

**Political Entrepreneurs and the Transfer Demanding Process:
Homesteading the Unassigned District**

By

Noel D. Campbell, Ph.D.

Gordon College, Barnesville, Georgia

Number of text pages: 42

Number of figures: 4

Number of tables: 0

Correspondence should be addressed to:

Dr. Noel D. Campbell

Assistant Professor of Economics

Gordon College

419 College Drive

Barnesville, Georgia 30204

tel.: 770-507-1771

email: n_campbell@falcon.gdn.peachnet.edu

Political Entrepreneurs and the Transfer Demanding Process: Homesteading the Unassigned District

Abstract:

Being primarily neo-classical in origin, the standard, leading models of political economy do not include elements of formal entrepreneur or process theory, and approach dynamics as logical, mathematically precise movements between equilibria. This paper extends a Peltzman-based interest group theory of government by dynamically incorporating elements from Schumpeter's theory of the entrepreneur, and by focusing on the discontinuous, creative behavior of entrepreneurs who act to organize latent interest groups to seek legislative transfers, rather than focus on entrepreneurial office holders. The paper discusses the efficacy of this extension by applying it to the political maneuvering that culminated in the first Oklahoma land run, and white settlement in the Unassigned District of the Indian Territory.

Political Entrepreneurs and the Transfer Demanding Process: Homesteading the Unassigned District

1. Introduction

From Smith to Walras to Von Mises and beyond, economists have long striven for general theories; for inclusive systems of thought and unifying principles of human behavior and decision making. That subset of the overall economists' enterprise known as political economy is no different. Political economy and public choice scholars engage in the same search for general theories of institutional and political action using the economists' tools developed to explain market behavior. Currently among political economy theorists, the interest group theory of government is widely held to be a general, or nearly-so, explanation of political policy, especially when limited to entities possessing democratic institutions. But given the theory's origins in the static theory of optimization on the part of legislators or regulators, this theory is subject to the same criticisms leveled at the neo-classical model of markets and/or consumer's equilibrium. Certain strands of criticism leveled at these market models have emphasized the nature of social interaction as open-ended processes in which people make real decisions in an atmosphere of general uncertainty, where the most important feature of markets is the

entrepreneurial disruption of established procedures. (Kirzner 1997, Kirzner 1992, Kirzner 1973, Schumpeter 1993, Schumpeter 1989)

This is not to say that the interest group theory of government and similarly derived models of political interaction have ignored the presence and actions of entrepreneurs. (Denzau and Munger 1986, Peltzman 1976, 1989, Stigler 1971, Wagner 1966) However, in many of these models, entrepreneurial behavior is circumscribed so that it impacts the model only through pre-defined, or otherwise limited channels. (Denzau and Munger 1986, Wagner 1966, McChesney 1992, Peltzman, 1976, 1989, Stigler 1971, Coppin and High 1991) Rarely is a well-articulated theory of entrepreneurial behavior central to these models.

Furthermore, and partially for this reason, attempts to account for time, or dynamic changes of condition within the models, emphasize logical, mathematically precise movements from equilibrium to equilibrium. This approach to dynamics is true even of models employing multiple equilibria. While the next outcome may not be known with ex ante certainty, no one is *surprised* when the equilibrium is obtained; it was understood with a certain likelihood that such a situation would occur. That is, ex ante the model predicted not only the equilibrium, but also how to achieve it, and once that path was embarked upon the equilibrium would result.

Accordingly, there may be room to meaningfully extend the generality of this traditional approach to political economy. This could be accomplished by incorporating elements of a formal entrepreneurial theory, wherein the entrepreneur is an unpredictably

disruptive force, and the entrepreneurial function is free to operate in different contexts within the model, especially in forming effective demand for transfers. An appropriate test for such an extension would be to determine whether it more accurately or more completely explains observed phenomena than the traditional approach alone. This testing may be carried out in numerous ways, from the expected econometric hypothesis testing to more heterodox empirical methodologies like the case study, or other examination of the historical record. Because of the discontinuous, unexpected nature of entrepreneurial behavior in question, the historical examination is likely to be the apt empirical methodology. Therefore, the remainder of this section shall set out the basics of an extension to traditional political economy, and propose a test case. In the empirical section, the paper will consider the political maneuvering leading up to the first Oklahoma land run, and the settling of the Unassigned District by white homesteaders.

1.1 The Extension and the Test Case

Competition in politics to secure an income-enhancing privilege, is, as in markets to secure a profit, a rivalrous competitive process, marked by entrepreneurial and strategic behavior. While this process may generally tend towards the regularity and stability emphasized in equilibrium models, entrepreneurial behavior alters the process' "path." In the terms of dynamic economic analysis, this differs greatly from the theoretical program that views dynamics as the purely logical movement through time from one equilibrium to the next in response to changed functional values. Rather, this

conception focuses on a historical, evolving course in which creative humans make non-trivial decisions. For present purposes, “dynamics” describes the development of the economy; the revealing of the economy and its permutations through historical unfolding. Rather different from a Hamiltonian, dynamic analysis is based on “surprise” as Kirzner puts it (Kirzner, 1997), and human decision making which could not be predicted by the functional values of arguments; decisions which “create... situations from which there is no bridge to those situations that might have emerged in its absence...” (Schumpeter, 1989, p. 222)

Viewing political competition as an open-ended process, allowing behavioral change by the participants, can be a meaningful approach to political economy that helps complete the insights derived from non-process approaches. The actions of entrepreneurs are key to any process model of social interaction, and the political process is no different. Entrepreneurial behavior is not limited to the actions of current or would-be political office holders or regulators, but also encompasses the behavior of net-demanders of legislative wealth transfers and would-be net demanders. The mechanisms discovered by the transfer demanding entrepreneur provide the means and incentive for other participants in the political competition process to overcome their free-riding incentives and form a cohesive interest group. This entrepreneurially organized interest group alters the relative benefits afforded legislators or regulators by any policy or law, thereby changing the political outcome: the allocation of property rights to wealth.

The settlement of white homesteaders in the Indian Territory, now the state of Oklahoma, furnishes the empirical case. The current extension of traditional political economy is demonstrated by reference to the actions of the railroad agents and the Boomers, a created pro-settlement interest group, in their attempts to secure the legislation necessary to settle the Indian Territory, on their preferred terms, and over the opposition of other interest groups. Though political economists are producing ever more work in this field, the political economy of the Boomers' and railroads' successful gambit, the first land run, has not been analyzed as a separate phenomenon. Few if any have examined how the railroads and the Boomers dynamically and entrepreneurially changed strategy to turn defeat in 1879 to victory by 1889.

The process of western institutional formation has generated a flow of economic scholarship, and the political economy of property rights allocation in the west is an established research program, and an accepted paradigm for historical research. The accepted political economist's property rights approach "concentrates on institutional constraints and the incentives they created to explain why the settlers behaved as they did. [P]olitical economy treats human action as response to benefits and costs determined by both natural and manmade environments," and that "much of western history can be understood in the context of competition for ownership of resources." (Anderson Hill, 1994, p. x)

This property rights political economy paradigm for historical research has been summarized as an economic theory of property rights: "An efficient set of property

rights depends on the relative prices of scarce factors. Because property rights are costly to produce, definition and enforcement activity will be undertaken only when it is economic to do so. As scarcity increases... more effort will be devoted to establishing rules governing who has access to resources and who can derive returns from their use.” (Leonard Carlson, 1992, p. 68)

To this standard, public choice-new institutionalist theory, the current extension of that theory would add that as scarcity increases, more effort will be devoted to *transferring* or *amending* existing rules. Entrepreneurial effort will also be made to transfer property rights politically, outside the price system, provided that external activity (external to the price system) is more economic than internal, price system activity. In response to altered economic conditions, political entrepreneurs will disrupt the existing constellation of political costs and benefits, possibly by acting to organize a previously latent interest group. Within that context, this work attempts to address a subset of public choice issues raised by the specific historical details surrounding the land run and the extinguishing of the Indians’ tribal title.

Concerning the first land run, the question to social science becomes the explanation of the powerful reversal of fortune enjoyed by the railroads in Oklahoma. How did the political tides alter so suddenly and completely? What was the impetus of change and how was it carried out? How can the political economist explain the historical facts of Oklahoma's white homesteading in accord with his existing theories? By

answering these question the paper will demonstrate the efficacy of the extended approach to understanding historical phenomena.

2. Brief Review of the Relevant Economic Literature

The literatures of entrepreneurship, political entrepreneurship, interest group theories of government, and theories of pressure group formation are (separately and certainly jointly) voluminous, as the political economy literature of frontier and post-frontier relations is becoming. Any attempt to even cursorily survey these literatures would take us too far afield and still be egregiously incomplete.

Instead, this section focuses on a much smaller body of the public choice literature, beginning with the watershed articles of Stigler and Peltzman outlining the interest group theory of government. The literature review also includes discussion of Schumpeterian entrepreneurial theory, and concludes with Olson's Logic of Collective Action.

2.1 Public Choice: Stigler & Peltzman

A review of Peltzman, "Toward a More General Theory of Regulation," *Journal of Law and Economics*, August, 1976 will also neatly encompass a review of Stigler's seminal piece, "Theory of Economic Regulation." Peltzman states Stigler asserts a law of

diminishing marginal returns to group size in politics and models a political auction wherein the high bidder is able to tax the wealth of everyone else. (Peltzman, pp. 235-237) Peltzman's formal version of this model moves away from Stigler's "single-winner" auction, and produces a principle of regulation resting on the care the political process must give to marginal opposition: the benefits of regulation to a group will necessarily be less than a perfect broker for the group would obtain. (Peltzman, pp. 241-242) In making this point, Peltzman states, "[*P*]olitical entrepreneurship¹ [on the part of the regulator] will produce a coalition which admits members of the losing group into the charmed circle." (Peltzman, p. 246) This is Peltzman's only per se mention of political entrepreneurship. For his purposes, Peltzman conceives of political entrepreneurship as the province of the regulator, *not* the demander of legislation. This seems to be the common use of the entrepreneurial concept in political models both pre- and post-Peltzman 1976.

¹Italics added

The Peltzman model borrows from the model of the consumer's optimum. Peltzman makes the common assumption that the indifference curves- his iso-majority curves- are stable, making the conscious decision to focus on changes to "constraints" and not "the appropriate political power function." (Peltzman, p. 248) But by viewing his power relationships in this fashion, as analogous to tastes shaping the regulator's utility function, he downplays a role for outside actors to change that function; that is, for a demander of legislation to alter the legislator's iso-majority sets. If we view the power relationship not as taste, but as set of constraints affecting what the legislator can do or desires to do², a much wider range of behaviors may be analyzed using Peltzman's basic model, including the current framework of allowing a demand-side entrepreneur to alter the interest groups that pressure the legislator, thereby altering the marginal pressure felt by Peltzman's legislators.

Furthermore, by deliberate choice, Peltzman's dynamics are largely non-existent, and his comparative statics consist of "parametric shifts" in his subsidiary functions, with little or no discussion as to how these shifts might come about, or how to endogenize shifts to the iso-majority curves.

2.2 Public Choice: Wagner and Denzau and Munger

² As McCormick and Tollison (1981) view it.

The pioneering work on political entrepreneurship is likely Wagner's review of Olson (1965). Wagner (1966) stresses the point that the market for wealth transfers exists because of the institutions of democratic decision processes. Just as in the market for private goods, entrepreneurs will seek profit opportunities in the democratic process. Wagner focuses most of his subsequent discussion on the entrepreneurial behavior of elected representatives, the suppliers in his market, which is perfectly consonant with his theme that interest groups are a sufficient, but not necessary, component of wealth transfers. He states, "the political entrepreneur provides the key to understanding why certain groups receive real income increasing favors while others do not...." (Wagner, pp. 164-165)

Formally extending Wagner's argument, Denzau and Munger (1986) adopt a similar focus on entrepreneurial legislators as suppliers of wealth-transferring legislation to explicitly derive legislators' supply prices for various interest groups, conditioned by the preferences of their unorganized geographic constituency. They conclude that though "the voting group is not "organized" in Olson's (1965) sense,... legislators acting as political entrepreneurs can use the unorganized group to countervail interest group pressure (Wagner, 1966)." (Denzau and Munger, p. 102)

In this light, both Denzau and Munger and Wagner use entrepreneurship to discuss the supply of wealth transfers in an institutional setting by elected political entrepreneurs. Though neither paper limits entrepreneurship to the supply side of politics, it is the elected suppliers of legislation who demonstrate the entrepreneurial

drive. The current model posits a *demand side* entrepreneur acting to create an interest group to lobby *for* legislation, in a process not well described by either Wagner or Denzau and Munger. Also, though these and other papers enlighteningly and correctly extend the concept of entrepreneurial behavior to political activity, they have not formally applied to the political process the theory of the entrepreneur developed by Schumpeter.

2.4 Schumpeter's Theory of the Entrepreneur

Schumpeter³ views the entrepreneurial function as the stimulus which provokes economic development: innovation, the industrial, commercial, or organizational application of something new, continuously works within the economic structure to destroy the old while creating the new. This is Schumpeter's process of Creative Destruction, the essential feature of capitalism. (Elliot, p. xix) Schumpeter's theory is not constrained to the narrow study of capitalistic markets, but was rather an overarching theory of man in social action. Entrepreneurship exists not only in the economic sphere, but in all aspects of human society, with entrepreneurial behavior evident in "cultural, artistic, and political fields, every form of thought and indeed intellectual ambitions." (De Vecchi, p. 19)

In this sense, the entrepreneur's defining characteristic is doing something new, or doing something in a new way. (Schumpeter, 1989, p. 223) However, the entrepreneur behaves in a radical, discontinuous manner, and his changes cannot neatly "be

³The author wishes to thank Ivan Pongracic for guiding him through this literature.

decomposed into infinitesimal steps.” (Schumpeter, 1989, p. 223) Schumpeter thereby creates a dichotomy in the way the economy adjusts or remakes itself:

“Whenever an economy or a sector of an economy adapts itself to a change in its data in the way that traditional theory describes, we may speak of the development as *adaptive response*. And whenever the economy or industry or some firms in an industry do something else, something that is outside of the range of existing practice, we may speak of *creative response*.

[F]rom the standpoint of an observer who is in full possession of all relevant facts, [creative response] can always be understood ex post; but it can practically never be understood ex ante; that is to say, it cannot be predicted by applying the ordinary rules of inference from the pre-existing facts.... Secondly, creative response shapes the whole course of subsequent events and their 'long run' outcome.... Creative response changes social and economic situations for good, or, to put it differently, it creates situations from which there is no bridge to those situations that might have emerged in its absence... Accordingly, a study of creative response in business becomes coterminous with a study of entrepreneurship. The mechanisms of economic change in capitalistic society pivot on entrepreneurial activity.” (Schumpeter, 1989, p. 2)

Ex post innovation, the entrepreneur must overcome institutional barriers to the new way, “in the form of *legal and political obstacles*⁴, social mores, customs, and the like.” (Elliot, p. xxi) Institutions are ways for individuals and societies to economize on the rational action needed to solve problems. “And from this it follows that every step outside the boundary of routine has difficulties and involves a new element.” (Schumpeter, p. 84) Schumpeter, therefore, contrasted entrepreneurial activity with the activity of the “inherited routine,” and concluded that the definition of entrepreneurial activity is “to act outside the pale of the routine.” (Schumpeter, 1989, p. 2)

⁴ Italics added

The introduction of novelty is the functional starting point for the entrepreneur's impact on the economy, but Schumpeter's theory also encompasses the *creation* of the entrepreneurial innovation. Ex ante, the entrepreneur must exert an effort to imagine, to see a feasible world where his conceived novelty has an impact. Thus, Schumpeterian imagination is more than Kirznerian alertness, where the entrepreneur notices opportunities that others have missed. (Kirzner, 1973, pp. 65-69)

“[B]ecause he tries something new, the entrepreneur adds something to the facts.... The entrepreneur is a creator, but his creativity is neither instinctive nor irrational, but founded on a knowledge of the present situation and of feasible future situations.” (De Vecchi, p. 18-19)

One may conceptualize Schumpeter's theory as applied to politics in terms of Peltzman's model. Recall Peltzman's graph of the regulator's equilibrium, where the public official chooses a regulated price that secures him the support of the largest coalition of interest groups. In price-profit space, this is:

(INSERT FIGURE 1 HERE)

where m_i is the legislator's iso-majority curve. Supposing a Schumpeterian entrepreneur were active in politics by organizing a new, previously latent interest group, the Peltzmanian program would analyze his effect as an exercise in comparative statics, where one can discuss the existence and properties of the new equilibrium following a change to the iso-majority function.

(INSERT FIGURE 2 HERE)

By comparison, Schumpeter and the current hypothesis are concerned with the process *between* figures 1 and 2; with how a dynamically unfolding social process so altered the political and economic landscape. One can discuss dynamic changes within a Peltzman-style model, usually through the differential with respect to time, d_t . This type of dynamics focuses on exogenous but regular (periodic or continuous) changes in the parameter values in the functions over time, and provides for the logical progression from one equilibrium to the next, expected equilibrium inherent in the functional forms and parameter values. However, this sort of dynamics is completely ineffectual for demonstrating Schumpeter's radical, creative response.⁵

2.4 Olson's By-Product Theorem

The current model features entrepreneurs who seek to obtain favorable legislation by organizing previously latent interest groups. The standard text for discussing the formation of interest groups is Olson's The Logic of Collective Action. Olson forcefully demonstrates why most effective political interest groups are composed of small numbers sharing narrow interests, and why many numerically large, general interests are not politically represented. Olson also detailed how it was possible for large membership

⁵ Understanding this point may clear up some confusion on another point as well. If this is Schumpeter's vision for economics, then there is no tension between his analysis of the process of creative destruction and economic development AND his insistence on more formal mathematical modeling. For Schumpeter, these were two separate issues.

interest groups to form and be effective. Because of its application to the empirical section of this paper, Olson's extension of his theory to the large group case is now reviewed.

Olson argues that to have funds requisite to lobby for a collective good, a large group must also provide some non-collective benefit, sell a non-collective good or service to its members, or have some means of compelling donations; that is, such a large group must have a selective incentive to induce a rational individual to bear part of the collective good's lobbying cost. (Olson, pp. 133-134) Olson asserts that large groups might even obtain their selective incentives by "lobbying also for non-collective "political" goods, like individual exceptions to.... a general rule or law, or for patronage...." (Olson, p. 134 footnote)

Thus, any political entrepreneur who seeks to organize a large latent interest group must offer, or promise to secure, either a private good along with a collective good, or private goods only, though political transference of these goods may be the very object of the group's existence.

3. A Narrative of Oklahoma

The material in this section is a synthesis of several standard histories of Oklahoma, and a few other selected works. The interested reader is directed to the following secondary sources, upon which this chapter is heavily dependent: the seminal Formation of the State of Oklahoma, by Roy Gittinger; Oklahoma: A History of Five Centuries by Arrel Morgan Gibson; Oklahoma: A History of the Sooner State, by Edwin McReynolds and History of the Indians of the United States by Angie Debo.

Oklahoma's historians have a (largely unconscious) natural affinity with public choice economics. Public choice is rooted in a rational choice framework, with the tenet that people's motivations and behavior are consistent regardless of the field of endeavor, whether private or political. Therefore, public policy can be explained as the result of a competitive process where individuals and groups compete to receive income enhancing favors from the state. In the historians' exposition of Oklahoma's settlement, self-interested policy makers respond to lobbying pressure brought to bear by narrow, organized interests. The resultant policy reallocates property rights to those with access to the institutional structure, or who are able to use it relatively cost-effectively, thereby concentrating benefits and spreading costs regardless of an overarching public interest, ethics, or ideals.

3.1 The Standard History

Through the end of the Nineteenth Century, the history of Oklahoma is primarily the history of the Five Civilized Tribes- the Choctaw, Chickasaw, Creek, Seminole, and

Cherokee, who had their original homes in the southeastern woodlands of the United States. They were very numerous, well organized, and powerful, with well developed, long standing political and social institutions. Both before and after their removal to the west, these Indians lived by commerce and agriculture and had laws and institutions to which they were committed. By 1866 the Five Civilized Tribes were in their final homes in the eastern and central parts of what is now Oklahoma, concentrated east of the ninety-eighth meridian and west of Arkansas.

In the removal treaties that evicted the Tribes from the Southeast, the U.S. ceded enormous tracts of land to them, and each tribe was to be paid an annuity in the millions of dollars for their lands in the east. The treaties also guaranteed that their new lands should never be included within the limits of a state or organized territory. In fact, the titles were guaranteed to the tribes, corporately, by treaty rights which were later to erode.

The Five Nations soon brought their wild frontier into production and prospered. Because of the river transport system, the market orientation of Indian planters was to the South. The Indians' Southern economic orientation and their abandonment by the federal government explains their support of the Confederacy. The hostilities, external and internecine, devastated the Indian Territory, and bred lawlessness. Before and after the hostilities, unwillingness to enforce the laws on the part of the federal government, and the inability of the Indians to do so became a hallmark of Indian Territory.

As they had after Removal, the Nations rebounded after the devastation of the Civil War. Cattlemen negotiated grass leases with the Nations, having their greatest success in the empty ranges of western Indian Territory. Soon after 1870 a coal-mining boom near McAlester, Choctaw Nation, produced dozens of mining towns. The Chickasaws found a source of tribal funds in the expanding range-cattle industry and in a tax on white settlers. For the privilege of residing on and farming Indian soil, these Anglos purchased annual permits from the Chickasaw government.

An important factor in the rapid postwar development of Indian Territory and West in general was the steady increase in the non-Indian population. Kansas and Texas in particular were filling rapidly with farmers and with towns to serve the rural population. By the late 1870s most of the arable, well-watered land in the Trans-Mississippi West had been homesteaded, and the Indian Territory represented a farm to the home-seeker, range to the cattleman, and wealth to the railroad and border merchant. (McReynolds, p. 279; and Gibson, p. 173) There was no immediate prospect of filling it up with Indians.

Reconstruction brought fundamental change to the Indian Territory. Each of the four Reconstruction treaties contained clauses providing for the cession of tribal lands for the express purpose of settling other Indian tribes. The tribes retained a residual right blocking alternative land uses, such as white settlement. Through the railroad lobby's influence, pivotal clauses were written into the Reconstruction treaties providing for rights-of-way across each nation for one railroad running north and south and one running

east and west through its territory. The Nations reluctantly granted rights-of-way only two hundred feet wide. The railroads expected more. A few days after the last Reconstruction treaty was signed in 1866, Congress promised conditional grants of Indian Territory land to the projected railroads. The railroads, and these conditional land grants played critical roles throughout the rest of the Five Civilized tribes' history.

The Indian Territory was, of course, not public land. The Missouri, Kansas and Texas (MKT or Katy) Railroad acquired the charter to build its lines through Indian Territory and the conditional grant of public land along its right of way. The MKT openly declared that it was entitled to 3 million acres as a subsidy for building its north-south line across Indian Territory. Since Indian title was extinguished only by allotments in severalty and Indian land did not become a part of the public domain, the MKT and others were unable to gain possession of this valuable Indian property after laying their lines. The railroads never received these acres and waged a long, bitter struggle against the Indians and other pressure groups to allow further construction and economic development.

Railroad construction came to a temporary halt in 1872, following the government's failure to ratify the grants, but other factors leading to white settlement were put into place. In 1870 the courts handed down the "Cherokee Tobacco Case" decision, which stated that an act of Congress could be intended to, and did supersede and qualify any provision of a treaty made with an Indian tribe. Then, in the winter of 1879, Congress declared that no more Indians would be removed to the Territory.

The fear of having to give up large blocks of tribal land to the railroads caused Indian leaders to do everything in their power to keep the railroads from expanding throughout their territory. The Indians' sustained resistance blocked railroad expansion, and one observer wrote, "The only way to recoup [the railroads'] investment and hope for future profitable operations was to populate the country... build towns, stimulate agriculture and business enterprises. To this end the railroads maintained a powerful lobby in Washington to promote legislation for the opening up of the Indian Territory to settlement." (Gibson, p. 160) "Of course, railroad companies were hopeful that Indian territory would soon be settled with a farmer on every quarter section, that thriving towns would develop along the tracks, and that tons of produce would be freighted to distant markets." (Gibson, p. 173)

Each proposal to open the Indian Territory met vigorous opposition. The leaders of the Five Civilized Tribes opposed any such move, and the next most powerful group working against the opening of Indian Territory was the cattlemen's lobby. It became apparent to the railroads by the close of the 1870s that their direct efforts to open the Territory to the settler by acts of Congress "had finally become discredited. Their influence behind these proposals had received too much publicity." (Debo, p. 296) In 1879 they changed their tactics.

Their new campaign was launched by MKT attorney T. C. Sears and the Cherokee E. C. Boudinot. Early in 1879 Sears announced he and Boudinot had found that the Unassigned District, 1.9 million acres of land in the heart of the Creek and Seminole

cessions, belonged to the public domain of the United States, and was subject to entry by qualified home seekers. Boudinot's article and his many public speeches on the subject, along with a massive distribution of pro-settlement literature describing the wondrous bonanza opportunities awaiting the home seeker in Indian Territory, had the desired effect.

The historians' consensus is that the railroads also hired professional promoters called "Boomers" to mobilize home seekers. This name came to be applied to all who sought white settlement in Indian Territory.

"The Boomer colonies were an enduring protest against the barriers to settlement in Indian Territory, and Boomer raids were in effect demonstrations that evoked widespread interest and sympathy. Chief among the Boomers was David Payne, who maintained an incessant pressure on the federal government until his death in 1884." (Gibson, p. 175)

He was succeeded by William Couch, who showed less flash but more tenacity. Couch and his followers ultimately participated in the first land run.

Though membership in Boomer organizations, such as David Payne's Oklahoma Colonization Society and his Oklahoma Town Company, was large enough to rival trade or craft unions⁶, the Boomers' strength, and most of their activity, lay outside their sheer voting power. The Boomer leaders, David L. Payne, William Couch and others were powerfully effective public speakers. They peppered the state and national legislature

⁶ Common estimates are that Payne's Boomer groups accounted for at least 14,000 members by 1884, though that number may well understate paid membership in Payne's various organizations.

with a constant stream of petitions and memorials signed by labor unionists, merchants, bankers, manufacturers, border-town shop-keepers, railroad bond-holders, and potential homesteaders. The members of the various Societies and “interested corporations,” meaning railroads, (Gittinger, p. 121) contributed large sums to send Payne and others to Washington for in-person lobbying of federal legislators. Perhaps the Boomers’ most effective tool was their repeated, massed physical invasions of the Unassigned District. These invasions prompted the Army to arrest hundreds of United States citizens and deport them to Texas or Kansas, where they faced Federal Courts. In these court appearances it became ever more apparent that though invading the Indian Territory was illegal, there were no effective penalties the government could assess the invaders.

The Boomer pressure finally won out. On January 30, 1885, as Couch and his Boomers were being escorted out of the District after an armed stand-off with an artillery-supported detachment of the U.S. cavalry, the Secretary of the Interior recommended the opening of Indian Lands. On March 3, 1885, Congress passed an act authorizing the president to negotiate the purchase of the Creek, Seminole, and Cherokee surplus lands in western Indian Territory, to quiet any residual interest these tribes might have.

Though more quiescent than in the earlier period, the Boomers maintained a low flame under Congress. The Indians resisted coming to any terms with the presidential negotiators, but had wearied by 1889. Sensing that the time for negotiation had almost passed, Pleasant Porter, a Creek leader, agreed to relinquish all Creek claims to western lands. A Seminole delegation headed by John F. Brown signed a similar agreement.

President Benjamin Harrison issued a proclamation that declared the Unassigned Lands would be opened to settlement on April 22, 1889.

Gibson writes:

“Until this time, in populating the public domain of the American West, there had been such an abundance of desirable land available for home seekers that the settlement rate had been continuous. By 1889 most of the good land had been taken and the number of home seekers far exceeded the homesteads available. Because the eventual opening of Indian Territory had been popularized by the Boomers, and because the Unassigned Lands represented such a small settlement area (about 2 million acres), government planners responsible for the opening realized that there would be many more home seekers than claims available. To give equal opportunity to all interested persons, it was decided to settle the area by a novel procedure -- the land run. The rule against trespassing on Indian Territory lands was lifted three days previous to the date of the run to allow home seekers to time to gather on the four borders of the Unassigned Lands.” (Gibson, p. 176)

As other lands became available following the implementation of the Dawes Act of 1887 this pattern was to be repeated several times. As surplus land from the reservations came into the public domain, it was transferred to settlers by outright sale, lottery, or land run.

The land run for the Unassigned District and the settlement of the remaining Indian territory under provisions of the Dawes Act form the climax and denouement of the Indians' independent political existence. As Gittinger says,

“Allotments were completed in all of the reservations in 1892. An act of March 3, 1901, declared that all the Indians in the Indian Territory were citizens of the United States. A great deal was still to be done to close up the affairs of the Five Civilized Tribes, but they had ceased to exist except as financial corporations.” (Gittinger, pp. 188-195)

4. Empirical Application: The MKT, the Boomers, and the Unassigned District

4.1 Theories of the Critical Decade, 1879 - 1889

Historians and some economists present a constituency support, median-voter-like argument in the settlement of Oklahoma. However, the standard theories of interest group formation, especially Olson (1965) suggest that the masses of poor, potential homesteaders would be unable to form an effective lobby, especially in the face of the powerfully organized, more compact cattle and Indian interests. Also, Peltzman suggests that the cattlemen and Indians would not be so completely disenfranchised in Oklahoma when the change came. Furthermore, in the standard histories, the poor home seekers' actual use of voting clout is a curiously undeveloped theme.

The scant evidence of the homesteading constituency exercising their vote, and models which predict that unconcentrated interests will not form pressure groups need not imply that the homesteading constituency would be unrepresented in Congress. (Denzau and Munger, 1986) However, though individuals who supported homesteading in Oklahoma likely voted their preferences, and such preferences were likely supported in ways predicted by Denzau and Munger, the analysis of final push for opening the Indian Territory begins and ends with the Boomers, a recognizably modern, organized, single-issue interest group.

Aside from voting derived models, the political economist's tool kit consists largely of interest group theory models which derive clearly from the seminal pieces by Peltzman (1976) and Stigler (1971). However, like voting and voter-conditioned models, the interest group literature has a difficult time dealing with the 1880s. This literature can easily explain the equilibrium that emerged in 1889, as patterns of subsidies and cross-subsidies among the various groups involved. However, the most interesting aspects of the historical episode are exactly those aspects in which the Stigler / Peltzman literature is weakest. Over time, how did the new interest group, the Boomers arise and how did it affect the model to produce the dramatic shift in equilibrium? This is exactly the question upon which Stigler did not elaborate and Peltzman deliberately chose to avoid.

Likewise, our theories of interest group formation, deriving largely from Olson ⁷, do not materially get beyond the specific question they ask. Olson's model detailing which interests are likely to be able to form a lobbying group does not then embed that interest group in a very rich model of policy formation. Explaining the settlement of Oklahoma will require more than an exposition of how the railroads or the Boomers were able to organize the lobby effectively.

⁷ As written, this seems to be implying a hard and fast dichotomy between the Stigler / Peltzman literature and "Logic of Collective Action," which would be obviously untenable. Stigler's "Theory of Economic Regulation" clearly has strong affinity to Olson's work. However, Olson is known more for his model of latent / actual interest groups than the embedded policy model that suggests unorganized interests receive no legislative favors (see Wagner 1966). As a separate model of the formation of interest groups, Olson is conceptually separate from Stigler's emphasis on who wins legislative favors. It is in this respect that this paper makes a distinction between Olson and Stigler Peltzman.

Oklahoma of the 1880s does, however, provide a coherent empirical application of the framework outlined in this paper. Furthermore, by focusing on radical, real time political entrepreneurship among the demanders of legislation, one is able to avoid some of the potential shortfalls and increase understanding of the political economy surrounding the first Oklahoma Land Run, demonstrating the extended model's potential usefulness.

4.2 Demand-Side Political Entrepreneurship

In the instance of Oklahoma's homesteading settlement, a compact set of interests, the railroads, entrepreneurially organized a latent, demand-side pressure group (demanders of policy rather than suppliers), the Boomers, by imagining and implementing a feasible selective incentive, such that lobbying to satisfy the Boomers would also satisfy the railroads. Ultimately, through its lobbying, this interest group drastically affected the rational calculus of the legislators, substituting a radically different path for the previous stable path.

Acting entrepreneurially in a rivalrous, competitive process for government income-enhancing favors (in this case, a re-allocation of property rights), the railroads, especially the MKT, foresaw a feasible alternative outcome, and foresaw a strategy that would allow them to achieve this possible state. The railroads organized a previously latent pro-settlement interest group, the rank-and-file of whom were poor farmers seeking

homesteads, through whom the MKT and others would drag the “clouded” title of the Unassigned District before the federal courts, thereby circumventing the Congress’ powerful cattle, tribal, and “Eastern Sentimentalist” (Rister, 1942 p. 40) interests. Concurrently, the new pro-settlement interest group, the Boomers, would lobby Congress in more easily recognized fashions as well, thereby altering the set or type of marginal political pressures Congress would “marginally balance”, in a Peltzmanian sense, resulting in a new equilibria more to the MKT’s liking.

In terms of Peltzman’s model, one could alter his graph to correspond to Oklahoma as follows:

(INSERT FIGURE 3 HERE)

Where the axes are the profits of the cattlemen and the railroads, and m_i represents the relative effects of both on a legislator’s well-being. Figure 3 would correspond to the pre-Boomer situation, circa early 1879.

A comparative statics exercise of the Oklahoma model demonstrates the existence and properties of the new equilibrium. For example, if 1879 Oklahoma corresponds to figure 3, then post-1889 Oklahoma would look like figure 4:

(INSERT FIGURE 4 HERE)

where the introduction of Boomer pressure over time altered the relative returns to legislators for supporting the cattlemen and Indians and the railroads.

The railroads and their sometimes-maverick agents, David L. Payne and W. L. Couch, were able to coalesce an interest group according to Olson’s by-product theorem

capable of generating wide-spread emotional appeal, and composed of individuals normally predisposed to antipathy towards the railroads. (Masterson, pp. 118-125)

Though not trivially apparent, Payne and Couch were offering a selective incentive in the form of a private benefit, and offered a service that coordinated lobbying to help secure the rights to that private benefit. Before legal rights to the land (the principle benefit) had been secured, Payne offered his followers property rights to scarce, high quality farmland near the future cities and railroad facilities. He offered organizational, trail-guide, and surveying services. His organization also promised to provide its paying members property rights enforcement services against any rival homesteading claimants. All of these services greatly mitigated the “publicness”, and therefore the free-riding incentive, of supporting Payne. With these selective incentives in place, Payne extended his activities and organizational skill to lobbying the government to transfer the property to which his selective incentives applied.

The most important characteristic of the Boomers derives from their railroad origins. The Congressional property transfer that satisfied the Boomers’ single issue also served the railroads’ interests. By a single Congressional act, the Boomers and the railroads both got what they wanted: access to the Unassigned District, and through that foothold, all of the Indian Territory. The railroads’ entrepreneurial plan worked. The Boomers, with the railroads’ continued behind-the-scenes financial backing, had “won the war” by 1885, when Congress authorized a delegation to negotiate with the Creeks and Seminoles to

transfer their residual interest in the Unassigned Lands, though it took four more years of effort to actually secure the conveyance.

4.3 Considering the Historical Record

From the vantage point of an observer in early Spring 1879 the political situation in the Indian Territory must have appeared fairly settled and stable. The “guardians of the Indian Territory,” “the leaders of the Five Civilized Tribes, and the next most powerful group working against the opening of Indian Territory[,]...the cattlemen's lobby” (Gibson, 1981, p. 173) and the Western Senators with Indian Territory cattle interests⁸ appeared to have won the political struggle against “the regional railway companies, banks, farm machinery manufacturers, and wholesale distributors” (Gibson, p. 174) at relatively low political cost.

By early April of 1879, the railroads and their affiliated boosters seeking homesteading in the Indian Territory could see that a drastic change in competitive strategy was needed to secure a preferred political outcome. The political equilibrium arrived at in the late ‘60s and early ‘70s seemed stable, and unfavorable to the railroads.

Thus to the observer in 1879 the situation was much the same as it had been in 1871. By 1889, the observers’ view of the political reality was very similar, yet

⁸ See Gittinger for an incidental and extended discussion of sitting Senators’ interests both in Indian Territory cattle and the regional railroads. See also Rister, and especially Masterson.

simultaneously utterly different. As innovators, the railroads struggled against the existing institutional structure, as predicted by Schumpeter. The political entrepreneurs were not struggling to convince the public or government to adopt a superior method or product, but the political entrepreneurs faced opposition from entrenched interests and patterns of behavior, perhaps in more formal and concrete a fashion than that envisioned by Schumpeter. By their activities in organizing a transfer-demanding interest group, the railroads undeniably “shape[d] the whole course of subsequent events and their ‘long run’ outcome[,] from which there is no bridge to those situations that might have emerged in its absence.” (Schumpeter, 1989, p. 222) We will never be able to predict the allocation of property rights and course of economic development that might have emerged had the MKT and the Boomers been unsuccessful.

Spring 1879, in an exercise of Schumpeterian entrepreneurial effort, the railroads, especially the MKT, saw that a change in competitive strategy was needed. Just as a market-based entrepreneur “sees” a feasible future in which introduction of novelty can be to his private benefit, the railroads identified a set of feasible futures which allowed profit improvements over the status quo. If the Indian Territory could be made public domain, settlement would occur. At best, the railroads would receive their now immensely valuable land grants along with settlement, and at worst, white settlement would increase railroad traffic. The railroads also foresaw a particular change in competitive strategy which might cause these desired changes. Through a media campaign, they could create questions concerning the Indians’ title to the Unassigned

District, where none had previously existed. They could (help) organize a new interest group that could take advantage of the less-than-certain legal status of the Unassigned District. Though implicitly assuming an underlying voting model, Gibson states,

“Because railroads, banks, and large business combines were generally unpopular with the public, a direct campaign by them to open Indian Territory to settlement probably would have aroused hostility. The home seeker, more closely connected with the image of American democracy, therefore was selected as a likely stalking horse for the corporate interests.” (Gibson, p. 173)

Thompson echoes Gibson:

“... the consensus is that historian Arrel M. Gibson was correct in labeling the home seeker a “stalking horse” of the railroad interests.” (Thompson, p. 48)

The new interest group could have two political effects. It could allow its members and the railroads to bypass the national legislature as the allocator of property rights by bringing the matter of the Unassigned District before the federal judiciary, who would have to rule on the status of the Unassigned District. Alternatively or simultaneously, the new interest group would serve as a disrupting element added into the existing Peltzmanian equilibrium, bringing their pressure to bear on the Congress, though the underlying economic conditions remained relatively unchanged.

Consequently, T. C. Sears and Elias Cornelius Boudinot (a formidable Cherokee politician), both attorneys, Washington bureaucrats, and paid employees of the MKT, set this plan into motion.

“Boudinot was at that time employed in Washington as clerk of the House Committee on Private Land Claims. Boudinot was and had been in communication with attorneys for the MKT railroad.... Several railroads were in operation nearly to the territorial line, and they were probably interested in the [settlement] agitation. Boudinot, in [his influential] circular letter..., had stated impartially the facilities offered by the different railroads for reaching the lands described by him.” (Gittinger, p. 99)

Sears was an attorney representing the MKT’s Washington lobbying arm.

“T. C. Sears... early in [April] 1879 announced that he and Elias C. Boudinot... had examined the treaties, laws, and land title question for Indian Territory. He claimed they had found that 14 million acres of land in Indian Territory belonged to the public domain of the US, subject to entry by qualified home seekers. “These lands are among the richest in the world,” Sears declared. “Public attention is being called to them and my opinion is that, if Congress shall fail to make suitable provision for the opening of the Territory within a very short time, the people will take the matter into their own hands and go down there and occupy and cultivate those lands.” (Gibson, p. 174)

Simultaneously, E. C. Boudinot began producing circular letters, newspaper articles, pamphlets, and a widely reproduced map supporting Sears’ position. He circulated widely before large public audiences and many leading newspapers reprinted his articles.

“Boudinot’s article and his many public speeches on the subject, along with a massive distribution of Boomer literature describing the wondrous bonanza opportunities awaiting the home seeker in Indian Territory, had the desired effect. Three “Oklahoma colonies” were organized during the spring of 1879.” (Gibson, p. 170)

Along with this misinformation⁹ campaign, which set the interest group plan into motion, Boudinot had met the perfect man to organize their interest group around the

⁹ Prior to Sears and Boudinot, no one had seriously questioned the rights of the Indians to the Unassigned

“shadow on the rights of the Indians” (Gibson, p. 170) their media blitz had created: Captain David L. Payne. At various times, Payne had been an immigrant to Kansas, a homesteader, a Union officer, a private Indian fighter for the state of Kansas, a Kansas legislator, assistant doorkeeper to the United States House of Representatives, farmer, well-digger, saloon keeper, sometime grocer, possible thief, and general drunk.

While a Kansas legislator, Payne had developed a reputation for working with the railroads. “During... session [of the Kansas legislature] Dave also served on the Committee of Railroads and Accounts.” (Rister, p.31)

“Wichita citizens charged, however, that he was elected as a result of a “plot” to dismember Sedgwick County to the advantage of neighboring communities and towns. At this time, the Atchison, Topeka and Santa Fe Railroad (which later had two lines through the Indian Territory) was building through its northern townships. And towns within this area (Newton, Sedgwick City, and Park City), together with the neighboring counties of Reno, McPherson, Rice, and Marion, thought it to their advantage to reduce the size of Sedgwick County.” (Rister, p. 28)

Rister continues:

“In [the splitting of Sedgwick], the Newton Town Company had favored [Payne] with a grant of two lots. Nominally, the Town Company (of which the leading spirits were prominent Santa Fe officials) had sold him the lots for \$100.00, but he kept them for only four days and resold them for the same price.” (Rister, p. 33)

District. After the fact, a steady supply of opinions from attorneys general, federal department heads, and federal judges supported the interpretation that the Indians held a residual right to the land. Furthermore, there were factual errors in Boudinot’s circular letter and his map.

By the late 1870s Payne also had a keen interest in the Oklahoma lands and their settlement.

“While assistant Doorkeeper Dave Payne was maintaining a watch over the House of Representatives gallery in Washington he met and had several conferences with E. C. Boudinot.... Moreover, he had carefully studied the treaties bearing on the Oklahoma Problem and had consulted “eminent” lawyers with reference to homestead rights. There is good reason to believe that he and Boudinot had agreed upon some common plan of action, perhaps including the backing of one or more railroad corporations. O. E. Jefferson wrote in 1889 that it was logical to suppose that Frisco officials had employed Payne, since he was a Kansas frontiersman and politician, and that he probably received “a salary from them during the first years of the boomer excitement.” There is substantial proof... that at least there was some railroad support.” (Rister, p. 50)

At the time, many people inside and outside the organization felt the railroads were orchestrating the Boomers. Gittinger points out that

“[t]he military authorities... were still convinced that the agitation was given financial aid by “interested corporations,” and such an expression could only refer to the railroads.” (Gittinger, pp. 121-122)

Rister quotes Captain J. Robinson, United States Army, who had arrested Payne in the Indian Territory.

“[Payne] said [in 1880] that his invasion had been made on the advice of “eminent legal talent at Washington, Saint Louis, and Kansas City” and had been strictly in accordance with instructions. Robinson was convinced that this was true. He wrote [General] Pope.... “I think the majority of them are temporarily employed to go with Payne on this expedition and are unquestionably remunerated by some agent acting for [the Santa Fe], [the MKT], [the Frisco], and [the Gulf] railroad[s].”

Robinson's belief that Payne was backed by railroad corporations was shared by others... [notably] Chief D. W. Bushyhead of the Cherokees... [, and] Samuel Checote of the Creeks...." (Rister, p. 71)

The border press also brought charges against the Boomers:

“Payne, Boudinot, Carpenter, and the whole outfit are a set of plotting hirelings of the railroad companies,” joined in the Sumner County Press, which in another issue scoffed: “Behold these lilies of the field; they toil not, neither do they spin; and yet they are gorgeously arrayed, have pockets plethoric with railroad passes, while their aldermanic proportions suggest good living and frequent infractions of the constitutional amendment.”” (Rister, p. 85)

David Payne and his lieutenants raised a dues-paying membership, consolidated and absorbed other colonization companies, started a newspaper, wrote articles and letters, and stumped continuously. At any bar, theater, or train station, Payne and Couch could rouse an enthusiastic crowd, eager to dispatch another memorial or petition to Congress. The Boomer leaders also produced a great deal of old-fashioned, direct lobbying in the various state capitals and Washington.

“[Payne] had brought with him [to Washington] a formidable bundle of affidavits of Westerners who allegedly knew of “slush funds,” trooper cruelties, cattle rings, and malpractices of Indian agents; and he would not allow polite, smiling officials to sidetrack him. Everywhere he went-- on the streets, into crowded hotels, outer offices of executive secretaries, the Capitol-- he told of Boomer grievances, in season and out of season. The Washington Gazette stated that an outstanding Western Senator and an Indian lobbyist bolted the capital to avoid testifying before a Senate committee.” (Rister, p. 154)

Following Payne's death in 1884, Couch carried the case to Congress. He was a frequent visitor to the capitol, representing various mercantile, manufacturing, banking and civic booster organizations, and appeared before the Senate on numerous occasions.

However, the Boomer's best remembered and most effective tactic was large-scale invasion of the Oklahoma lands. From 1880 to 1884 Payne maintained large camps of potential homesteaders directly across the state line from Indian Territory. At regular intervals he would lead wagon trains across the border and down into the Unassigned District. Once in the District the colony would survey town sites and farms, and begin construction and plowing. Invariably, the army would pull up the survey stakes, round up the colony, deport the rank-and-file, and arrest the leaders, giving the Boomers another chance to drag the Oklahoma lands before a federal judge. The Boomer press would print reams of lurid material which would be widely reprinted by the national news associations. Following Payne's death in late 1884 and Congress' agreement to negotiate with the Indians in early 1885, Couch led fewer invasions, but kept up a steady, if unspectacular, stream of border incursions to maintain pressure on Congress.

According to Schumpeterian theory, the railroads' actions were clearly entrepreneurial for a number of reasons; that is the railroads introduced novelty into the political system, representing a creative response to systemic conditions. As Schumpeter predicted, from our ex post perspective the respective roles of the railroads and the landless home seekers seems natural, almost inevitable. The general tenor of the historians' account, and even economists' ¹⁰, supports this contention. From modern

¹⁰ Alston and Spiller build a model of legislative supply based on the work of Weingast and Moran (1982). In such modeling, the question of Indian support is largely (and perhaps correctly) ignored. The Indians could not vote, and therefore could not support Congressmen. However, a political principal-agent model like this appears to minimize the potent impact Indians wielded through non-vote lobbying.

times, it appears ludicrous that the massive swelling of the United States population should not overwhelm the Five Civilized Tribes, just as the white populace had done every time previously. It also seems ludicrous that the railroads, with so much to gain, so little to lose, and with obvious ex post benefits, should not somehow ally themselves with the home seekers.

However, from an ex ante perspective the innovative nature of railroad support for the Boomers, as well as the tactic of by-passing Congress through the courts, becomes apparent. Settlers and squatters were no great friends of the railroads, whose land grants threatened to take great tracts of land out of the settler's cash-strapped hands. The MKT in particular had difficulty with organized, armed bands of squatters opposing railroad development. Masterson reports,

“Hordes of immigrants, many of them honest settlers but a goodly proportion of them tough, land-speculating squatters who hoped to make a fortune by pre-empting railroad lands, were organized into “leagues” to fight for their “rights” throughout this period. Some of these organizations grew powerful; all were a thorn in the side of the [MKT]; most were a real deterrent to honest settlement and development, for the ‘hardest characters’ usually obtained control of the leagues and were responsible for many outrages perpetrated during this period[,]” (Masterson, pp. 81-82)

and that “military detachments issued from time to time in futile efforts to keep the Land Leaguers under control.” (Masterson, p. 81) Though the Boomers were not directly associated with the Land Leagues, the anti- “corporation” language was retained by the Boomer leaders throughout the settlement struggle, even as they accepted railroad support.

Seen in this light, it is easy to see the innovative nature of the railroad's pro-settlement coalition of interest groups. As never before in Indian Territory settlement issues, the railroads were able to unify interests such that the separate, normally opposed, interests could be achieved by the same political action.

The novelty of the railroad's new approach to settlement is evident in their deliberate introduction of misinformation via Sears and Boudinot, and by tactic of dragging the Unassigned District before the courts. Though the judicial gambit was only partially successful, it was a new tactic; not tried before on this issue. Armed settlement incursion on Indian lands, and pre-emption of public domain had occurred elsewhere, notably in the Black Hills of Dakota in the mid-1870s. However, those attempts were designed to produce direct settlement under the "possession is nine-tenths of ownership" dictum, and not to force a series of court rulings. Furthermore, the Indians involved in the Black Hills had not been guaranteed perpetual title as had the Five Civilized Tribes.

"There is little doubt that Payne was anxious to test the Oklahoma homesteads issue before a federal court. He wrote District Attorney Hallowell on March 29[, 1880,] that he proposed to start for the Oklahoma lands with a colony on April 10, and requested that the government take some action against him before that time. He asked whether his declaration of purpose would not be equivalent to an actual invasion. Since most of his followers were poor farmers and could not afford to lose a year's crop, would it not be better to stop the movement now?" (Rister, p. 56)

"Payne was also reported to have [said] that all arrangements had been made to test the legal bearing of the case at Fort Smith, Arkansas, and that his backers expected to continue putting expeditions in the field until the government was forced to submit the matter to a federal court." (Rister, p. 71)

In 1884, Payne told his arresting federal officers that he

“only wanted to be tried before a United States court, he said, so that the land problem could be settled once and for all. Over and over he asked for this privilege. In order to assure his visitors a case against him, he said that he would sell them liquor or cigars without a license or permit.” (Rister, p. 164)

The issue of settlement was being jointly decided by the courts and the legislature.

The courts were finding it illegal to settle in Oklahoma, but finding that violators could not be charged or penalized. Gittinger states,

“The government failed to stop the invasion of the Oklahoma district because the statutes intended to protect the Indian country, as interpreted by the courts, were found to be practically without a penalty for their violation. In spite of the efforts of the executive department, Congress did not strengthen the statutes to meet the conditions. The course of the boomer agitation can not be understood without a knowledge of the difficulties that had to be met in the enforcement of the law[,]” (Gittinger, p.115)

and, therefore “Payne.... was practically immune from civil action.” (Gittinger, p.116) A federal judge’s famous November 20, 1884, decision read in part,

““I am of the opinion... that the acts charged do not show a conspiracy to commit an offense against the United States within the meaning of the conspiracy clause..., and for this reason these indictments [against Payne and other Boomer leaders] must be quashed.”“ (Rister, p. 183)

“In arriving at this conclusion the judge made a distinction between an “indictable offense” that could not be prosecuted by criminal proceedings and an offense created by statute.... On November 20 the Oklahoma War Chief exultantly headed a column: **“GLORY! HALLELUYAH! FIRST DECISION OF THE COURTS, AND IT IS IN FAVOR OF THE COLONISTS! THE LONG WAR ENDED!”**” (Rister, p. 184)

Shortly thereafter Congress began to negotiate with the Creeks and Seminoles. Despite Judge Foster's and other similar rulings, the Army continued to evict the Boomers and not

disturb the ranchers for four more years. Ultimately it was Congress, and not the weight of judicial rulings, who opened Oklahoma.

The Boomer leaders maintained a two-pronged pressure on both the courts and Congress. To “lobby” before the courts or Congress only small numbers were needed but lobbying using the effective tactic of large-scale invasion required a large interest group.

“Payne’s announcement... printed in the *Wichita Beacon* of November 3, 1880[,],... proclaimed that the time was fast approaching for a third Oklahoma invasion. The former expeditions were intended to provoke court action. For these, large numbers were unnecessary. “But the situation is now changed,” the announcement read. It was of utmost importance that a large Colony move at once upon the ceded lands so that the President would not dare interfere [and remove the colonists] without the sanction of Congress.” (Rister, p. 77)

How were Payne and his lieutenants were able to offer the selective incentive which allowed them to create an effective large-membership interest group? A curious point to mention is the nature of the homestead benefit. The 160-acre farm was certainly a private, non-collective benefit. Though the land seemed limitless, the record demonstrates that there were far more runners for each quality section. (Thompson, p. 49) The land itself was highly excludable, being in perfectly inelastic supply. However the legislation that produces that benefit, i. e. that organizes the property rights allocation scheme, has very public aspects. The costs of using the political system to secure an Indian Territory homestead lay well above demand for all individuals and most groups of individuals. A single person could not secure a homestead in Indian Territory, and passage of a homestead bill for Indian Territory created a very collective benefit; anyone

who could rapidly get to a homestead section received a free farm. Simply because one bore part of the cost to secure the transfer, one would not automatically get a portion of the private benefit. There was still a severe free-rider problem inherent in the situation.

At root, Payne offered an ex ante private benefit through his (incorrect) insistence on pre-emption laws, and the arrangement of the Colony to support colony-member claims. The Company then lobbied to “produce” the transfer of property to which these private rights applied. Payne, his lieutenants, or his railroad supporters discovered private, selective incentives:

“The form of the certificate of membership was as follows:

[Captain D. L. Payne, President,...]

Certificate of Membership

OFFICE OF PAYNE’S OKLAHOMA COLONY

Wichita, Kansas, _____, 188__

This certifies that _____, having paid the fee of two dollars, is a member of Payne’s Oklahoma Colony, is entitled to all the benefits and protection of said colony and an equal voice in all matters pertaining to and the formation of its local government.

In testimony whereof the official signatures of the president and secretary are hereto subscribed, and the seal of the colony attached.

Secretary

President

This certificate of membership in Payne’s colony was supposed to secure for the holder the protection of that body in retaining his homestead. No member of the colony would be permitted to settle on a claim already staked off by another member, and it was understood that persons who were not members would be allowed to settle only on land that had not been chosen by or for those who had paid for it. In other words, the colony was to become a vigilance committee to protect the rights of its members in an extra-legal, not to say illegal, way.” (Gittinger, p.110-111)

Rister discusses the complementary half of Payne's private benefit message: “Over and over he stressed the point that under the Pre-emption Law Boomer claims... established

[through invasion] would be valid once the country was opened to settlement.” (Rister, p. 134)

“There is little doubt that this repeated assertion [on the force of the pre-emption laws] gave force and drive to the Boomer Movement. How else could one explain the fact that poor Oklahoma claimants had repeatedly made donations to the Boomer cause even to the point of sacrificing family needs? They realized that their expenditure of time, labor, and money could only be fruitful if and when Oklahoma was opened to settlement. This, of course, was a desperate gamble, an economic cow which Payne milked dry from year to year. Always there was need for money-- to pay a Washington agent’s expenses, to employ attorneys, or to launch a newspaper.” (Rister, p. 134)

The phenomenon of contributing wealth to secure a purely private good is well-understood. The membership fee is analogous to a down-payment on a farm, and the continued special levies were payments to keep the member’s option on a real estate contract from lapsing. A Boomer paying his fee is little different from an investor in a start-up firm. The incentives are very similar. The fee not only funds political action, it is also a bond for personal lobbying. Payne and his followers entered into a paid-for mutual defense society to protect their genitive property rights, but if they had not lobbied, then their “rights” would have been worthless.

Aside from any personal remuneration from the railroads, or public office ambitions¹¹, it is not difficult to understand the Boomer leaders’ incentives: “The income

¹¹ Couch was the first mayor of Oklahoma City until a rival claimant to a prime corner-lot gunned him down in the street. Couch later died of his wounds.

from these sources must have been fairly large, especially as the fee for active membership was raised for a time to six dollars.” (Gittinger, p.110-111)

“Membership dues in Payne’s Oklahoma Colony were at first fixed at two dollars, and in the Town Company at twenty-five dollars. In the Colony, members were entitled to all the rights and privileges the organization could afford, as well as a claim to 160 acres of land apiece. In the Society, a member was entitled to a town lot in the proposed capital. The Colony surveyor was also required to make a charge of two dollars for each homestead location, and the secretary fifty cents for the imprint of the Colony seal on each claim certificate, which he was allowed to keep. Then, finally, special collections were taken to pay Payne’s attorneys, to defray railroad expenses, and for other unexpected calls.” (Rister, p. 52)

“During the greater part of the time the membership fee was fixed at two dollars and a half. Payne retained two dollars of this for the colony, and the remainder went to the secretary “for recording claims.”” (Gittinger, p.110-111)

“It is not known how much money was raised to back all these colonization purposes, although Colonel Edward Hatch, in charge of Oklahoma troops, later said that he personally knew of \$100,000 having been collected by Payne. Receipts for membership dues in the Colony numbered well above fourteen thousand by the time of Payne’s death in 1884. The number of shares is not known, although in May, 1880, there was reported to be a rush for corner lots.” (Rister, p. 52)

5. Conclusions

The foregoing is hardly a complete description of the political economy of Oklahoma’s settlement. The railroads’ and the Boomer leaders’ entrepreneurial behavior in Oklahoma’s settlement was on a far larger scope than discussed above. This chapter focused on the specific case of the railroads’ and the Boomers’ successful attempt to

provoke settlement legislation, but it should be mentioned that the railroads also operated the Indian Territory's explosively expanding coal (pun intended) and zinc mines, as well as timber harvesting. The companies not only hauled out the product, but leased the mines or timber acreage, and managed the operations as well. The Boomers and the railroads were not the only odd political bedfellows, either. The Boomers received powerful support from the Knights of Labor and other organized labor groups. Neither did the chapter discuss the railroads' very visible hand in the placement of Oklahoma's cities, nor their roles as seed bankers and agricultural extension agents for the early settlers. Of course, no attempt was even made to disentangle the political subsidies and cross-subsidies that developed out of the move to the settlement / post-settlement Peltzmanian equilibrium.

What conclusions may one draw from the foregoing analysis of the railroads, the Boomers, and their role in opening the Unassigned District in Oklahoma? The analysis suggests that entrepreneurs are pervasive throughout human endeavor and through time, and that they are active in organizing and operating interest groups. It reinforces the concept that entrepreneurial behavior is not limited to the pursuit of profit in capitalistic markets, and entrepreneurs are anyone who exploits opportunities for their own gain, whether in markets or in politics. The analysis also suggests that interest groups are omnipresent and persistent, and that politics, or rent-seeking, makes strange bedfellows. Moreover social scientists may occasionally make sense of history by employing a process-based approach to political economy to address issues left unresolved in popular

equilibrium frameworks. This may be especially true, or enlightening, when the analyst is faced with “demand-for-legislation” entrepreneurs who lobby the government for special favors. Furthermore such political entrepreneurs can be shown to act in ways that reinforce Olson’s by-product analysis of interest groups. These conclusions should surprise no one.

Perhaps these conclusions are not so trivial, however. This effort encompasses a critique of historians and their literature and conclusions as well as critiques of economists. Specifically, this article implies that the implicit models used by historians to explain this episode may not always be the most appropriate ones. Their emphasis on “democratic determinism,”¹² the notion that history turns on the will of the people, and their admiration for the power of the vote may be misplaced in this instance.

As noted, the political economy of Oklahoma’s settlement could be easily, and rather meaningfully, motivated by a model of elected agents supporting the home constituency, but such a view would be significantly incomplete. A broad underlying message to public choice economists may be to be wary when using voter support models when doing economic history, and to be conscious that any voting story can also be told as an interest group story.

Furthermore, this essay develops an economic tool-- an organizing principle around which to build a hypothesis-- and uses it to approach a specific historical episode.

¹² Author’s term.

There is now the opportunity to develop that tool into a powerful generalization, that is, a true theory. On a smaller scale, this is analogous to Peltzman's development of Stigler's insights. From Stigler's informal explanation of observed events, Peltzman derived an extremely powerful and popular model. This chapter starts with Peltzman's model and develops an extension of it from a different perspective and demonstrates one example of the subsequent reasoning. Hopefully this will motivate others to "replicate" its results, adding to our sum of economic knowledge.

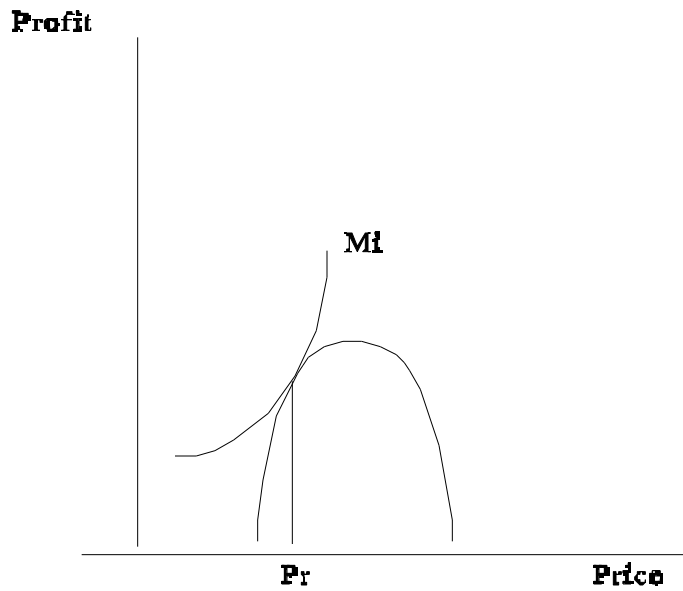
REFERENCES

- Alston, Lee; Spiller, Pablo. "A Congressional Theory of Indian Property Rights: The Cherokee Outlet," in Terry Anderson and Peter Hill, eds., *The Political Economy of the American West*, Lanham, MD: Rowman & Littlefield, 1994, pp. 85-107.
- Anderson, Terry; Hill, Peter J.. "Traditionalist, Revisionist, and Political Economist: Alternative Approaches to Western history," in Terry Anderson and Peter Hill, eds., *The Political Economy of the American West*, Lanham, MD: Rowman & Littlefield, 1994, pp. ix-xxiii.
- Carlson, Leonard. "Learning to farm: Indian Land Tenure and Farming Before the Dawes Act," in Terry L. Anderson, ed., *Property Rights and Indian Economies*, Lanham, Maryland: Rowman & Littlefield, 1992, pp. 67-83.
- Coppin, Clayton A.; High, Jack. "Entrepreneurship and Competition in Bureaucracy: Harvey Washington Wiley's Bureau of Chemistry, 1883-1903," in Jack High, ed., *Regulation*, Ann Arbor, MI: University of Michigan Press, 1991, pp. 95-118.
- Debo, Angie. *A History of the Indians of the United States*, Norman, OK: University of Oklahoma Press, 1970.
- Denzau, Arthur; Munger, Michael. "Legislators and Interest groups: How Unorganized Interests Get Represented," *American Political Science Review*, 80, 1, March, 1986, pp. 89-106.
- DeVecchi, Nicolo. *Entrepreneurs, Institutions, and Economic Change: The Economic Thought of Joseph Schumpeter (1905-1925)*, Brookfield, MA: Elgar, 1995.
- Elliot, John. "Introduction to the Transaction Edition," in Joseph Schumpeter, *The Theory of Economic Development*, New Brunswick, MA: Transaction Publishers, 1993, pp. vii-lix

- Gibson, Arrel Morgan. *Oklahoma: A History of Five Centuries*, Norman, OK: University of Oklahoma Press, 1981.
- Gittinger, Roy. *The Formation of the State of Oklahoma*, Berkeley, CA: University of California Press, 1917.
- Krizner, Israel. *Competition and Entrepreneurship*, Chicago, IL: University of Chicago Press, 1973.
- Kirzner, Israel. "Entrepreneurial Discovery and the Competitive Market Process: An Austrian Approach," *Journal of Economic Literature*, 35, 2, March 1997, pp. 60-85.
- Kirzner, Israel. *The Meaning of Market Process: Essays in the Development of Modern Austrian Economics*, New York, NY: Routledge, 1992.
- Masterson, V. V.. *The Katy Railroad and the Last Frontier*, Norman, OK: University of Oklahoma Press, 1952.
- McChesney, Fred S. "Government as Definer of Property Rights: Indian Lands, Ethnic Externalities, and Bureaucratic Budgets," in Terry L. Anderson, ed., *Property Rights and Indian Economies*, Lanham, MD: Rowman & Littlefield, 1992, pp. 109-146.
- McCormick, Robert; Tollison, Robert D.. *Politicians, Legislation, and the Economy: An Inquiry into the Interest Group Theory of Government*, Boston, MA: Martinus Nijhoff, 1981.
- McReynolds, Edwin C.. *Oklahoma: A History of the Sooner State*, Norman, OK: University of Oklahoma Press, 1964.
- Olson, Mancur. *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge, MA: Harvard University Press, 1965.
- Peltzman, Sam. "The Economic Theory of Regulation after a Decade of Deregulation," *Brookings Papers on Economic Activity*, Special Issue, 1989, pp. 1-41.
- Peltzman, Sam. "Toward a More General Theory of Regulation," *Journal of Law and Economics*, 19, 2, August, 1976, pp. 211-240.

Rister, Carl Coke. *Land Hunger: David L. Payne and the Oklahoma Boomers*, Norman, OK:

University of Oklahoma Press, 1942.



Schumpeter, Joseph. "The Creative Response in Economic History," in Richard V. Clemence, ed., *Essays on Entrepreneurs, Innovations, Business Cycles, and the Evolution of Capitalism*, Oxford, UK: Classics in Economics, 1989, pp. 221-231.

Stigler, George. "The Theory of Economic Regulation," *Bell*

Journal of Economics and Management Science, 1, 2, Spring 1971, pp. 137-146.

Thompson, John. *Closing the Frontier: Radical Response in Oklahoma, 1889-1923*, Norman, OK: University of Oklahoma, 1986.

Wagner, Richard. "Pressure Groups and Political Entrepreneurs: A Review Article," in Gordon Tullock, ed., *Papers on non-Market Decision Making*, Charlottesville, VA: University of Virginia Press, 1966, pp. 160-168.

Weingast, Barry R. and Mark J. Moran. "Bureaucratic Discretion or Congressional Control? Regulatory Policymaking by the Federal Trade Commission," *Journal of Political Economy*, 91, 4, October, 1983, pp. 765-800.

Figure 1

Figure 2

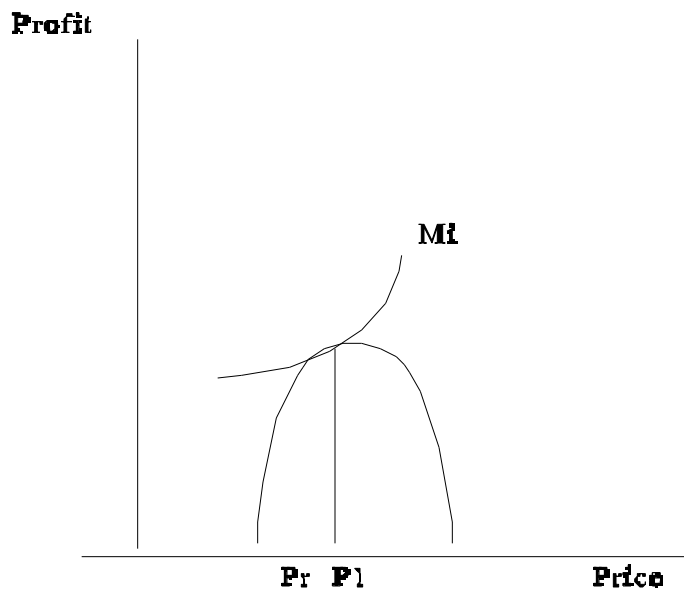


Figure 3

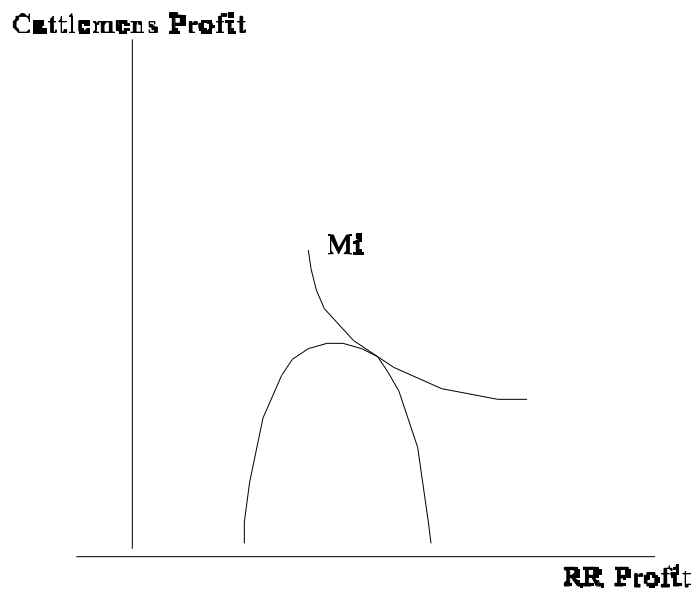


Figure 4

