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Social Capital, Civic Labor, and State Capacity in the Early American Republic: Schools, Courts, and Law Enforcement

Abstract: This article examines the local roots of the American state to complicate existing historiography. It suggests that, for education and law, the state tapped into local social capital to develop capacity. State and local governments relied on the mobilization of citizens' bodies—civic labor—to provide public goods. In doing so, it suggests that we need to offer a story that captures the myriad ways that Americans engaged in state-building, and how those different forms shaped Americans' relations with state power.

Keywords: American political development, American state building, civic labor, Early Republic institutions, education, local social capital, voluntarism

The development of the American state has received increased attention from scholars of the era between the American Revolution and Civil War. Much of this work has focused on the federal government. Seeking to reject what

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William Novak called the “myth of the weak state,” scholars have demonstrated the federal government’s capacity to exert influence and shape outcomes in various spheres of activity, from foreign policy to inciting reform movements such as sabbatarianism.¹ As Jeffrey Pasley has colorfully written, even if the American state was relatively small, it was a “midget on horseback,” capable of marshaling its resources for significant reach.²

Despite the attention on the federal state, however, much of American state activity took place at the state and local levels. Novak and Christopher Tomlins have argued that state governments in the postrevolutionary era had substantial discretionary “police” power.³ More recently, Gary Gerstle, in his new interpretation of the history of the American state, *Liberty and Coercion*, reminds us that we must “bring the states back in.” Their police power was so vast and addressed so many spheres—economic, cultural, moral—that they simply cannot be ignored.⁴

Statistically, state and local governments are at the heart of the history of the American state. After 1820, local spending grew at a much faster rate than either state or federal spending. In 1820, local spending accounted for 13.5 percent of government spending, the state governments accounted for 25.5 percent, and the federal government for 61 percent. By 1860, however, local governments accounted for 44.4 percent of all government spending, compared to 23.1 percent for states and 32.5 percent for the federal government. In per capita terms, local governments spent \$.28/person in 1820 and \$3.33/person in 1860.⁵

The data suggests significant growth in the capacity of state and local governments to provide public goods. By examining recent work on education and law, this article seeks to understand how state governments increased their capacity to produce public goods. Lacking a modern bureaucracy, which was as much the product as the cause of increased capacity, state governments purposefully tapped into local social capital. They encouraged ordinary citizens to work together to provide education and law, including law enforcement. In doing so, state governments drew on resources in civil society, blurring the line between the two in citizens’ experiences of the state. In other words, much of what historians might see as state activity was experienced by individual Americans as an extension of their lives together.

Several decades ago, Theda Skocpol encouraged scholars to “bring the state back in,” challenging the reigning Cold War weak state–strong civil society paradigm.⁶ But the arrows between the state and civil society point both ways. Thus, recently, scholars have started to look in both directions.⁷

Once again, Skocpol has helped set the agenda. In *Diminished Democracy*, Skocpol argues that voluntary associations proved their value during the Civil War, a time when “Americans were familiar with federated voluntary association” and thus knew how to mobilize people and resources when the government “was less prepared than the citizenry for the gargantuan efforts internecine warfare would demand.”⁸ In other words, the state relied on the people’s capacity to organize as much as the other way around.

Brian Balogh’s *The Associational State* also makes a case for examining the importance of civil society. Efforts to bring the state back in, Balogh writes, “were based on the belief that there was an impermeable boundary between state and society.” That was just not true; we must be willing to accept the importance of “civil society, that murky territory that lay somewhere between citizen and state.” Scholars have discovered that “state authority . . . could be enhanced through private and voluntary mediation.” Balogh argues in *Associational State* and in *A Government Out of Sight* that the federal government relied on the mediating institutions of civil society and business to carry out its public works because Americans wanted much from government but also distrusted it. The state could hide itself from view by relying on proxies, and thus could avoid the kind of antistatist backlash that a more visible, autonomous state might, and has, generated.⁹ Gary Gerstle reaches a similar conclusion. The federal government expanded its reach by “persuading private groups to do work that the central state was not authorized or willing to undertake.” Whether to the business sector or civil society, the government outsourced responsibility to build internal improvements (“railroads, dams, and other forms of infrastructure”); mobilize Americans for war; and even enforce morality—i.e., temperance and prohibition laws.¹⁰

Yet we need to think more deeply about the development of the state’s capacity to carry out public goods like education and the law. Both Balogh and Gerstle suggest that the state’s turn to civil society associations was primarily strategic. This article suggests it was as much about capacity as strategy. State governments simply did not have the capacity to achieve their public policy goals. They needed to develop that capacity. Successful governments did so by tapping into local social capital and building the state from the bottom up. They required ordinary citizens to step up and do the public’s work of state building.¹¹ In this sense, we need to think less in terms of civil society–state partnerships than about the role of social capital in making the state’s activity possible.

This essay takes to heart William Novak's caution that understandings of the state cannot be limited, in a tradition dating back to Hegel and Weber, to bureaucracy and ideal-type presumptions that real states are autonomous from society.¹² Instead, by looking at how bodies were mobilized, what I call civic labor, I will argue that state capacity in education and law developed where public and private, state official and ordinary citizen, met. I thus share Philip Gorski's conclusion that state capacity emerged "out of the institutions of civil society." Whereas Gorski, influenced by Foucault, focuses on how early modern confessional states tapped into "the energies of the human soul—another well-known but little-used resource" for state capacity, I will turn to social capital theory. Rather than the energies of the soul, I will look to how communities could mobilize citizens' bodies.¹³

This article, however, is decidedly not a rejection of the attention recent scholars have placed on the state as a causal agent in the early American republic.¹⁴ Both the provision of schools, courts, and law enforcement depended on the state's sovereign authority and public policies. Yet, by turning our lens to the state and local levels of American government, and by looking at the public education and legal systems, certain components of the American state that were obscure come into focus. In both education and law, the state depended on the cooperation and labor of ordinary citizens in local communities. Just as historians of capitalism emphasize the role of labor in capital formation, I will seek to bring attention to the role of civic labor in state formation.¹⁵ This article thus develops for an earlier period of U.S. history Elisabeth S. Clemens's recognition that state-building often depended on "borrowing" resources from the private sector.¹⁶

Robert Putnam, in his 2000 *Bowling Alone*, defined social capital as a collective community resource arising from "connections among individuals—social networks and the norms of reciprocity and trustworthiness that arise from them." Communities rich in social capital have citizens not only capable but habituated to working together to achieve shared goods—which in turn reinforces social trust.¹⁷ Social capital is a resource for local governments. Citizens in communities with social capital are more capable of overcoming collective-action problems.¹⁸ American towns were such places, and state governments needed their resources to develop public schools, courts, and police forces. Once these were developed and running, legislators increased centralized administrative oversight, in time leading to salaried civil servants and relatively autonomous bureaucracies.¹⁹ But that would not happen until after the 1820s and it could not happen, recent historiography in education

and law suggests, if citizens had not been capable of delivering these public goods, initially at least, on their own.

Even as state governments relied on social capital, state governments themselves shaped the development of civil society. Governments, through their oversight of the laws and terms of voluntary association and incorporation, could influence both negatively and positively the existing stock of social capital.²⁰ When they mobilized local bodies to do the public's work, they *both* drew from a community's stock of social capital and, by encouraging citizens to come together to accomplish a collective goal, replenished it. At the moment of state-building, however, as legislators sought to expand access to public goods without bureaucracies, the capacity of citizens to work together was an important state-building resource. The result was that much state activity in the postrevolutionary decades was not autonomous from the community. Instead, it was housed in local officials who were part of local networks. Much government was, in John L. Brooke's word, "embedded" rather than autonomous, personal and communal rather than institutional. At the local level especially, embedded government was the norm, and, according to Brooke, was the form of government that many Americans wanted. By keeping government close to them, local freeholders—white men—would directly govern themselves and their dependents. As a result, "the state" was imagined as an unwelcome intrusion, whereas citizens' local activity—public and governmental as it was—was not. The Jeffersonian-Jacksonian strain of American politics, in particular, considered normative the idea of the "electorate mobilized for direct action by an effective empowerment *as magistrates*"²¹

In Brooke's formulation, the line between citizen and public official, or between civil society and state, was blurry. It existed in law but not in experience. And this, I argue, was how state governments developed the capacity to carry out education and law. Put simply, the public's work requires bodies to do it. The bodies must be mobilized somehow. Before bureaucracies, legislators relied on communities to mobilize labor for the public good, and thus civic labor was a source for state building. This is not to diminish the role of the state but to acknowledge that, for reasons of politics and capacity, legislators turned to the people to produce directly public goods. In addition, some state governments could also rely on the coerced labor of enslaved bodies.²² Only later did local and state governments start to hire their own special bodies—civil servants with salaries—to do this work. Governments could do so, however, only once sufficient capacity was already there. To figure out from where that capacity came, we must wade into Balogh's "murky territory."

PUBLIC EDUCATION

The Local Roots of Public Education

Providing public education is one of the most important and expensive responsibilities of state governments. By the Civil War, many northern states had committed significant tax support for schools, and many southern states were moving in the same direction. In other words, by the Civil War, state governments had developed the capacity to provide a new public good through public institutions. But where did this capacity come from? Scholars recognize now that the expansion of public education emerged from local contexts and depended on citizens' support. This new consensus challenges arguments dating back to the 1970s, and still dominant among some education historians, that the expansion of public education was largely an elite response to social and economic change.²³

The expansion of mass schooling was a transatlantic phenomenon, but certain states were more effective than others in raising taxes and increasing enrollment. For much of the nineteenth century, the German states and the United States were in the lead. These countries also had the smallest enrollment gap between boys and girls. Challenging top-down theories, economist Peter Lindert discovered that enrollment and spending were correlated with "whether school finance and curriculum were decided locally or by the central government." A secondary factor was whether citizens at the local level had a meaningful voice in political affairs.²⁴ Decentralization was also posited as one of the primary "virtues of the past," which economists Claudia Goldin and Lawrence Katz credit for expanding access to public education in the nineteenth century. America was a leader in education by 1900 because of "small fiscally independent districts, public funding, secular control, gender neutrality, open access and a forgiving system, and an academic [not vocational or technical] curriculum."²⁵

Historians have also recognized a connection between localism and school enrollment. David Tyack, in a now-classic 1972 essay, argued that decentralization was one reason why antistatist Americans embraced public schools. Education reformers may have desired greater central control, but many citizens appreciated that "the country school belonged to the community in more than a legal sense." Indeed, the schoolhouse was "frequently the focus of their lives outside of the home." Because schools were run by neighbors known to each other, the line between the state and the sociability of the community was not experienced starkly. To Tyack, "school and community were organically related in a tightly knit group in which people

met face-to-face and all knew each others' affairs."²⁶ Modifying Tyack's framework, Jürgen Herbst described early public schools as "between community and state." Despite reformers' efforts, "a widely scattered population in small towns, villages, and the countryside accounts for [Americans'] resistance to centralized direction or supervision." The resulting schools, however, were neither creatures of the state nor the community but, to Herbst, in a middle space as localists and reformers engaged in a "see-saw battle" to control them.²⁷

Economists thus have found a correlation between localism and increased enrollment and taxation. Historians Tyack and Herbst, in analyzing these correlations, have suggested that the public sector expanded because schools blurred the conceptual line between the state and the community. That school districts were public entities cannot be denied; indeed, recent work has demonstrated that education history is central to understanding the development of the American state.²⁸ Nonetheless, Tyack and Herbst have good reasons for their conclusions. Local control mattered not just as a matter of principle but because it encouraged the expansion of the state's capacity to offer schooling as a public good.

Local Social Capital and Public Education

In a 2010 article examining New York state, Nancy Beadie argues that "by the time the state [government] intervened, the social aim of education and the social institution of schooling *already* mobilized financial resources and participation from ordinary households on a voluntary basis at a level far beyond that which either the state or the local government could command." This is a striking statement. If correct, it means that the expansion of public schooling depended on the prior capacity of citizens to work together in their communities. Looking at ten districts, Beadie writes that enrollment was "virtually universal from the very first year such data was collected." This, to Beadie, was not because of top-down legislation or bureaucratic capacity but because governments "incorporated pre-existing networks of social and financial capital into the political economy of the state." In Beadie's rendering, the schools were not between community and state (as Herbst had argued) but the state "incorporated" what citizens could do themselves.²⁹

Perhaps it was because citizens were able and willing to pool their own resources and labor that public schools took off. This is what David Mathews found for Alabama. In 1823, a new Alabama law divided the state's townships into school districts in which voters would elect school overseers. By tapping

into localism, the state government unleashed “an army of public support for public education.” In 1839, the state government offered state funding in return for local action. By the 1850 census, about a third of Alabama’s white children were enrolled. It was at this point that Alabama followed other states to establish a state and county superintendents for oversight. Between 1850 and 1860, enrollment increased 117 percent. By 1860, around nineteen hundred of the state’s twenty-one hundred schools were public and expenditures had increased by about a third, much of which came from local taxes.³⁰

Neither Beadie nor Mathews ignores government’s role, but both point to the importance of local citizens working together. I build on their insights in my recent book, *Democracy’s Schools*. I argue that localism was as much a purposeful approach to state building as it was a principle of democratic politics. Because state governments lacked the capacity to tax sufficiently and to build and run schools, they had to develop that capacity from below. Thus, the expansion of public education was a combination of legislators’ policy choices (the state) and what citizens could accomplish (social capital). State governments nudged and then pushed citizens to act, but the success of their efforts depended on collective action in localities around America.³¹

My argument helps us understand how states’ abstract police power to provide for the public welfare became the capacity to provide education as a public good at scale. If, as Beadie and Mathews conclude, the first public schools relied on the capacity of citizens to mobilize at the local level, once in existence the schools themselves became “agents of change,” as Richard R. John has characterized government in this era.³² Citizens mobilized themselves locally to form school districts, elect school officers, raise taxes, build schoolhouses, and hire teachers. But once these institutions and practices were in place, they had a momentum of their own. Americans learned how to run schools and raise taxes for them. Elected school officers became boosters, often demanding more resources from their town, county, or state governments. As more children enrolled, more parents sought the same for their children, creating a need to provide equitable access, once again increasing the need to raise taxes. Each decision generated more capacity and more momentum, creating a path-dependent set of forces encouraging greater investment and, over time, greater state capacity.³³

In New York, for example, the state legislature in 1795 authorized £20,000 for education but required localities to raise taxes to qualify for state funds. New York depended on citizens to build state capacity. Towns elected three to seven commissioners, but the heart of the system was at the local level. New York legislators purposefully and knowingly relied on citizens’ bodies.

The law urged citizens to “associate together” to hire teachers and build schoolhouses. We see a slippage between the language of the state and voluntarism as schools were built in the middle ground between the two. Ohio followed a similar path. Ohio lawmakers in 1821 permitted townships to divide into smaller districts where citizens would elect school committees and vote on school taxation. In 1825, this nudge became a mandate and counties were required to collect one-twentieth of a percent of their overall taxes to distribute to school districts. Towns were required to break up into districts, and districts were required to form schools. While the legislature pushed, citizens did the work, and by 1829 there was sufficient capacity for the state to mandate a minimum three-month term. By 1837, Ohio’s first state superintendent counted 7,748 school districts, about seven per township, enrolling about a third of school-aged children.

The state mattered greatly. Even if some schools were organized before state laws required citizens to do so, legislators provided the incentives and mandates to expand schooling’s scope and scale. Yet states did not do the work of schooling; for this, they relied on citizens’ capacity to work together. By the time that reformers like Horace Mann sought greater central oversight and bureaucratic autonomy, states had already increased substantially their capacity to provide education.

The same story may be true for the South. For a long time, scholars presumed that white southerners did not seek to expand public schooling; poor farmers did not want it, and rich planters did not want to pay for it. The South thus lagged behind the North in increasing access to public schools. Yet the story is complicated by the fact that many state legislators sought to expand access to schooling for white Southerners, and after the Revolution, at least on paper, southern states expressed support for public schools. Why, then, the lag? Some of it is because of the challenges of raising taxes in a slave economy.³⁴ But, I contend, some of it has to do with legislators’ strategies.³⁵ The South lagged behind not just because of a lack of will, but because they initially failed to tap into local social capital. Middle-class white Southerners were, like their northern counterparts, joiners. They formed associations for all kinds of purposes, suggesting that there was significant social capital in the South.³⁶ But because Southern states tended to be governed at the county level, and because many public offices were appointed rather than elected, the state did not effectively mobilize ordinary citizens.³⁷ Early efforts to organize schools in the South followed this model: legislators attempted to build schools from the top down, but state and county governments lacked the capacity to accomplish their goals. Things started to change around the 1830s

as southern states expanded suffrage and made more offices elective.³⁸ Southern states then followed their northern counterparts in mobilizing citizens' bodies. Mathews considered localism to be the key to success in Alabama, but the story holds true for other southern states as well. When authority was given to local districts with elected officials, citizens tended to organize more schools and increase enrollment and taxation at higher rates. In the South, as in the North, states' capacity to provide education increased when legislators tapped into local communities.

As states in both regions developed school systems, they often relied on bonding forms of social capital when it came to race. To Putnam, bridging social capital links people across divisions, whereas bonding social capital reinforces those divisions. In the South, the schools were explicitly for white Americans, reinforcing the racial barrier. Indeed, in southern states, the decision to democratize control to local communities and expand schooling may well have reflected elites' sectional anxieties.³⁹ (After the Civil War, African Americans sought to expand access to schooling, as did many northern philanthropists. As in white schools, northern foundations relied on African American communities' stock of social capital. African Americans raised money and pooled labor to build and run schools, just as had white Americans.)⁴⁰ In the North, racial barriers to citizenship increased in the antebellum decades, and while there was no single pattern, many states in the North and Old Northwest explicitly or implicitly authorized racial segregation, reinforcing the bonds between white Americans rather than, as many African Americans had hoped, using the common schools to bring all Americans together.⁴¹

One consequence of the way in which state governments expanded public education was that the line between the state and the community was blurred. A local system required thousands of citizens to *volunteer* their labor to organize and serve on local school boards. For these citizens, there was little reason to distinguish between themselves and the state. Instead, they saw themselves as community members, even as they were tasked with carrying out the objectives of state legislators and relied on the sovereign capacity to tax and make necessary regulations. And it took a lot of civic labor. Henry Barnard estimated that it required six to eight thousand citizens to run Connecticut's schools. In Pennsylvania in 1841, there were 917 districts, which meant 5,502 directors and 19,410 school committee members.⁴² The public's work was being done locally by the people themselves. As a result, when state capacity had reached a threshold and reformers sought to centralize control, establish salaried officers, and increase oversight, many other

Americans objected. They responded (not necessarily accurately) as if the state that they had created with their own labor was taking on an independent life.

COURTS AND LAW ENFORCEMENT

Courts

The very premise of law is that there exists a sovereign capable of making and enforcing it. The law therefore is a creature of the state. The existence of legitimate courts, judges on those courts, officers in those courts, and individuals empowered to enforce the law, including apprehending suspected criminals, all depend on the state's exercise of sovereign authority.

Yet when we turn to how the law worked and who enforced it, we once again find ourselves in a space that blurred the line between the state and the community. Unlike in the case of public education, there was greater continuity between the colonial and postrevolutionary eras. Yet, as in the case of public education, when it came to undertaking public work, courts and law-enforcement officials relied on the civic labor of ordinary citizens. Once again we find that state governments developed the capacity to adjudicate and enforce the law by tapping into local social capital.

In 1950, James Willard Hurst noted that the central judicial role local justices of the peace played “meant that one kind of court was set up almost on a neighborhood basis.”⁴³ In the colonial era, justices of the peace prided themselves on mediating between the King's law and local context. They distinguished themselves from lawyers precisely because they relied on local knowledge over abstract reasoning.⁴⁴ Much of what passed as law continued to be grounded locally after the Revolution. While scholars have noted the abstract “police power” held by states to enforce order, in practice most of the daily work of the law took place in local contexts, a space and place very different from when historians examine legal doctrine or the decisions of higher courts.⁴⁵ It was in these local contexts that the state developed the capacity to adjudicate and enforce law, and so we must turn to them first.

Laura Edwards's *The People and Their Peace* offers the best picture we have of these local contexts and how they worked. Examining North and South Carolina, Edwards urges scholars to distinguish between doctrine and practice, and between high-profile cases and the daily work of legal institutions. Like Tyack and Herbst in their examination of schools, Edwards found in her study of courts that historians must put “ordinary people, rather than

legal professionals and political leaders, at the center of law and governance in this period.⁴⁶ After independence, postrevolutionary North and South Carolina responded to citizens' desires for greater access to courts by decentralizing the system. Advocates of legal centralization, as in the case of education, made little headway until around the 1830s.⁴⁷ Courts' capacity to adjudicate law depended on the people's own understanding of law. As a result, the law's legitimacy depended on local consent and action. Local courts, Edwards writes, were always "blurring the demarcation between 'local administration' and 'state government.'" State governments remained "relatively weak" and thus "largely depended on local jurisdiction." The legal system depended on "flesh-and-blood individuals." Thus, many Americans experienced "the legal system as something directly connected to them."⁴⁸

At the local level, crimes were not prosecuted by publicly paid prosecutors. Instead, "everyone participated in the identification of offenses, the resolution of conflicts, and the definition of law." Rather than a formal body of doctrines, local citizens' "situated knowledge" mattered most. Legal localism had dual implications. On the one hand, women, poor people, and even enslaved people could gain access to the law. As lawyers exerted greater control around the 1830s, and as courts gained autonomy from their communities, such people had a harder time accessing legal institutions, which came to favor enfranchised white men.⁴⁹ On the other hand, legal localism did not mean a greater commitment to equality. The "local community networks" Edwards identifies allowed greater access but also reinforced "hierarchical family and community relationships."⁵⁰

A way to make these claims tangible is to examine the places where the law was adjudicated. In education, we have images of the early nineteenth-century one-room schoolhouse. We may look back and see them as shabby, but they were important community centers.⁵¹ Courthouses, like schoolhouses, were not widespread before the Revolution. Martha McNamara argues in *From Taverns to Courthouses* that it was not until the late eighteenth century that courts were "held in purpose-built structures devoted exclusively to judicial proceedings." By the mid-nineteenth-century, Americans had constructed a new "landscape of justice."⁵² As with schoolhouses, early courthouses served, Edwards writes, as "multipurpose public buildings used for other meetings and events when court was not in session," reinforcing the law's close links to the local community.⁵³ And it was on this community, not the law, that justices of the peace relied to get the law's work done.

Sheriffs and magistrates were legal officials created by the state and elected or appointed by state laws. They embodied the people's sovereign

authority, but they had little capacity to enforce law. Instead, to enforce legal dictates they “deputized willing bystanders to perform specific duties temporarily.” In other words, they tapped into social capital. Trials did not necessarily take place in formal settings governed by formal legal rules. Before courthouses, trials might be held “in convenient spots that would accommodate a crowd: taverns, country stores, front porches, a room in the magistrate’s house, or under a canopy of trees.” Legal spaces were at first not demarcated from the broader community’s life. Instead, courts, like schools, were constituted by the people coming together in their shared space and bringing them into being. And, once a judicial determination was made, enforcement depended on “community policing,” as neighbors, friends, and others carried out justice.⁵⁴ Courts were more formal institutions at higher levels, but even in these contexts, Edwards concludes, court days in court towns were as much social and economic events as legal ones. Given this overlap, Edwards argues for “the impossibility of distinguishing between private and public.”⁵⁵

A good example of how this worked can be found in Elizabeth Dale’s discussion of an 1805 South Carolina trial. On October 24 of that year, Elizabeth Cannon awoke to find her husband John dead beside her. She screamed; her stepson alerted neighbors and family. When John’s adult nephew arrived, he noticed finger marks on John’s neck and a bump on his head. He called for the magistrate, who represented the state’s sovereign authority. The magistrate in turn called for, in Dale’s words, “the white men of the community.” These community members were quickly sworn as a jury and concluded that criminality had taken place. Everyone knew—relying on what Edwards calls “situated knowledge”—that the culprit was likely Elizabeth’s lover, Joshua Nettles. The judge ordered him apprehended, but he had absconded, and brought Elizabeth into custody. The entire process, from identifying the crime to forming the jury to apprehending Elizabeth and searching for Nettles, took place by citizens acting in common.⁵⁶

Similar stories can be told for the North. In his study of Philadelphia, Allen Steinberg argues that before the Civil War “the law was ‘brought to bear’ upon citizens not by policemen or state officials but by each other.” Citizens prosecuted each other rather than rely on the mediating role of police or court officers. As a result, Steinberg writes, reaching a conclusion similar to Edwards, there existed “a process of prosecution that was . . . popular, particularistic, and extremely locally based,” as well as “flexible, subject to exploitation, and often, relative to the formal law, quite corrupt.” Over time, as in education, reformers wrangled control away from citizens,

replacing private prosecutions with a criminal justice system “anchored by the police and the public prosecutor.” But in doing so, reformers relied on institutions that had gained their capacity by tapping into the local community—the courts “originated,” Steinberg concludes, “within the world of private prosecution.”⁵⁷

Thus, much of what would be called “law” in the postrevolutionary decades was locally produced and was carried out not by formal public officials alone but by ordinary citizens deputized or sworn into juries. These early courts, like early schools, tapped into local social capital and generated state capacity. Legal reformers who sought, after the 1830s, to make the legal system more autonomous and governed by experts relied, as did school reformers, on the existence of this institutional capacity. By the Civil War, American courts began to look more familiar: lawyers were more widely used; there were formal rules governing who could practice law; and court officials had greater bureaucratic autonomy and resources, including being able to rely on salaried police forces (see below).

Law Enforcement

The people’s role extended from adjudicating to enforcing justice. Again the line between state and community was blurry. Before paid police forces, law enforcement depended on magistrates’ ability to recruit citizens to carry out the law’s mandates. Law enforcement may have been more dependent on local social capital than the courts. The state’s coercive power—its monopoly on legitimate violence—could not be asserted *a priori*, but, as in education, emerged by building state capacity from the local level upward.

Law enforcement had to be able to serve the courts before the courts could serve the law. The history of law enforcement thus parallels that of schools and courts. At first, citizens directly carried out the law. In Baltimore, Adam Malka finds that “ordinary individuals performed seemingly ‘public’ roles all the time, and this proved especially to be the case when it came to policing” and enforcing the racial order.⁵⁸ In Philadelphia, for most of the first half of the nineteenth century, the police force was, according to Steinberg, “a handful of men who guarded the city at night and who could initiate a criminal proceeding through an arrest.”⁵⁹ That started to change in 1833, when a gift from Stephen Girard enabled the city to divide into four sections, each with day policemen, thirty night watchmen, one watch captain and lieutenant, and three inspectors. In 1835, Philadelphia’s police force consisted of 176

officers, even as the city expanded and violence increased. Pressure to expand the Philadelphia police force's authority and autonomy emerged after the city's 1838 riots, when the major and watchmen proved incapable of stopping rioters from burning down the newly completed Pennsylvania Hall and citizens refused to respond to officials' requests to keep the peace. After years of effort and modest reforms in response to nativist and other violence, in 1850 two reforms were instituted: the formation of a "marshal's force" composed of a marshal elected to a three-year term who was authorized to select officers from a pool of nominees chosen by district councils or district commissioners; and the public prosecutor's title was changed to district attorney and the officeholder was now required to "sign all bills of indictment and conduct in court all criminal or other prosecutions in the name of the commonwealth."⁶⁰

Across the nation after the 1830s the line between officer and citizen became clearer.⁶¹ At the heart of this change was a tension between two modes of law enforcement: citizens who responded to the "hue and cry" of local officials as needed, and a permanent salaried force that was part of an identifiable state. During the postrevolutionary decades, law enforcement required civic labor. Jurist James Wilson describes the posse comitatus as the primary way that sheriffs enforced the law. Posse comitatus was, Wilson argued, the sheriff's "high power of ordering to assistance the whole strength of the country over which he presides" to "suppress . . . unlawful force and resistance." Edward Livingston celebrated the posse for having "the same ties of property, of family, of love of country and of liberty" necessary to be "effective instruments for the suppression of disorder" without "usurpation." Because posse comitatus required the sheriff's call, one might see it as a "compulsory institution," as does Gautham Rao. From another perspective, it was evidence of the practical reality that local law enforcement required the labor of local bodies.⁶²

Southern slave patrols offer another example of how the state tapped into local social capital to carry out its work. Slave patrols, like school district committees, were created by and empowered by the state's sovereign authority. Yet, for many, they were experienced as extensions of the community. Local citizens, voluntarily or for a stipend, upheld slave laws and protected white southerners from real or perceived violence. According to former South Carolina governor James Hammond in 1845, "With us, every citizen is concerned in the maintenance of order . . . and our habitual vigilance renders standing armies, whether of soldiers or policemen, entirely unnecessary." Maintaining slavery, which depended on coercion, required both laws

and the white community's willingness to enforce them. As Sally Hadden argues in *Slave Patrols*, we too often imagine slavery as taking place on individual plantations subject to the whims and desires of specific masters and mistresses or their hired overseers. In reality, it took a village.⁶³

Hadden's meticulous reconstruction of slave patrols' organization and activities in Virginia and the Carolinas reinforces the story told here. Law enforcement relied on local civic labor. The line between state and community was therefore blurry because the same bodies moved back and forth across it. The same person could be, at one point, a citizen and, at another point, an officer. Patrollers were often recruited during militia musters or assigned by lot. In North Carolina, the county court appointed citizens to slave patrols. In the 1830s, the legislature created local patrol committees, turning to localism to develop patrolling capacity, much as they would do in education. Appointed patrollers took an oath, signed papers, and their bodies were transformed from ordinary citizens to bearer of the state's coercive authority. They now acted, in Hadden's words, "on the community's behalf."⁶⁴ The existence of slave patrols also illuminates another role that enslaved Americans played in state-building. As enslaved people moved between plantations for their own purposes, their actions created the security and enforcement needs to which patrols responded.⁶⁵

Americans' experiences in posses, as night watch, and on slave patrols may be why they resisted the formation of paid police forces. Paralleling opposition to the professionalization of schools and courts, many Americans considered efforts to professionalize law enforcement as alienation and sources of potential tyranny. London, in 1829, was the first city to establish what scholars call a preventive police force—designed to prevent rather than respond to criminal activity. New York's Common Council rejected a similar mayoral proposal in 1836 because "the nature of our institutions are [*sic*] such that more reliance may be placed upon the people for aid, in case of emergency, than in despotic governments." In 1844, in response to a bloody murder and public fears, the state legislature established a police force. Yet the police force was tied to popular, partisan politics to avoid tyranny; each city ward would nominate officers to be selected by the mayor. Localism continued to rule even as cities moved toward greater bureaucratic capacity.⁶⁶

Both citizens and police officers themselves worried about the extraction of policing from its embeddedness in the community. For example, advocates of uniformed police officers argued that uniforms would serve as a crime deterrent and aid citizens needing police help. Others, including police officers, considered uniforms a sign that police officers were not free citizens.

David Johnson writes that “a uniform smacked of subordination and tyranny”; uniforms were “un-American liveries.” Yet between 1853 and 1862, most major cities adopted some kind of uniform. A more critical issue was violence. As gun crime increased, some officers started carrying their own weapons, but many citizens protested when police departments armed officers because the new paid police forces were not seen as extensions of the community so much as agents of the law, and sometimes violent, corrupt, and racist agents at that.⁶⁷ As both courts and police gained autonomy, many Americans recognized a shift from relying on civic labor to paid intermediaries to carry out public goods.

Federal state builders faced particular challenges as they sought to enforce federal law. Unlike local posses or slave patrols, which relied on local social networks, federal state builders were seen as imposing authority from the top down. Rao argues that citizens refused to comply with federal warrants because “the federal government lacked the requisite political legitimacy to force individuals into service.” This was particularly true among northern citizens who refused to enforce fugitive slave laws, especially the 1850 Fugitive Slave Act. The call for a posse was in theory a compulsory order, but Rao demonstrates that citizens were much more likely to respond effectively if the call came from a local source rather than from a distant federal state.⁶⁸ In the case of fugitive slave laws, the federal government found itself incompetent when citizens were unwilling to provide their own civic labor.

Citizens were more willing to support law enforcement when they felt it was tied closely to their own local understandings. Dale writes, “so long as the people were the police and jurors, their ideas of what justice permitted continued to shape criminal law.” Legal reformers thus confronted the same challenges in their efforts to develop public bureaucracies accountable to expertise rather than to amateur citizens as did education reformers. One option was to limit who counted as a member of the public. Women, children, African Americans, and Native Americans were simply determined not to be able to carry out the law with their civic labor; they were placed outside the law-creating and law-enforcing public.⁶⁹

But even with these exclusions, there remained a problem: how to make law and law enforcement something formal and managed by expert professionals. And the reasons to do so were clear. If, for many Americans, the line between the community and the state was blurry, this also meant that civic labor could be used for both legal and extralegal ends. Vigilante justice was rampant on the frontier, where state capacity was limited.⁷⁰ Mobs attacked antislavery activists; Joseph Smith was not the only person killed for threatening

communal norms and values. Partisan and racial violence spilled onto city streets.⁷¹ To limit vigilante justice—whether through legal or extralegal forms—cities turned to tax-supported uniformed police forces. In short, reformers by the Civil War purposefully drew a clearer boundary between the community and the state.⁷²

Although vigilante justice may not be something to celebrate, it still offers evidence of the importance of a community's capacity to draw on its own resources—and bodies—for collective action. In frontier communities, self-created associations enabled citizens to cooperate to protect their life, liberty, and property from criminality. True, self-created associations could be sites for criminality in gangs such as that headed by Jesse James. But, as Cindy Higgins argues in her essay about the Anti-Horse Thief Association in Kansas, before officials could enforce law, settlers “banded together to spontaneously halt wrongdoing.” The law was in the hands of the people themselves. Actual arrests were made by the victim of a crime or by a local official. Such popular forms of collective action could degenerate into the “lynch mob,” but often they were “moderate citizens orderly in their application of force.” Vigilantism may have “discouraged crime.”⁷³

In the west, collective action built social capital as citizens cooperated to achieve shared goals. Voluntary militias, for example, were part of a broad network of associations through which citizens forged social order in new frontier societies that lacked the stable structures of older eastern communities.⁷⁴ These new forms of social capital brought people together and also created new divisions, or bridging and bonding social capital. Thus, Rachel St. John concludes that frontier collective action provided a mechanism to solidify white supremacy against Native Americans.⁷⁵ This is not to imply that frontier societies created order spontaneously. The state was a central actor. Both national and territorial governments supported settlement by organizing property sales and managing Indian affairs, including using armed force to clear Native American land. State formation took place from the top-down actions of federal and territorial governments and the collective action of ordinary settlers. As new western communities formed, “the distinctions between state actors and early ‘frontierspeople’ blur.”⁷⁶

Another site for this blurring was the militia. The postrevolutionary militia was simultaneously a local institution and one that was organized by, gained its authority from, and was loosely directed by state and federal governments. The ideal of the militia—as Americans inherited it from England and colonial practice—was that the best defenders of a free state were armed and disciplined citizens. Standing armies represented the state or the king but not the

body of the people. Militia service, therefore, was required by law of able-bodied men. Communal defense depended on mobilizing citizens' bodies. The state, as it did in other realms, both relied on and encouraged the formation of local stocks of social capital.

According to Harry S. Laver, militia musters promoted "a sense of community, and a bond of neighborliness." By coming together in a militia, white male citizens developed connections that enabled them to act collectively, much as they did during meetings or court days. As in the case of segregated schools or courts, militia musters also drew lines between full and marginal members of a community; the militia's "public display of unity covered a hierarchical substrate of class, gender, and race." Yet, Laver continues, in early frontier Kentucky the militia enhanced the state's capacity to enforce law: "Kentucky's militia assisted local authorities by fulfilling some government duties," including helping the national census, providing information to federal authorities, assisting sheriffs, and guarding jails. An 1835 meeting of Lexington citizens called on "the several Militia and Volunteer companies" to "give their aid . . . in arresting and bringing to justice all persons guilty" of gambling "contrary to law."⁷⁷

None of this is to idealize the militia's effectiveness at its stated purpose: ensuring well-trained and willing citizen-soldiers. Instead, militias were often dysfunctional and lacked capacity. State-level officers rarely received from local companies the information that state laws mandated, and federal officials knew even less. As local institutions, in many states recruiting was carried out in a decentralized fashion, and militia officers were often elected by their local companies. Militia days may have forged bonding social capital among free white men who came together in musters, but militias were less effective at defending the homeland. Moreover, by the eve of the War of 1812, better-off Americans sought to pay fines rather than muster, thus undermining civic solidarity. Some northern states abandoned their militias. South Carolina, which considered the militia a necessary bulwark against federal power, struggled to organize it effectively. Some states moved to a voluntary model, which, given the administrative and bureaucratic limits of most states, may have proven more effective.⁷⁸

Yet the militia remained central to American defense because, as Gerstle writes, the American military "was minuscule" compared to other major powers. Instead, "the place of professional soldiers was to be taken by citizen-soldiers whom the government would call on in times of need to defend the republic." America's fighting capacity depended on state and volunteer militia companies. But given the failure of many state governments to maintain

effective militias, success depended on voluntarism. Leading citizens organized voluntary militias by “residence or ethnicity,” which would then receive “official recognition by the state governments.” Militia were useful in small skirmishes or for law enforcement. In times of war, the federal government turned to governors to recruit; in turn, governors would turn to “private citizens to raise the necessary troops.” “Thus,” Gerstle concludes, “America’s nineteenth-century military system was built on the willingness of ordinary citizens to respond to their government’s call,” as were schools and courts.⁷⁹

One need not and should not romanticize this local voluntarism. In all cases—schools, courts, law enforcement, and militia—citizens relied on the state’s sovereign authority and responded to its incentives and mandates. The development of schools, courts, and law enforcement was not spontaneous. But the state, lacking capacity, relied on the civic labor, and thus the willingness, of ordinary people to act in its name, which in experience blurred the line between citizen and state. The actual institutions were imperfect and often flawed. Citizens, for example, resented and shirked militia service. Such education reformers as Horace Mann believed, reasonably, that state and local governments could provide a superior education than that offered in ramshackle buildings with poorly paid amateur teachers. And reformers understood that relying on amateurs to enforce the law led to arbitrariness and poor administration. There were, in short, good reasons why education and legal reformers sought to assert expert control and build bureaucratic capacity and autonomy. In doing so, however, they risked angering citizens who had experienced the state and popular sovereignty very differently.

CONCLUSION

At a time of limited state capacity, legislators tapped into local social capital to provide public goods. This approach reflected necessity as much as principle. These early policy decisions blurred the line between community and state. When reformers starting in the 1820s sought to centralize control, increase taxation, and hire salaried civil servants—education superintendents and police commissioners, teachers and police officers—many citizens resisted and defended localism. Even if legislators were acting in good faith and for good reasons, their actions solidified the boundary between community and state, between citizen and official. Many Americans experienced the reformers’ efforts at state-building therefore as the alienation of their civic labor.⁸⁰

These competing visions of public-sector governance led to intense political divisions during the second party era. Whig reformers especially wanted a state that could pursue public goods without being subject to the whim of public opinion and in which those goods could be provided with consistent quality (something impossible when schools, courts, and law enforcement depended on voluntarism and localism, with their hit-or-miss standards and divergence in funding). Yet other Americans, especially Jacksonians, thought that freedom was better served when public institutions reflected the common sense of ordinary people and were closely tied to local communities.⁸¹

For historians of the state and American Political Development, the lesson is that we need a more pluralistic understanding of state development. This is not just to remind us, as scholars already have, that the American “state” is composed of thousands of units, from local and state governments, to ports and districts, to the federal government. Instead, it is important to understand how different functions of the state were constructed in different ways. In other words, the history of the state includes top-down efforts, but also public goods that were coproduced by citizen and legislator in such spheres as education and law.⁸² This article therefore does not challenge the conclusions of American Political Development scholars or those who conclude that Federalists such as Alexander Hamilton sought to construct a European-style fiscal-military state. It simply seeks to point to other streams that flowed into the ocean that historians call the state, and to recapture some of the complicated and contradictory ways that citizens experienced the state’s authority. Indeed, it is these multiple streams that might help explain why Americans have such a conflicted relationship with government, simultaneously seeing it as the embodiment of their will and of distant elites.

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NOTES

1. Richard R. John, “American Political Development and Political History,” in *The Oxford Handbook of American Political Development*, ed. Richard Valelly, Suzanne Mettler, and Robert Lieberman (New York, 2016), 185–206; Max Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York, 2003), and *A Hercules in the Cradle: War, Money, and the American State, 1783–1867* (Chicago, 2014). For examples of books focusing on the national level, see Stephen J. Rockwell, *Indian Affairs and the Administrative State in the Nineteenth Century* (New York, 2010); Brian Balogh, *A Government Out of Sight: The Mystery of National Authority*

in *Nineteenth-Century America* (New York, 2009); Mark Wilson, "Law and the American State, From the Revolution to the Civil War: Institutional Growth and Structural Change," in *The Cambridge History of Law in America, Volume II: The Long Nineteenth Century (1789–1920)*, ed. Michael Grossberg and Christopher Tomlins (New York, 2008), 1–35; William J. Novak, "The Myth of the 'Weak' American State." *American Historical Review* 113, no. 3 (2008): 752–72; Ronald P. Formisano, "State Development in the Early Republic: Substance and Structure, 1780–1840," in *Contesting Democracy: Substance and Structure in American Political History, 1775–2000*, ed. Byron E. Shafer and Anthony J. Badger (Lawrence, Kans., 2001), 7–35; John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge, Mass., 1995); and "Governmental Institutions as Agents of Change: Rethinking American Political Development in the Early Republic, 1787–1835," *Studies in American Political Development* 11, no. 2 (1997): 347–80; Frank Bourgin, *The Great Challenge: The Myth of Laissez-Faire in the Early Republic* (New York, 1989); Arthur M. Schlesinger Jr., *Cycles of American History* (Boston, 1986), chap. 9.

2. Jeff Pasley, "Midget on Horseback: American Indians and the History of the American State," *Common-place* 9, no. 1 (October 2008), <http://www.common-place-archives.org/vol-09/no-01/pasley/>.

3. William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill, 1996); Christopher Tomlins, *Law, Labor, and Ideology in the Early American Republic* (New York, 1993).

4. Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton, 2015), chap. 2. This point was also made by the older "commonwealth" school. See Harry Scheiber, "Government and the Economy: Studies of the 'Commonwealth' Policy in Nineteenth-Century America," *Journal of Interdisciplinary History* 3, no. 1 (1972): 135–51.

5. Randal G. Holcombe and Donald J. Lacombe, "The Growth of Local Government in the United States from 1820 to 1870," *Journal of Economic History* 61, no. 1 (March 2001): 184–89.

6. Theda Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research," in *Bringing the State Back In*, ed. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge, 1985), 3–37. For context, see David Ciepley, "Why the State was Dropped in the First Place: A Prequel to Skocpol's 'Bringing the State Back In,'" *Critical Review* (2001): 157–213.

7. I develop this argument in Neem, *Creating a Nation of Joiners: Democracy and Civil Society in Early National Massachusetts* (Cambridge, Mass., 2008).

8. Skocpol, *Diminished Democracy: From Membership to Management in American Civic Life* (Norman, Okla., 2003), 48–57.

9. Brian Balogh, "Toward an Associational Synthesis," in *The Associational State: American Governance in the Twentieth Century* (Philadelphia, 2015), 1–22; Balogh, *Government Out of Sight*.

10. Gerstle, *Liberty and Coercion*, 1–13.

11. My argument resonates with what William E. Nelson identified as a basic premise of colonial and early republic governance: the close connection between personal and official authority. See Nelson, "Officeholding and Powerwielding: An Analysis of the Relationship Between Structure and Style in American Administrative History," *Law and Society Review* 10, no. 2 (Winter 1976): 187–233.

12. William J. Novak, "Beyond Max Weber: The Need for a Democratic (Not Aristocratic) Theory of the Modern State," *The Tocqueville Review/La Revue Tocqueville* 36, no. 1 (2015): 43–91.

13. Philip Gorski, *The Disciplinary Revolution: Calvinism and the Rise of the State in Early Modern Europe* (Chicago, 2003), xv–xvi, 2. Even though I refer to the mobilization of bodies, I am not engaging directly with Michel Foucault's concept of governmentality. Like Foucault, I recognize the reliance of the state on the activities of ordinary citizens. Yet Foucault's understanding of power, and the state as its effect, is too diffuse. Governmentality is carried out in every body at all times within a particular regime. My article's scope is more limited. I am interested in how state leaders turned to citizens to achieve particular public goods, and the implications of these early choices for state development. See Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, ed. Michel Senellart, trans. Graham Burchell (New York, 2008); Johanna Oksala, "From Biopower to Governmentality," in *A Companion to Foucault*, ed. Christopher Falzon, Timothy O'Leary, and Jana Sawicki (Malden, Mass., 2013), chap. 15.

14. John, "American Political Development and Political History," offers an overview and interpretation of recent scholarship.

15. A recent example is Sven Beckert and Seth Rockman, eds., *Slavery's Capitalism: A New History of American Economic Development* (Philadelphia, 2016). See also Christopher Clark, *Social Change in America: From the Revolution Through the Civil War* (Chicago, 2006), chap. 4.

16. Elisabeth S. Clemens, "Lineages of the Rube Goldberg State: Building and Blurring Public Programs, 1900–1940," in *Rethinking Political Institutions: The Art of the State*, ed. Ian Shapiro, Stephen Skowronek, and Daniel Galvin (New York, 2006), 187–215.

17. Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York, 2000), quote at 19; Adam B. Seligman, *The Problem of Trust* (Princeton, 1997), esp. 75–100; Eric M. Uslaner, "Democracy and Social Capital," in Mark E. Warren, ed., *Democracy and Trust* (New York, 1999), 121–50; Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (New York, 1995), esp. 3–12. For discussions about the definition(s) of social capital, see John Farr, "Social Capital: A Conceptual History," *Political Theory* 32 (2004): 6–33; John Field, *Social Capital* (London, 2003)

18. Joe Wallis and Brian Dollery, "Social Capital and Local Government Capacity," *Australian Journal of Public Administration* 61, no. 3 (September 2002): 76–85; Robert D. Putnam with Robert Leonardi and Raffaella Y. Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, 1993).

19. On the emergence of bureaucratic autonomy, see Daniel Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928* (Princeton, 2001).

20. Ruth H. Bloch and Naomi R. Lamoreaux, "Voluntary Associations, Corporate Rights, and the State: Legal Constraints on the Development of American Civil Society, 1750–1900," in *Organizations, Civil Society, and the Roots of Development*, ed. Lamoreaux and John Joseph Wallis (Chicago, 2017), chap. 7; Lester M. Salamon, S. Wojciech Sokolowski, and Megan A. Haddock, *Explaining Civil Society Development: A Social Origins Approach* (Baltimore, 2017); Kevin Butterfield, *The Making of Tocqueville's America: Law and Association in the Early United States* (Chicago, 2015) and "Law and Voluntary Association in the Early United States," in *Organizing Democracy: Reflections on the Rise of Political*

Organizations in the Nineteenth Century, ed. Henk Te Velde and Maartje Janse (Leiden, 2017), 85–103; Neem, *Creating a Nation of Joiners*; William J. Novak, “The American Law of Association: The Legal-Political Construction of Civil Society,” *Studies in American Political Development* 15, no. 2 (2001): 163–88; John, *Spreading the News*; Michael Schudson, “The ‘Public Sphere’ and Its Problems: Bringing the State (Back) In,” *Notre Dame Journal of Law, Ethics, and Public Policy* 8 (1994): 529–46.

21. John L. Brooke “Patriarchal Magistrates, Associated Improvers, and Monitoring Militias: Visions of Self-Government in the Early American Republic, 1760–1840,” in *State and Citizen: British America and the Early United States*, ed. Peter Thompson and Peter S. Onuf (Charlottesville, 2013), 178–217, quote at 199. See also Neem, *Creating a Nation of Joiners*, chap. 5. Nicholas R. Parrillo, *Against the Profit Motive: The Salary Revolution in American Government, 1780–1940* (New Haven, 2013), 24–33, like Brooke, distinguishes between “familiar” and “alien” forms of state power, the former based in community relations, the latter based on agents of a more distant state.

22. Thus, in addition to civic labor, enslaved labor helped develop state capacity. See Ryan A. Quintana, “Slavery and the Conceptual History of the U.S. State,” *Journal of the Early Republic* 38, no. 1 (Spring 2018): 77–86.

23. For an overview of the historiographical landscape, see Johann N. Neem, “State of the Field: What Is the Legacy of the Common Schools Movement? Revisiting Carl Kaestle’s 1983 *Pillars of the Republic*,” *Reviews in American History* 44, no. 2 (June 2016): 342–55.

24. Peter Lindert, “The Rise of Mass Public Schooling Before 1914,” in *Growing Public: Volume 1: Social Spending and Economic Growth since the Eighteenth Century* (New York, 2004), chap. 5. On comparing Prussia and the United States, see also Jürgen Herbst, *School Choice and School Governance: A Historical Study of the U.S. and Germany* (New York, 2006).

25. Claudia Goldin and Lawrence F. Katz, “The ‘Virtues’ of the Past: Education in the First Hundred Years of the New Republic,” National Bureau of Economic Research Working Paper 9958 (2003); Goldin and Katz, *The Race Between Education and Technology* (Cambridge, Mass., 2008). See also William Fischel, *Making the Grade: The Economic Evolution of American School Districts* (Chicago, 2009).

26. David B. Tyack, “The Tribe and the Common School: Community Control in Rural Education,” *American Quarterly* 24, no. 1 (March 1972): 3–19.

27. Jürgen Herbst, “Nineteenth-Century Schools Between Community and State: The Cases of Prussia and the United States,” *History of Education Quarterly* 42, no. 3 (Fall 2002): 317–41.

28. Tracy Steffes, *School, Society and State: A New Education to Govern Modern America, 1890–1940* (Chicago, 2012); David Tyack and Thomas James, “State Government and American Public Education: Exploring the ‘Primeval Forest,’” *History of Education Quarterly* 26, no. 1 (Spring 1986): 36–69.

29. Nancy Beadie, “Education, Social Capital, and State Formation in Comparative Historical Perspective,” *Pedagogica Historica* 46, no. 1–2 (February–April 2010): 15–32, and *Education and the Creation of Capital in the Early American Republic* (New York, 2010).

30. David Mathews, *Why Public Schools? Whose Public Schools? What Early Communities Have to Tell Us* (Montgomery, 2002): 134, 107–13, 124–26 (more generally, see

chaps. 6–8); J. Mills Thornton III, *Politics and Power in a Slave Society: Alabama 1800–1860* (Baton Rouge, 1978): 293–95, 300–302.

31. The following discussion is taken from Johann N. Neem, *Democracy's Schools: The Rise of Public Education in America* (Baltimore, 2017): chap. 3.

32. John, “Governmental Institutions as Agents of Change.”

33. I make this argument in detail in Johann N. Neem, “Path Dependence and the Emergence of Common Schools: Ohio to 1853,” *Journal of Policy History* 28 (2016): 48–80.

34. Robin Einhorn, *American Taxation, American Slavery* (Chicago, 2008).

35. Neem, *Democracy's Schools*, 72–75, 91–92.

36. Jonathan D. Wells, *The Origins of the Southern Middle Class, 1800–1861* (Chapel Hill, 2004), chap. 4; John G. Deal, “Middle-Class Benevolent Societies in Antebellum Norfolk, Virginia,” in *The Southern Middle Class in the Long Nineteenth Century*, ed. Jonathan Daniel Wells and Jennifer R. Green (Baton Rouge, 2011), 84–104; Johann N. Neem, “Civil Society and American Nationalism, 1776–1865,” in *Politics and Partnerships: The Role of Voluntary Associations in America's Political Past and Present*, ed. Elisabeth Clemens and Doug Guthrie (Chicago, 2011), 29–53; Timothy Lockley, *Welfare and Charity in the Antebellum South* (Gainesville, 2007); John W. Quist, *Restless Visionaries: The Social Roots of Antebellum Reform in Alabama and Michigan* (Baton Rouge, 1998); Elizabeth Varon, *We Mean to Be Counted: White Women and Politics in Antebellum Virginia* (Chapel Hill, 1998); Suzanne Lebsock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784–1860* (New York, 1984). Less appealing evidence is the capacity of white Southerners to associate to provide slave patrols. See Sally Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge, Mass., 2001); Peter Wallenstein, *From Slave South to New South: Public Policy in Nineteenth-Century Georgia* (Chapel Hill, 1987), 43–44.

37. Erik Mathisen, “Pledges of Allegiance: State Formation in Mississippi between Slavery and Redemption” (PhD. diss.: University of Pennsylvania, 2009); John G. Richardson, “Settlement Patterns and Governing Structures of Nineteenth-Century School Systems,” *American Journal of Education* 92, no. 2 (February 1984): 178–206; Albert Ogden Porter, *County Government in Virginia: A Legislative History, 1607–1904* (New York, 1947): 155–226; Charles Sydnor, *Gentlemen Freeholders: Political Practices in Washington's Virginia* (Chapel Hill, 1952), esp. chap. 6; Robert M. Ireland, *The County Courts in Antebellum Kentucky* (Lexington, Ky., 1972).

38. Lacy K. Ford, “Ideology of the Old South's Plain Folk,” in *Plain Folk of the Old South Revisited*, ed. Samuel C. Hyde Jr. (Baton Rouge, 1997), 205–27; Fletcher M. Green, “Democracy in the Old South,” *Journal of Southern History* 12, no. 1 (1946): 3–23.

39. I thank Jonathan Daniel Wells for reminding me of this connection. On southern anxieties, see Michael O'Brien, *Conjectures of Order: Intellectual Life and the American South*, 2 vols. (Chapel Hill, 2004). On nationalism and textbooks, see Margaret Nash, “Contested Identities: Nationalism, Regionalism, and Patriotism in Early American Textbooks,” *History of Education Quarterly* 49, no. 4 (November 2009): 417–41; Keith Whitescarver, “Schoolbooks, Publishers, and Southern Nationalists: Reforming the Curriculum in North Carolina's Schools, 1850–1861,” *North Carolina Historical Review* 79, no. 1 (January 2002): 28–49.

40. Joan Malczewski, *Building a New Educational State: Foundations, Schools, and the American South* (Chicago, 2016); Noliwe Rooks, *Cutting School: Privatization, Segregation, and the End of Public Education* (New York, 2017), chap. 2.

41. On this trend, see Neem, *Democracy's Schools*, 161–72; Hilary J. Moss, *Schooling Citizens: The Struggle for African American Education in Antebellum America* (Chicago, 2009).
42. Neem, *Democracy's Schools*, 88.
43. J. W. Hurst, *The Growth of the American Law: The Law Makers* (Boston, 1950), 93.
44. Brendan Gillis, “Conduits of Justice: Magistrates and the British Imperial State, 1732–1834” (PhD diss.: Indiana University, 2015).
45. On police power, see note 3 above.
46. Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, 2009), 3–7.
47. Edwards, *People*, 47–53.
48. *Ibid.*, 5–7, 65–66.
49. On this point, in addition to Edwards, *People* (quote at 7), see also Martha S. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (New York, 2018).
50. Edwards, *People*, 11.
51. Jonathan Zimmerman, *Small Wonder: The Little Red Schoolhouse in History and Memory* (New Haven, 2009).
52. Martha McNamara, *From Taverns to Courthouse: Architecture and Ritual in American Law, 1658–1860* (Baltimore, 2004), 2–3.
53. Edwards, *People*, 67.
54. *Ibid.*, 68–74.
55. *Ibid.*, 90.
56. Elizabeth Dale, *Criminal Justice in the United States, 1789–1939* (New York, 2011), 23–35. For other examples, see Adam Malka, *The Men of Mobtown: Policing Baltimore in the Age of Slavery and Emancipation* (Chapel Hill, 2018), 30–46.
57. Allen Steinberg, *The Transformation of Criminal Justice, Philadelphia, 1800–1880* (Chapel Hill, 1989), 1–3. On this point, see also Robert M. Ireland, “Privately Funded Prosecution of Crime in the Nineteenth-Century United States,” *American Journal of Legal History* 39, no. 1 (January 1995): 43–58.
58. Malka, *Men of Mobtown*, chap. 1, quotes at 19, 30.
59. Steinberg, *Transformation*, 120.
60. *Ibid.*, 120–21, 148–49.
61. A good overview can be found in David R. Johnson, *American Law Enforcement: A History* (St. Louis, 1981). Johnson argues that the rise of professional police forces enabled the public sector to protect the peace not only more effectively but also in better alignment with the rule of law. The big shift he notes is from an era of citizen-officers who responded to crimes when called upon by justices of the peace and other local magistrates, to professional police forces designed to prevent criminal activity. In contrast, Malka, *Mob Town*, 62–85, 176–86, cautions against drawing too stark a distinction between popular and professional policing, noting that both reinforced the white male citizenry’s oversight of black people and relied on extralegal forms of violence. In Baltimore, “white popular policing” (176) continued to thrive even as Baltimore created a salaried police force.
62. Wilson and Livingston, quoted in David B. Kopel, “The *Posse Comitatus* and the Office of Sheriff: Armed Citizens Summoned to the Aid of Law Enforcement,” *Journal of*

Crime and Criminology 104, no. 4 (2015), at 793, 795; Gautham Rao, "The Federal *Posse Comitatus* Doctrine: Slavery, Compulsion, and Statecraft in Mid-Nineteenth-Century America," *Law and History Review* 26, no. 1 (Spring 2008): 1–56, esp. 9–15.

63. Hadden, *Slave Patrols*. Hammond quoted at 6.

64. Hadden, *Slave Patrols*, 45–47, 73–79, 102–4.

65. Quintana, "Slavery and the Conceptual History of the Early U.S. State"; Samantha Seeley, "Freedom, Race, and Forced Migration in the Early American Republic" (PhD diss.: New York University, 2014).

66. Discussion of New York from Johnson, *American Law Enforcement*, 26–27.

67. Johnson, *American Law Enforcement*, 28–31. On how professionalized police forces served to reinforce white supremacy, see Malka, *Men of Mobtown*.

68. Rao, "The Federal *Posse Comitatus* Doctrine." Discussing customs officials, Parrillo, *Against the Profit Motive*, chap. 6, argues that when federal officers were locally situated, they could rely on their status and networks to enforce duties, but, as customs officers became more distant partisan appointments, they lost the capacity for effective enforcement because they lost their connections to the community. On customs officers, see also Rao, *National Duties: Customs Houses and the Making of the American State* (Chicago, 2016).

69. Dale, *Criminal Justice*, chaps. 3–4, quote at 39.

70. Patrick Griffin, *American Leviathan: Empire, Nation, and Revolutionary Frontier* (New York, 2007).

71. Paul Gilje, *Rioting in America* (Bloomington, 1996); Malka, *Men of Mobtown*.

72. Dale, *Criminal Justice*, chaps. 3–4. On frontier justice, see Randolph Roth, *American Homicide* (Cambridge, Mass., 2009), chap. 5.

73. Cindy Higgins, "Frontier Protection and Social Network: The Anti-Horse Thief Association in Kansas," *Journal of the West* 42, no. 2 (Fall 2003): 63–73.

74. See Brooke, *Columbia Rising: Civil Life on the Upper Hudson from the Revolution to the Age of Jackson* (Chapel Hill, 2010); Neem, "Creating Social Capital in the Early American Republic: The View from Connecticut," *Journal of Interdisciplinary History* 39, no. 4 (Spring 2009): 471–95; Roth, *The Democratic Dilemma: Religion, Reform, and the Social Order in the Connecticut River Valley of Vermont, 1791–1850* (New York, 1987). No doubt, when order risked becoming anarchy, citizens also urged and welcomed more top-down authority. On this point, see also Griffin, *American Leviathan*.

75. Rachel St. John, "State Power in the West in the Early American Republic," *Journal of the Early Republic* 38, no. 1 (Spring 2018): 87–94.

76. Bethel Saler, *The Settlers' Empire: Colonialism and State Formation in America's Old Northwest* (Philadelphia, 2015), 9.

77. Harry S. Laver, "Rethinking the Social Role of the Militia: Community-Building in Antebellum Kentucky," *Journal of Southern History* 68, no. 4 (November 2002): 777–816, quotes at 786, 788, 799–800. See also Kenneth McCreedy, "Palladium of Liberty: The American Militia System, 1815–1861" (PhD diss.: U.C. Berkeley, 1991), chap. 12, on the voluntary militia's law-enforcement activities.

78. McCreedy, "Palladium of Liberty."

79. Gerstle, *Liberty and Coercion*, 37–38; McCreedy, "Palladium of Liberty," chap. 13.

80. For discussions on more recent eras, see Catherine Kramer, *The Politics of Resentment: Rural Consciousness in Wisconsin and the Rise of Scott Walker* (Chicago, 2016); Peter Berger and Richard John Neuhaus, *To Empower People: From State to Civil Society* (Washington, D.C., 1996).

81. See Neem, *Creating a Nation of Joiners*, chaps. 5–6; Brooke, “Patriarchal Magistrates”; Parrillo, *Against the Profit Motive*.

82. On the idea of coproduction and its relation to social capital, see Melissa J. Marschall, “Citizen Participation and the Neighborhood Context: A New Look at the Coproduction of Local Public Goods,” *Political Research Quarterly* 57, no. 2 (June 2004): 231–44.