrol, Secretary Perkins provided the basic statistics on the standing of the Border Patrol. The entire force consisted of 856 officers and employees. "During the fiscal year 1940, officers of the immigration Border Patrol had patrolled 7,895,348 miles, over 70,000 miles more than in 1939, examined 683,776 conveyances, and questioned

¹⁵³ Message From the President of the United States. May 22, 1940, *Reorganization Plan No. V*, 76th Cong., sess., III Doc. # 784 (Washington, D.C: Government Printing Office, 1940)

987,274 persons, in their effort to detect and prevent the illegal entry of aliens into the United States.”¹⁵⁴

Secretary Perkins also noted the developing international situation in Europe "furnished a strong reason for strengthening the border patrol without undue delay." "Conditions abroad always have an effect on the problems of the border patrol, and there is every reason for the belief that alien whose presence in this country would be inimical to its best interests will endeavor to enter surreptitiously along the southern border," the Secretary noted.

The Congress had already taken steps to bolster the force. On June 27, 1940, in the Second Deficiency Appropriations Act, an additional \$2 million was allotted to the Border Patrol to provide for a supplementary 712 patrol officers and 57 administrative staff. But the responsibility for spending the appropriations and hiring the new personnel now passed to the Department of Justice as a result of President Roosevelt's Executive Plan No. 5.

Willard F. Kelley, Chief Supervisor of the Border Patrol, informed an Appropriations Committee hearing on FY 42 appropriations for the Justice Department on February 28, 1941, the Border Patrol, under new leadership in the Department of Justice, "had 1,482 patrol officers. A total of 579 stationed along the Canadian border, 831 on the Mexican border and 72 in the Florida and Gulf area."¹⁵⁵ Chief Kelly expressed

¹⁵⁴ *Annual Report of the Secretary of Labor for the Fiscal Year Ended n June 20, 1940*, 110.

¹⁵⁵ Hearing before the Committee on Appropriations United State House of Representative, 77th Cong., 1st sess., *Justice Department Appropriations Bill*, February 28, 1941., 326.

his concern over the ability of the Border Patrol to continue to attract and retain qualified candidates for the position of patrol officer. Kelley noted, “a number have transferred to other law enforcement or investigative positions in Government service.”¹⁵⁶

Kelley’s task became even harder two months later. In April 1941, Attorney General assigned the Border Patrol the responsibility for the administration of internment camps then being established for German and Italian internees, and ultimately those established for Japanese-Americans after the attack on Pearl Harbor in December 1941.¹⁵⁷ The Border Patrol would oversee operations of all these camps in addition to its operations along both borders for the duration of the war. From its slightly modest beginnings, as a small ad hoc force cobbled together to enforce Chinese exclusion laws in the late 1880s, unfunded and unrecognized, the Border Patrol now found itself an integral part of national security and law enforcement establishment.

¹⁵⁶ Ibid., 329.

¹⁵⁷ John Christgau, *Enemies: World War Two Alien Internment* (Lincoln: University of Nebraska Press, 2001), 20.

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