

KAREN M. O'NEILL

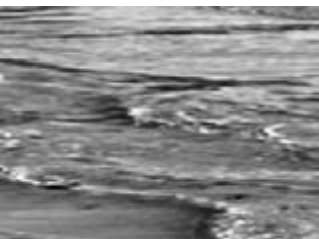
# *Rivers by Design*

STATE POWER AND THE ORIGINS OF

U.S. FLOOD CONTROL



Rivers by Design



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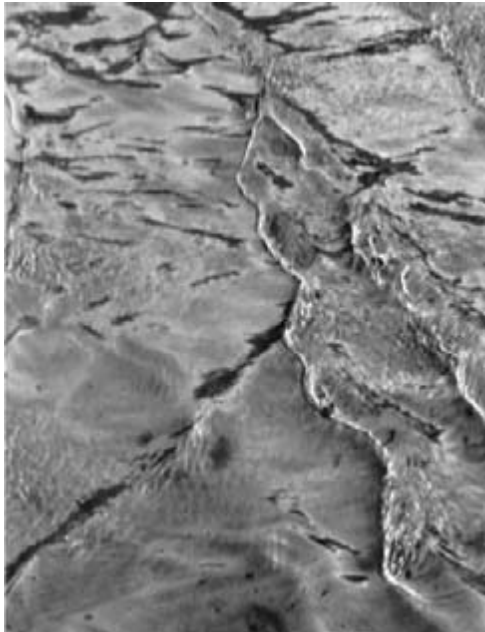


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OF U.S. FLOOD CONTROL



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*for Alex and Evan*



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## Preface

What is a river? Standing on the bank of a river in most areas of the United States, we are likely to think about rainfall and runoff, the landscape's slope, reeds, fish, and insects as the sorts of features that define a river. Accustomed to a domesticated landscape, we have trained our eyes to look past seemingly small modifications like sandbags or plantings that shore up banks along wooded river reaches. At the same time we may have stopped thinking of concrete-lined channels below highway bridges as rivers at all.

Engineering projects and legal agreements have remade nearly every river in the United States and have shaped expectations around the world about how governments should control the environment. Standing next to a high dam, for instance, we are impressed with the engineers' ability to channel and store a river and may even begin to think of that river primarily as a source of electricity. Low-profile works for flood control are not typically included in sightseeing tours but have rebuilt many more of the United States's rivers. The Los Angeles River was made into a concrete flood channel that carries rain water to the ocean with such speed that it is usually dry enough to be used for Hollywood car chases. The upper Mississippi River is a series of still pools bounded by navigation locks and flood control levees, earthen berms built alongside rivers to confine the flow. And the historic "river of grass" that flowed south from Lake Okeechobee to the Everglades has been diked and channeled, allowing farmers to drain wetlands and plant sugar cane.

These and other rivers simplified by flood control structures defy our commonsense understandings about rivers but have been tolerated as environmental sacrifice zones. Flood control structures wash out river eddies where fish feed, block the flow to wetlands, and reduce the amount of fresh water available for local human use. As we rethink our decisions to control rivers by debating whether to "naturalize" river

channels and restore wetland flooding, we are also considering how to restructure our relations to government.

This book analyzes the social origins of the United States's flood control program, which represents one possible institutional solution for managing rivers. I particularly aim to explain why the program was designed to link the central (federal) government with local and sub-national state government institutions, including landowner-run levee districts. This involves asking who pressed for this program and why the pattern of articulation emerged.

With the United Nations estimating that two to seven billion people will lack ready access to fresh water by 2050, there is growing interest in understanding the institutions that manage our water. About 60 percent of the world's largest rivers have been altered by hydraulic structures—including flood control works—that limit our flexibility in planning for future ecosystem and human needs.<sup>1</sup> Because water projects in the United States have inspired many of these structures, studying the social elements of water engineering in the United States may yield lessons about the prospects for achieving economic and political development goals elsewhere. The social origins and consequences of the United States's irrigation, hydropower, and drinking water supply projects are increasingly well documented. Programs for land drainage, wetland filling, and river flood control are less well understood, even though they have likewise yielded wealth and political power for some.

The United States's flood control program is primarily directed by the federal government, but it was initiated by elites from two outlying regions, not by power-seeking government officials. Planters, shippers, and merchants from the lower Mississippi Valley who were seeking to make their region more competitive with the established northeast originally defined aid for flood control as a program for economic development. They gained indirect assistance from Congress beginning in the 1820s, in the form of river surveys and swampland grants. Farmers, merchants, and investors in northern California began demanding flood control aid for the Sacramento River system in the late 1850s, after hydraulic gold mining operations in the Sierra Nevada range intensified the flooding of valley farms.

Farmers and city builders in the riverfront areas of these two river valleys had already built some levee lines privately and as members of

local levee districts, because they could not drain their lands without first blocking these rivers' characteristic floods. Advocates for federal flood control aid used these levee districts as their political base for organizing. They formed alliances with downstream merchants, passed subnational state government levee regulations, and promoted the issue of flood control within their home regions. They also campaigned for federal aid by organizing river conventions and gaining support from their members of Congress. By 1900, they had built regional and national lobby organizations that worked with business leaders, civic groups, and elected officials from river areas throughout the country to lobby Congress for flood control aid to the Mississippi and Sacramento valleys.

Congress unofficially directed the Corps of Engineers to repair and improve Mississippi River levees in the 1880s, at a time when the central government was still quite small. Most voters and politicians at that time felt that the U.S. Constitution restricted the federal government to aiding the interstate distribution of goods, not their production. Northern voters were especially unlikely to support aid benefiting planters in formerly rebellious southern states. Until 1917, this work was therefore justified publicly as benefiting river navigation, rather than as flood protection for riverfront lands. After years of lobbying by flood control activists, Congress created an official flood control program for both the Mississippi and Sacramento rivers in 1917 and then extended the program to all navigable rivers in 1936. In designing this program, members of Congress and the Corps of Engineers expected the Corps' existing system of field offices to oversee construction. These officers in turn hired local contractors and worked with subnational state and local government flood control agencies to plan specific works. This pattern of implementation articulated the three levels of government and involved landowner beneficiaries in program decision making. It represents one pattern of administration that has become characteristic of the United States. As historian Martin Reuss remarks, given the cultural and political tensions between central and local power in the early republic and the creation of "a republican form of governments within the government. . . . It is little wonder that [the United States] saw no successful implementation of co-ordinated public works administration. Perhaps more surprising is that this became a

permanent condition in the United States.”<sup>2</sup> This lack of coordination was evident in the inadequate and confused response to the devastation of Hurricane Katrina in 2005 in southern Louisiana.

As a study of the social origins of the flood control program, this book is neither a history of legislative power politics nor a history of the Army Corps of Engineers’ flood control program. My goal is not to explain why or when officials approved specific flood control bills or projects, decisions that depended on vote trading in Congress, on social or environmental crises, and on broad programs of state building like the New Deal. Scholars have written legislative histories of the major flood control bills and of bids to create comprehensive plans for multipurpose water use, such as the Tennessee Valley Authority (TVA). I cite these in the narrative.<sup>3</sup> I also rely on scholars who have detailed some of the local political developments that led to flood control activism.<sup>4</sup> Major elements of the story of social origins, however, have not been documented in the research literature. This book presents new data from information produced by the river activists themselves, describing the themes they used and their methods of organizing. It provides an overview of flood control advocacy through 1936 to consider how this advocacy produced a program that linked the implementing agency, the Corps of Engineers, with landowners and with subnational state and local agencies.

Efforts to alter the course of rivers have changed social and political structures in expected and unexpected ways. The lower Mississippi and Sacramento valleys received the first federal flood control aid. Along the lower Mississippi, planters were able to expand cropping onto formerly malarial swamplands. Although planters had been unwilling to risk the lives of slaves to work those lands, they encouraged freed African Americans and recent European immigrants onto those lands after federal levees were built. These areas remained susceptible to levee breaks, but sharecropping and other forms of labor control passed the risk of flooding onto these laborers. The flood control program encouraged the commitment of planters and merchants to the goal of reviving the cotton economy and achieving economic autonomy from the North, a goal that eluded them. In the Sacramento Valley, federal court intervention and the promise of federal flood control aid ended a political stalemate between gold miners in the Sierras and valley farmers, whose

lands had been inundated by debris from hydraulic gold mining in the mountains. These federal government actions effectively ended the Gold Rush, but they also fostered the rise of intensive specialty agriculture in the Sacramento Valley portion of California's Great Central Valley. In other river valleys throughout the country, flood control levees, reservoirs, and spillways have similarly helped farmers to devote their resources to intensifying production and have walled off cities from their rivers.

These river projects committed the government to developing specific rivers for specific purposes, altered the risks of living alongside rivers, and deepened the government's responsibility for managing uncertainty and responding to disasters. The earliest forms of federal assistance for flood control were discussed as forms of aid that would improve economic security by protecting farming areas and ports. Over time, people built residences and businesses in the floodplains behind river levees. Government levee building became increasingly focused on protecting population centers.

But the rivers push back. As more water is impounded behind upstream levee lines and shifted through diversion channels, and as more people build in downstream floodplains, the damage that is likely to result from a break in the levee system is greater than ever. Property losses from floods have increased dramatically since the government began building flood control works because levees and floodwalls made floodplains seem safe for building. The federal government now has floodplain management programs and coastal protection programs to improve ecological protections against floods. It has failed to take a more direct approach by requiring that local governments prohibit development in the most vulnerable floodplains once federal levees and floodwalls have been built. The federal system of government therefore complicates the task of responding to the dynamic interaction of weather, land, and rivers in landscapes that we have altered.

The country's political and cultural fragmentation also makes river projects politically vulnerable. Advocates of government reform have long complained that the lists of river projects approved by Congress are fueled by pork barrel politics. Environmental critics add that these projects have been environmentally devastating as well as wasteful. The unprecedented damages of the 2005 hurricane season provoked a new



round of debates about the social, financial, and environmental costs of federal projects for river and coasts.

As the following chapters show, river development politics led to changes in relations between the regions and the federal government. As the original national highways, rivers were first manipulated by local and subnational state governments. The federal government slowly took on its own river projects. In part I, chapter 1 presents scholarship about relations between regional elites and the modern state, considering how a centralizing state organizes outlying territories. Readers interested in the story of the flood control campaign, rather than in theory, may wish to skip to the second chapter.

Chapter 2 explains why decisions about land development and infrastructure set some of the federal government's basic domestic powers during the republic's early years. Federalists, National Republicans, and Whigs—most notably John Calhoun and Henry Clay—argued that internal improvements would create common interests by physically uniting the country and facilitating commerce. Democratic critics painted these plans as examples of governmental overreach. When the Supreme Court ruled in 1824 that the Constitution's interstate commerce clause made the federal government responsible for free access to river transportation, Congress directed the Army Corps of Engineers to begin a program to improve river navigation channels. This court case became the key constitutional justification for central government intervention into the economy, although for decades funding was usually limited to aiding the interstate distribution of goods, not their production. Because flood control work would directly enhance agricultural production by allowing farmers to control soil moisture, it was not acceptable under this view of the Constitution.

The rise of flood control activism in the Mississippi and Sacramento valleys is discussed in part II. Chapters 3 through 7 detail why leaders in the Sacramento and Mississippi river valleys were the first to seek flood control aid in response to early federal commitments to infrastructure building.

Because the massive Mississippi River gives access to the heart of the continent, settlers from the United States pressed for the federal government to take the Louisiana territory from the French, to improve the river for shipping, and to protect riverfront lands from floods. From the

time the French settled New Orleans in 1717, local authorities had organized levee districts run by landowners to coordinate local levee building along the lower Mississippi River. Under United States rule, large landowners, politicians, bankers, and shippers from port cities all along the Mississippi organized river conventions from the 1840s on to protest the disproportionate share of federal river and railroad aid going to the northeast. Many river activists from the lower Mississippi also began to argue that the river's volume and meandering ways caused flooding as well as navigation problems and that the two problems should be solved together. As a low-cost gesture typical of the times, Congress approved grants of federal government swamplands to a dozen subnational state governments west of the Appalachians beginning in 1849. The subnational states were to sell these lands to subsidize flood control works. Even so, southerners' continued resentment over the uneven allocation of rail and river navigation aid contributed to sectional polarization.

Territory might have been permanently lost to the United States after the Civil War, but instead, the central state was remade. As Barrington Moore argues, once the central state was no longer required to protect slavery to maintain the Union, it could devote itself more fully to economic development policies, with the support of a southern elite newly accepting of government economic interventions.<sup>5</sup> In their post-Civil War memorials to Congress, pamphlets, and editorials, southern river activists expressed the belief that federal promotion of northern industry could be accompanied by renewed promotion of the southern cotton economy. Many of these writings implied that the government owed aid to the South as war reparation. Recipients of the 1840s swampland grants (whom Populists derided as swamplanders) joined with merchants and other boosters in the 1870s to organize new river conventions demanding federal flood control aid. Members of Congress from the lower Mississippi Valley gained leadership of House and Senate river committees and traded votes over the years to win navigation projects. Finally, Congress informally directed the Army Corps of Engineers in the 1880s to use navigation program appropriations to assist levee districts on the lower Mississippi.

The integration of California into the union was less fraught, but it too provoked conflicts about what the government owed to new territories. Within five years of the discovery of gold along the Sacramento

River in 1848, miners shifted to intensive methods such as hydraulic mining, which used water under pressure to blast away hillsides in the Sierras. Tens of thousands of yards of rocks and clay flowed into the river system and soon onto the lands of valley farmers, who supplied the miners. As farmers and townspeople gained some economic independence by selling their goods outside of the mining areas, they began to protest mining damage.

Federal officials and judges were presented the choice of intervening between these two vital industries in California, a step unprecedented at the federal level. Even by the late 1860s, after editorialists and judges had widely acknowledged the damages from mining, Californians remained divided over the best response. Miners and many mining-dependent valley residents admitted that the harms from mining were visited upon downstream property owners but they asserted a principle often expressed in case law that defended mining as a higher and more productive use of land. Recipients of large swampland grants, like their counterparts in the Mississippi Valley, favored demanding that the federal and state governments build flood control works. Residents of valley areas dominated by small farms tended to prefer lawsuits and injunctions against mine owners, suspecting that miners would use government flood control works to justify more mining. In the end, lawsuits worked more quickly than politics did. In what was likely the first major environmental ruling of a federal court, a judge in 1884 extended case law protections against harms by ordering hydraulic mine operators to build and maintain vast debris basins. This requirement pushed the costs of mining beyond the reach of most operators. The lengthy ruling also documented the federal government's failure to regulate mining claims and to prevent harms.

The former adversaries regrouped. They now argued that the court ruling obliged the federal government to aid miners and farmers. Aid would include building debris dams and river improvements throughout the river system, in conjunction with existing California state flood control measures and with local levee districts. Congress created a commission to investigate mining damages and to plan improvements.

Courts and Congress had generally limited the federal government to facilitating the interstate distribution of commercial goods. Interventions into California's mining dispute and levee aid for planters on the

lower Mississippi River were instances of federal aid to economic production that encouraged further interventions in the twentieth century.

Part III analyzes the role of river activists in fostering the rise of a system that distributes most federal development aid through regional competition. Chapters 8 through 10 discuss the unification of the two regional campaigns into a national campaign seeking aid for the Mississippi and Sacramento valleys and describe their success in passing formal flood control bills. Flood control advocates from the two valleys had begun forming a joint campaign at the turn of the century fronted by professional lobby organizations, which attracted support from commercial organizations throughout the country. The Mississippi River Levee Association lobbied for aid to the lower Mississippi. Advocates also eventually convinced the National Rivers and Harbors Congress, the influential river navigation lobby, to add to its wish list flood control aid for the Mississippi and Sacramento rivers. The 1917 Flood Control Act directed the Corps of Engineers to provide levee aid for the Mississippi and Sacramento rivers. In 1928, after immense and deadly floods on the Mississippi, Congress committed the federal government to wholly redesigning the Mississippi and Sacramento river systems to control floods.

Chapter 10 analyzes the final step ensuring that government water development in the United States would be fragmented across special purpose programs, like the flood control program, rather than coordinated through comprehensive planning. Scholars of political development argue that the reformist New Deal broke the nineteenth-century pattern of limited government. New Deal dollars certainly expanded land and resource programs, but the flood control program and most other resource programs retained their orientation. President Franklin Roosevelt and other reform-minded New Dealers pushed to create non-political, professionally managed organizations such as the TVA to centrally plan and supervise multipurpose river development projects. The New Dealers' eagerness to act did provide opportunities for advocates of reform in resource policy, and they managed to pass the TVA bill. But it also provided opportunities for advocates of the reform-resistant flood control program. Despite the early promise of the TVA, Roosevelt's signing of the national Flood Control Act of 1936—which empowered the Corps of Engineers to build projects for all navigable rivers—

effectively ended nationwide, comprehensive planning for natural resources at the federal level. The 1936 Flood Control Act institutionalized the influence of river interest groups and the articulated pattern of implementing federal projects in cooperation with local institutions. It also marked the triumph of the “river lobby” in ensuring that the Corps of Engineers would retain management over nearly all navigable rivers through its navigation and flood control programs. Other water management duties would be divided among agencies including the TVA, Bureau of Reclamation, Soil Conservation Service, and Bonneville Power Administration. In the process, these government programs have created new physical vulnerabilities for people who settle in areas that appear to be safe.

Chapter 11 looks back at the development of river policy to consider how earlier ideas and policies about rivers helped shape governance and changed the ways we use rivers. The pattern of articulation between the three levels of the federal system and between the government and landowners allowed for a workable division of labor for designing, funding, and building flood control works. The goals of these interrelated institutions are not easily changed. The Corps of Engineers’ navigation and flood control programs and their state and local partners have resisted financial reforms and have addressed the ecological problems caused by engineers by proposing ever more ambitious engineering works to restore waterways. Infrastructure works and the human organizations that created those works continue to impose limits on our actions and our imagination.

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## *part I*

### Rivers and State Authority

Infrastructure building during the early nineteenth century contributed to several related processes of social change that increased the central state's power and defined how the state would relate to citizens. The United States government organized its territory, established a unified property system, and aided the rise of the national market and the industrial sector. Chapter 1 presents questions about territory, federalism, and regional activism that guide this study. Chapter 2 outlines how those processes unfolded during the early years of the United States as decisions were made to develop rivers. These chapters lay the groundwork for parts II and III, which describe how activists and their legislative allies from the Mississippi and Sacramento valleys got Congress to increase development aid by increments.





## *chapter 1*

# Infrastructure Builds the State

The flood control system built by the United States Army Corps of Engineers is rivaled only by the system protecting the Netherlands. But while the Netherlands could scarcely exist without river levees and sea-walls, the United States has plenty of land outside of floodplains.<sup>1</sup> It is not obvious why the United States government would take on the responsibility of providing flood control and flood insurance for lands along all major rivers.

As later chapters will explain, demands for federal government flood control aid by landowners, shippers, financiers, and politicians from the Sacramento and Mississippi river valleys made the local and regional problem of flooding into a national responsibility. Far from being imposed by the central government, the flood control program was resisted by Congress and the Army Corps of Engineers. Activists first established laws and public works programs at the local and subnational state government levels to assist private flood control work. Once the federal program was created, federal managers had to work closely with local contractors, levee districts, and subnational state governments to build federal levees and weirs. This activity articulates the central government with local and subnational state government institutions, and it articulates the government with landowners. Organizational articulation is one possible institutional form that affirms central government authority in regions that are physically distant from the capital, even though in the case of flood control such institutions were not imposed from the center.

This chapter outlines the broad processes of modern state building and class formation affecting the way the U.S. government manages land and resources, setting a conceptual framework for analyzing why the pattern of articulation emerged in the flood control program. Establishing and sustaining territorial power is a defining feature of modern states. Studying relations between the central government and distant regions is one way of considering how the physical integration of

territory contributes to modern state power.<sup>2</sup> Centralizing authorities typically repress internal challengers and set up border garrisons and administrative controls to manage outlying regions. Effective rule depends, however, on a wider range of activities, including economic development projects, changes in the law, and discursive work. These activities produce institutional forms that manage interactions between the central government and outlying regions. In the case of flood control, they produced an institutional form that articulated the federal, state, and local governments.

People in outlying regions influence the nature and timing of activities that build government power, and they even initiate efforts that end up affirming central government control. Like many other land and resource programs in the United States, the flood control program was created because provincial elites demanded aid. Landowners, shippers, and merchants from the lower Mississippi and Sacramento river valleys argued that the federal government had a duty to control floods that threatened valley farming and shipping and that hindered participation in the national economy.

Two features relevant to the control of outlying territories are special to this case, namely that it concerns land policy and that it unfolds in a country with a federal system. Land, resource, and infrastructure policies often produce visible symbols of central government power that become essential for sustaining daily life in a locality. These policies also require modifying legal and social systems that regulate access to land. Studying a federal system highlights how the authority and power of a central government can be extended by responding effectively to local demands and by incorporating local institutions.

These features of the flood control case draw our attention to the organizational, legal, and cultural boundaries between the modern state and society, rather than to the central government's bureaucracies, budgets, or armies. The flood control program is what George Steinmetz calls a "structure-changing policy," one which alters the way subsequent policies are produced by altering the perceived boundaries between the modern state and society.<sup>3</sup> The flood control program altered boundaries by redefining the government's political duty to assist landowners, while giving the impression that it was merely ensuring some morally prior landowner right to property that is ready for productive use. In particular, politicians and judges in the early nineteenth century

had interpreted the interstate commerce clause of the Constitution as limiting federal river work to navigation projects that facilitated the distribution of goods. By contrast, flood control projects would directly improve the way goods were produced (especially crops), not just the way they were distributed, and would directly benefit landowners.<sup>4</sup>

Flood control activists and sympathetic officials did not set out to change the nature of property and the state. Neither did they anticipate that the path to success would involve temporarily defining levee repair as navigation work, trading votes for regionally specific development aid in Congress, calling for national rather than merely regional flood control aid, emphasizing public safety rather than economic development, and making delicate political tradeoffs with Progressives and New Dealers.

Activists did consciously build on the long-standing assumption in the country's culture that the government should support rather than threaten the institution of property. The Mississippi carried much of the nation's water, they pointed out. The Sacramento was burdened by debris from mining that had built the nation's gold reserves, which were considered at that time to represent the country's wealth. Flooding was therefore a national problem that unfairly burdened landowners. The nature and timing of specific political steps leading to federal aid depended on large-scale political and economic conditions. The cultural and political transformation of local and regional flooding into a national problem, however, depended on the links between federal, state, and local governments and between government agencies and landowners established over the decades while they worked to change rivers. To explain why this sort of transformation helps to define the modern state, the next sections consider how territorial power is sustained domestically, how modern state territorial claims and property laws regulate access to land, how these institutions affect the formation of landed classes, and how federalism structures space.

## The Modern State and Territory

Modern states organize territory by reorienting social networks toward state activities.<sup>5</sup> In the United States this involved changes in property rights and changes in the central government's legal and physical organization of territory.

Scholars readily agree that modern states differ from other forms of political power because they organize territory more intensively. In a statement cited by theorists of many persuasions, Max Weber defines the modern state as “a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory.”<sup>6</sup> Before the full emergence of modern states in Europe, religious, military, and political authorities typically had jurisdiction over specific groups of people, rather than authority over well-defined territories.<sup>7</sup> Historically, the emergence of a territorial power in a region forced other powers to organize to protect territory, or face possible annexation.<sup>8</sup> By gaining authority to draw resources from a specific territory, a state may become able to finance territorial expansion or to create more intensive political controls within its existing territory.<sup>9</sup> Political expectations, nationalist ideologies, international agreements and norms, international aid packages, and targeted military actions have fostered the organization of the world into territorial states.<sup>10</sup>

Some observers argue that international governmental organizations, transnational nongovernmental organizations and corporations, and border-spanning economic activities and technologies have eroded states’ roles as authoritative political and economic actors, or at least changed the conditions under which modern states operate.<sup>11</sup> Writings on globalization invite us to consider whether modern states have until now been as unified and territorially well defined as is often assumed.

Scholars who view state power as being imposed from the center have contributed to the idea that the modern state is unitary. Tocqueville argued that the French state not only centralized power and resources but also compelled the provinces to adopt a national culture.<sup>12</sup> Many studies inspired by Tocqueville<sup>13</sup> describe regional resistance and acknowledge that modern state power is often indistinguishable from the power of local landed elites, but the focus of these studies remains on central bureaucracies.<sup>14</sup>

Others question the assumptions that modern states are monolithic organizations distinct from civil society that impose order and political culture from the center.<sup>15</sup> Critics of Weber’s definition of the state note that states often fail to monopolize coercion but remain recognizable as states in their attempts to control territory.<sup>16</sup> Empirical studies find that the actual practice of state sovereignty varies, to the point where challenges within the borders of some countries have established them-

selves as alternative regional authorities.<sup>17</sup> And nationalities seldom fully coincide with national borders, even when state leaders encourage nationalist movements.<sup>18</sup>

Peter Sahlins reconsiders assumptions about state control over outlying territories by studying a border area of a country strongly associated with centralized control, France.<sup>19</sup> Ethnic Catalans on both sides of the emerging border with Spain resisted the two centralizing states, while using their new national identities and nationalist claims to territory to compete against each other locally for scarce resources. Sahlins concludes that political links between French Catalans and the French government were built therefore from the provinces as well as from the center, despite the Catalans' long-standing ambivalence toward Paris. Sahlins's approach provides a model for investigating initiatives from outlying regions in the United States that determined how the central government related to people in these regions as it managed rivers.

Stein Rokkan identifies two fundamental domestic conflicts relevant to such struggles for territorial control that mark the rise of the modern state: (1) a conflict between centralizing state regimes and resistant peripheral regions and (2) an industrial revolution that stimulates a class cleavage between owners and workers and a sectoral cleavage between landowners and industrialists.<sup>20</sup> Rokkan's two conflicts unfold in part as struggles over the way land is organized and used. Using these concepts, a historical case study of state building would analyze events to consider how specific institutions were established to manage each of these two forms of conflict.

As Timothy Mitchell sees it, state building is not accomplished by leaders imposing their will on the people to suppress these two conflicts. Instead, it occurs through social processes that change not only how people organize control over material conditions but also how they perceive the institutions that control those conditions. The state appears to be a separate entity that regulates society. Despite this appearance, case studies of policy making show that the border between the state and society is ambiguous and ever changing. For instance, governments may privatize or nationalize industries, take on old age care, and create incentives for industries to regulate their own activities. Rather than conceiving of the state as an entity that imposes order over territory, Mitchell therefore proposes that we investigate how mundane practices of spatial organization, such as border guards and watch-

towers, lead us to perceive of an authoritative modern state set apart from society.<sup>21</sup> Sahlins and others who study borderlands have used this approach to investigate the social and cultural processes that (provisionally) transform frontiers into international borders.<sup>22</sup> To understand how land is regulated *within* the borders of an advanced capitalist country, I consider how Mitchell's dividing line is drawn between state territory and private property, the two key institutions regulating land in such countries.

### The Modern State and Property

In addition to excluding other sovereigns from their territory, modern states also regulate access to land by their own citizens. With the rise of capitalism, states have managed a mix of capitalist, usufruct, and other forms of land claims. In the United States, people have relied on the language of law when debating decisions about "internal improvements," that is, government-sponsored land development projects and public works. Within the Anglo-American tradition of law, according to Edward Levi, decisions about internal improvements and other types of land development are treated as answers to "the perennial problems of government: the relationship between problems of the person, the state, and property rights."<sup>23</sup>

Putting this in theoretical terms, state territory is a form of authority that overlaps with private property on most land in the United States. Anglo-American law represents this overlap by conceptualizing property as a bundle of rights that is divided between landowners and the state. The fee simple estate in the United States includes the exclusive right of the landowner to hold land and its permanent features, the rights to use it or dispose of it, and the rights of freedom from interference or damage by others.<sup>24</sup> Society, represented by the state, always withholds the right to tax private property, the right to condemn land for public use (eminent domain), police power, and the right to reclaim land if the owner fails to maintain ownership rights (escheat). Government may also regulate land use indirectly with its spending power.<sup>25</sup> The modern state's coercive role is built into these rights, and the actual benefits that owners enjoy vary greatly as circumstances change and