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**Buried in Paper: Policy implementation networks
and their role in shaping archaeology policy.**

A thesis
submitted in partial fulfilment
of the requirements for the Degree of
Doctor of Philosophy

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by
Andrew Hinshelwood

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Abstract of a thesis submitted in partial fulfilment of the requirements for the Degree of Doctor of Philosophy.

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by

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Archaeology is often presented as holding the key to understanding our collective ancestry, and yet the dominant form of archaeological work in the western world today is not guided by theory or driven by enquiry; it is primarily concerned with regulatory compliance requirements arising in the context of land or resource development. Archaeology policy implemented in this context is premised on a vague sense that public benefit that arises when archaeological resources are protected in the face of development. The public is not the sole beneficiary, however, as developers, archaeologists, and the state also benefit. These beneficiaries are connected within networks of interaction not centred on archaeological practice, but in this interaction they contribute to policy implementation, and through this they shape archaeological practice. In this thesis, I explore the consequences of implementing archaeology policy through a network of actors that includes non-archaeological interests.

In this thesis, I focus on archaeology policy from Ontario, Canada, and review archaeology policy implementation from three directions. Documented policy is used to identify the stated policy intent and the rules for implementation. These documents include statutes, regulations, and manuals, as well as documents clarifying or detailing implementation direction. These objectives are considered in relation to actual implementation practice, as revealed in open-ended interviews with public sector actors involved in archaeology policy implementation. Finally, this information is triangulated using my own experience in Ontario archaeology.

The organising theory for this research is Schattschneider's (1960) conflict theory of politics. The theory posits that political contests, which I extend to include policy implementation, become destabilised when the scope of participation expands. As implementation contests become destabilised, the nature of the contest, and implementation objectives change. This can mean that the direction of implementation may shift from stated policy objectives to new

objectives determined in the interaction of the implementing actors. In this thesis, I extend this theory further using insights from actor-network theory to admit policy documents as (textual) participants. These textual actors influence implementation by drawing new associations among participants, and at times by representing and displacing the actors who deployed them initially.

Using three case studies, I trace how implementing actors attempt to make strategic use of scope, either to expand policy application, reduce obligations, or to create a better fit between archaeology policy and other organisational functions. Intermediary policy documents are often critical in these local contests as they can be mobilised in support of private interests, or used strategically to distance central actors from local negotiations.

This research builds on the enduring insight of Schattschneider's theory of politics, and demonstrates its utility in the study of policy implementation. By extending this theory to include non-human textual actors, the theory also gains the capacity for a richer understanding of the social forces acting in implementation, as well as engaging a significant body of social science theory. Insights to archaeology policy include identifying consequences to archaeological practice of vague policy objectives and local policy negotiations.

Keywords: public policy, implementation, networks, Schattschneider, actor-network theory, archaeology policy, archaeological practice, Ontario archaeology.

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Ivor Cutler, in a short story on collective effort stated the obvious: *many feet make one path*. In writing a thesis a student wanders many paths of promising ideas and concepts, and in doing so, follows segments of existing paths well travelled by others. The paths followed aren't what is unique to the research; it is how the segments are combined.

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Chapter 1

Introduction

1.1 Introduction

The challenge of policy implementation is ensuring that outcomes meet policy objectives efficiently and effectively. Implementation is easier in small networks, especially when the main actors share similar interests, backgrounds, or professional norms (Wilson 2000). In small networks, it may be more straightforward for the participants to reach agreement on both the policy objectives and the operational approaches to implementation. When multiple actors are engaged, larger networks arise and expand the scope of implementation. In these complex social ecologies of competing interests and contested meanings, implementation becomes destabilised, and the ability of public administrators to control for the outcomes is diminished.

The implementation challenge is thus to develop strategies for achieving the desired goals, by building the types of relationships with and among implementation actors that allow them some degree of autonomy in decision-making. Acting strategically to exclude some interests, or narrowing implementation to specific tasks will ensure that administrators maintain control over implementation and its outcomes; however, restricting the scope of participation in this way can hold political and democratic consequences (cf. Schattschneider 1960; Ripley and Franklin 1981; Freeman and Stevens 1987; Mulgan 2003; Catlaw 2007).

In practice, policy implementation often involves more actors than can be effectively overseen. While participants in small networks may share common interests, backgrounds, or professional norms that distinguish network members, this is less likely to be the case in larger networks. As the scope of an implementation network expands, local negotiations may engage substantive questions of the purpose or social value of the policy, instead of the technical requirements of implementation. Implementing actors may be unwilling to fully commit to policy that is incompatible with other important commitments (Pressman and Wildavsky 1983), or viewed as lying beyond their mandate (cf. Baier, March and Saetren 1986; Meier and O'Toole 2006). These negotiations may be indirect, as when a rule is not ignored, but interpreted in ways that limit the effect of the policy on other agency objectives (cf. Spence 1999). But these local contests incrementally destabilise implementation, and cumulatively shape the policy being implemented (Kaufman, 1981).

1.2 Problem statement

This thesis is exploratory, and addresses the question: what are the consequences of implementing public policy through a network, including the effects arising from the scope of participation and negotiations among local actors? In this, I seek to understand how the interactions among participating actors influence and shape archaeology policy as it is implemented.

To address this question, I focus on the implementation of archaeology policy in Ontario, Canada. This policy is set out in statute, the Ontario Heritage Act, and supplementing documents, including statutory regulations to the Act, terms and conditions for archaeological licensing, checklists and training materials for use by non-specialists, and archaeological reports. It is also found in the practices of implementation, and the negotiations and contests among local actors that shape implementation. Implementation of the Ontario Heritage Act is both direct, where individuals are licensed to practice archaeology, and indirect, where the Act is implemented through the planning and approvals processes of other policies.

1.3 The archaeology policy narrative

The narrative¹ that underwrites archaeology policy is this: archaeological sites hold unknown, but discoverable, insights into the history of a group, a people, or a nation, but they are continually under threat from the twin scourges of time and uncontrolled excavation. These fragile and non-renewable vestiges of a national or cultural heritage must be preserved as a public good so that they remain available for future generations to enjoy and study.

As Deborah Stone notes (2002, 138), every good story has a villain, and in this narrative there are at least two: natural processes of deterioration, and human behaviour contrary to the ethos of preserving our collective heritage. Time, and its accompanying taphonomic processes, is a natural condition which can, the narrative implies, be countered through collective will and specialist technique. Uncontrolled activity by individuals who loot our collective past can be countered through regulation; as citizens, we can preserve our collective history by aligning our interests with the state and the specialists who are authorised to investigate these sites on our behalf. Regulation is necessary to proscribe the actions of those who seek private gain through theft and private exploitation of this warehouse of archaeological knowledge, or who

¹ Roe defines a policy narrative as "...stories (scenarios and arguments) which underwrite and stabilize the assumptions for policymaking in situations that persist with many unknowns, a high degree of interdependence, and little, if any, agreement" (1994, 34). Stone (1989; 2002) also speaks of policy narratives, expanding the discussion to consider the various forms these stories take. Roe is methodological: Stone critical. When two distinct narratives come together in negotiations over the requirements of policy, "conversations" develop (Black 2002).

destroy sites out of ignorance, wilfulness, or disregard. The collective benefit these sites offer is achieved by engaging their data content through specialist practice, installing them in institutional collections, and presenting the research results in reports and as educational outreach.²

While the villains in this narrative seem clear, the heroes are less so. But, they seem to be present in the archaeologists and museums, and in the state agencies that champion the site and artefact protection described in policy. The public may also be heroes in this narrative, as the public interest in protecting archaeological sites is implicit in the narrative. Also implicit is the notion that the true value of these sites and objects are determined by our champions through their work, to the exclusion of others. In the basic version of the narrative, archaeological sites are antecedent to archaeological practice. Sites are created through archaeological practice, and in this creation they are protected by archaeologists (Lucas 2001). Absent archaeological practice, the sites are unknown: without archaeology, these sites are simply places or locations within a wider landscape.

Cultural resource management (CRM) is now the principle form of archaeological practice in many western states (Ferris 1998; 2002; 2007; Willems and van den Dries 2007). In CRM, archaeologists licensed by the state, complete work on behalf of public or private sector clients. This places the archaeologists under obligations to both the state and their clients. They represent the state interest in archaeological resource protection, and support their clients in clearing the archaeological regulatory hurdle. In this relationship, the state benefits by demonstrating that the public interest is addressed, developers benefit by obtaining planning approval, and archaeologists benefit through the funding and research opportunities. The public interest in CRM archaeology is abstracted in this process as deriving in part from

² Although many examples may be cited, the “Top 10 Discoveries of 2009” list from *Archaeology* magazine (Volume 63 Number 1, [January/February 2010](#)) may be sufficient. The editors describe the list as compiling “the year's most exciting discoveries ... [the] sites, artifacts, and scientific studies we feel most enrich our knowledge of the past”. The list includes ancient palaces and cathedrals, lost cities, tombs, a zoo, irrigation canals, an Anglo-Saxon treasure hoard, and evidence of Roman chemical warfare. Remarkable finds which, the editors hope, will encourage readers to make their own “connections with the past” (<http://www.archaeology.org/1001/topten/>, accessed March, 2010). In the same issue of the magazine, a list of Sites Under Threat in 2009 (Volume 63 Number 1, [January/February 2010](#)) describes the risks faced by sites around the world. This list includes sites in war-torn frontiers, botched restorations in Bolivia, and the construction of a ‘mega-mart’ in Alabama, as well as the invasion of tree roots into a rock art site in France. Other lists of significant archaeological sites appear on the internet, crowded to the fringe with examples of how well archaeologists serve our understanding of the past. In one view, archaeologists are “... working day and night to look for valuable things that will supplement and strengthen our knowledge of history through significant findings they may find” (<http://socyberty.com/history/archaeological-finds-with-great-significance-to-mankind/>).

these benefits: the state represents the public interest, development is an economic good, and archaeologists care for the material remains of the collective heritage.³

In a wider sense, archaeological practice, at least the practice expressed through CRM, may be seen as isolated from the broad public interest in archaeology that is assumed to exist. The public interest in archaeology is fraught: public interest is the grounds on which the regulation of archaeology is based, but research into this interest (for example Carman 2002; 2005; Pokotylo and Guppy 1999; Lea and Smardz 2000; Birch 2006), has found that while the public find archaeology interesting, its protection is not a concept around which they might organise. In turn, this has led archaeologists to pursue public archaeology programmes that are less about providing information as it is about mobilising interested individuals in support of the archaeologist's objectives (Carman 2005; McGimsy 1972; Cleere 1989; Little and Amdur-Clark 2008).⁴ This is generally encapsulated in the popular presentation that the archaeological resource is an archive, with each site like a page from a history book, couched in a broader narrative of mystery, adventure, discovery, science, and ultimately our present condition.⁵ Archaeological research, the story suggests, allows us to look back in time and learn about ourselves as part of a broader social collective, be it cultural, regional, or national (Merryman 1989; Carman 2005).

Dissenting views to the idea that regulated archaeological practice constitutes a clear public benefit arise in three arenas. Some observers have noted that archaeology policy and the practice that follows from it does not address the interest of indigenous groups or descendant populations in archaeological resources in planning outcomes (Smith 2005; Johnston 2007). The indigenous perspective on archaeological practice is perhaps the most significant challenge facing archaeologists and public administrators who oversee archaeology policy. Indigenous rights, both traditional and treaty-based, are increasingly visible in broad social

³ Webb used public interest as the basis for initiating archaeological survey in the Norris river basin, funded by the Tennessee Valley Authority, in the opening remarks to his report: "As early as August 1933 the suggestion was made by interested citizens that the [TVA] should undertake archaeological investigations in the areas to be flooded by the building of dams..."(1938, 1).

⁴ Not all public archaeology represents a simple exposition of archaeological practice. Community archaeology (for example, Leone, et al. 1987) is often devised as a deliberative approach which emphasises generating input from local or descendant communities in developing research questions or analytic focus. The longer term benefits of such approaches may include creating a greater sense and value for "local heritage" protected in much the same way as "national heritage" currently is.

⁵ The Nova Scotia, Canada museum website, for example, sets out the following narrative: "If time-travel were easy as hopping on a bus, wouldn't you buy a ticket to the past? We don't have time-machines, but we do have artifacts. Artifacts let us reach back into time for real clues to the mysteries of ancient worlds and people ... Personal collections of artifacts are often well cared for and bring much pleasure to the finder's family and friends, but they are usually not available to other people for study or enjoyment. Arrowheads in a desk drawer can't tell their story to a researcher or excite the curiosity of a child."

(<http://museum.gov.ns.ca/arch/arcintro.htm>)

discussion, much more so than archaeology, and it may simply be a matter of time before the policy contest pits archaeological interests against indigenous interests.

A second view suggests that CRM archaeology is under-theorised, and perpetuates outdated theoretical paradigms (Carman 2000; Smith 2000; 2004; Mitchell 2006). As Smith (2004) notes, the positivist focus of CRM binds it to an earlier body of archaeological theory that views the past as distinct from contemporary social practice, and which is discoverable through the application of scientific rigour to the investigation of archaeological data. Despite the efforts that individual archaeologists may make to adopt emerging theory in their practice, archaeology that is directed by policy must conform to policy direction to manage sites as data sources. Recent work on quality management in archaeology (cf. Willems and van den Dries 2007) takes a pragmatic approach to reconciling commercial and theoretical archaeology, but may not address the lack of reflexivity seen in archaeological practice (Hodder 2003). Further, as I argue in this thesis, non-archaeologists are active in setting the objectives of regulated archaeological practice to an extent far greater than archaeological theory does. If the archaeological resource is constructed through the practice of archaeology, then in contemporary CRM archaeology the resource represents an externality to development, and does not, except through considerable narrative effort, represent the past.

A third concern is that the extensive collections of documents and materials created through CRM, the artefacts, photographs, maps, and reports that would otherwise have been lost is not a public benefit, but a deferred liability. The obligation assumed by the state when salvage is favoured over *in situ* preservation, or indeed when sites are consigned to destruction without salvage, is held to be inadequately accounted for in the pricing of archaeological consulting contracts. Consequently, this cost may ultimately fall to the state (Stewart 2002; 2003). Under this argument, the privatisation of funding archaeological resource protection by making it a condition of development planning approval will still end up being subsidised by the state if the promises of archaeological resource protection implicit in policy are to be met in full.

These dissenting views frame the dilemma facing archaeologists and archaeology policy makers; salvaging sites by transforming them into collections does not address all public concerns, and merely relocates the need to remain vigilant for the effects of time, while preserving the sites *in situ* as archaeological places on a landscape does nothing to protect them from deterioration and unauthorised intrusions. More immediately, failure to mitigate archaeological resource impacts in a way that is sympathetic to the interests of the private

developers underwriting this work could cause these interests to organise politically in opposition to the obligations imposed by archaeology policy (cf. Ferris 2007).

In this thesis, I seek to add to this narrative by reinforcing the view that archaeological sites are both the object and outcome of archaeological study. That is, that archaeological sites become archaeological site through practices that are sanctioned in policy. Policy prepared in support of a public interest in archaeology in fact serves private archaeological interests by authorising archaeological practice over other means of interacting with sites. While the public interest in archaeological practice and its products is the basis for archaeology policy, the connection between practice and the public is tenuous. I argue, that the formulation and expansion of archaeology policy through the 20th century was not a popular triumph for the public interest in archaeology, but rather it marked the success of private archaeological interests in a sequence of policy contests. Smith (2004) has noted that the contemporary practice of cultural resource management has reduced the focus of archaeology to data-collection, reinforcing the interests, and policy-based opportunities presented to archaeologists through the 20th century, particularly the benefits that have arisen from aligning practice with development (cf. Ferris 2007).

1.4 Method

Policy implementation is an inherently social process (Hajer and Laws 2006). The social context of policy implementation means that both policy and implementation are products of “an unformed but generative flux of forces and relations that work to produce particular realities” (Law 2004, 7). In conducting research into policy implementation, the researcher’s role is to construct facts about the world (Latour and Woolgar 1979), even though a different set of facts, assumptions and rules might lead other actors to see another world. In the selection of facts, and the assumptions and rules of research, the social scientists craft the worlds they describe, but establishing matters of fact in the social sciences can also have political consequences. These consequences include not only institutionalising rules for determining the validity and relevance of facts and modes of reasoning, as well as reinforcing the cultural and epistemological positions of the researcher (Law 2004). In this way, methods, rules and practices “not only describe but also help to produce the reality that they understand” (Law 2004, 13). Thus, research should not depend upon a predetermined set of methodological rules, as such rules are deterministic not only of the questions asked, but also of the answers returned (Law 2004), but rather ensure that the assumptions, rules and procedures followed in a particular project are exposed.

I have set out to understand how the interactions among actors influence and shape implementation of archaeology policy. At the outset, I understood that multiple actors were engaged in implementation, and that these actors interacted, or did not interact, at different points in the process of applying the direction in archaeology policy to other work in which they were engaged. To me, these interactions defined a network, and it should come as no surprise that I found a network once I began to look. Therefore, it is necessary to reflect on Latour's (2005) view that a network is a tool that researchers may use to organise their thinking, but that, as networks are not things that exist in and of themselves, they should not be the unit of study. Instead, it is necessary to seek out actors within the presumed network, and to ask them what they do, and how they do it (Latour 2005)

In this research, I approached the record of archaeology policy implementation from three directions. First, I began with a review of available documents that described both the policies to be implemented, and the rules for implementation. This documentation included both statements of policy intent found in statute, regulations and manuals, and documents clarifying or detailing direction to implementation participants. The documents reviewed were used to build a sense of how the implementation relationships should be formed, and what outcomes were sought by the central archaeology policy agency. My method in this research was to analyse processes, documents, and interactions among actors (human and organisational) engaged in implementing archaeology policy. Most of the processes and interactions were defined in policy documents, which allowed me to identify interactions that were intended for implementation in higher level policy (such as statute), but were defined in more limited terms, or were absent altogether, in local direction.

Next, in order to expand upon this documentary review of implementation, I relied also on a series of open ended interviews with a range of public sector actors with some involvement in archaeology policy implementation to confirm that my reading of the direction or identification of absences was correct or reasonable (Appendix I). The identification of the individual respondents is not provided, as many spoke to me with the understanding that greater anonymity would return greater candour in their responses. In this way, I was able to draw out the local response to the obligation to implement archaeology policy, what the policy meant in terms of the participant's primary area of responsibility, and the way in which they interpreted their (or the agency's) role in implementation. The interviews were conducted either in person, on the telephone, or through email depending on the individual's availability. Some of the interviews built on previous discussions conducted during professional encounters that predated this research, and as such the cases show a bias toward

north-western Ontario, where I have been centred most of my professional life.

Conversations based around specific case examples have been generalised for the purposes of this discussion. Private sector actors were not engaged for this research.

The information gathered from the documents, and the interviews were compiled, and triangulated against my own experience in Ontario archaeology. Over a span of about 30 years, I have worked as a research archaeologist, as a central agency operator involved in the review of archaeology reports submitted under license, I have worked on behalf of a delegated agency in meeting regulatory obligations for archaeological resource protection, and I have worked on behalf of private and public sector clients as an archaeological consultant. For the Ontario Ministry of Natural Resources I provided cultural heritage direction in forest management planning, and participated on the writing team for the Forest Management Guide for Cultural Heritage Values (MNR 2007). Most recently I have been employed by the Ministry of Tourism and Culture as regional archaeologist and archaeological review officer for northern Ontario, with responsibility for the review of reports prepared under license. I also participated as a member of the technical advisory group for the Draft Standards and Guidelines for Consulting Archaeologists in Ontario (MCL 2009a).

1.5 Theoretical framework

In this thesis, I combine two theoretical perspectives to inform my exploration of archaeology policy implementation. The central organising theory for the research is Schattschneider's (1960[1983]) conflict theory of politics.⁶ I extend Schattschneider's theory using insights gained from actor-network theory (Callon 1986; Latour 2005).

To Schattschneider, politics is essentially strategic, and political success depends on the effective management of the intensity, visibility, direction, and scope of the political conflict engaged (Schattschneider 1957; 1960). These four dimensions determine in large part when and how people will organise politically. But as a social process (Hajer and Laws 2006), politics, including policy implementation, is dynamic and constituted of multiple, simultaneous conflicts among interests. The theory provides several key insights, including: 1) that strategic management of the scope of conflict is critical to success; 2) that scope is determined by practices of inclusion and exclusion; 3) that the outcome of these contests is at

⁶ Schattschneider's book, *The Semi-Sovereign People* was first published in 1960 (Schattschneider 1960). A second edition, with a new introduction, was produced in 1983 (Schattschneider 1983). The second edition did not include an altered text, but pagination changed. In this thesis, direct quotes are taken from the 1983 edition, while general reference to the work is to the 1960 edition.

best a temporary stability, and; 4) new contests may arise which absorb and redefine earlier contest outcomes.

In this thesis, I focus on the role of scope and direction of political conflict in implementation. The scope of a conflict relates to the level of public participation, or the range of interests represented in the conflict. Scope defines the stability of the conflict, and stability in turn determines how well the outcome may be predicted. In private conflict, when the scope of participation is limited, the conflict is stable, and managerial direction is effective. Any expansion of the scope of participation, however, brings new interests into the conflict, destabilising it and reducing the ability of any central figure to manage or control for specific outcomes.

The direction of a conflict relates to its social and political context. Conflicts compete with each other for the attention of the public, and consequently more intense conflicts displace the less intense. Where a conflict is related to other conflicts that mark similar divisions in society, it will gain prominence through this synergy, but a conflict that is at odds with the dominant cleavages in society will be subsumed. Each conflict redistributes the available participants; some individuals will be divided on one issue but united on another, and in some conflicts a change in the direction will change the overall scope of participation. As noted, the stability of a political conflict depends on scope of participation, and when the visibility or intensity of a conflict increases, it attracts participation and loses stability. One of the main causes for such change is when the conflict becomes visible through its connection to a broad social cleavage. “The direction and scope of cleavages are related” (Schattschneider 1957, 942), to the outcome of political conflicts because people must choose where to devote their energies: it “all depends on what we want most” (Schattschneider 1957, 940).

I extend Schattschneider’s theory to account for the social dynamics inherent in implementation, by drawing on insights from actor-network theory (Callon 1986; Latour 2005). Schattschneider’s (1960) theory is presented as addressing overt conflict between large, identified actors seeking a political resolution in the form of statute, or more generally, policy. I take the position that this theory can also be applied to policy implementation in general to account for the social relations that underpin implementation, expressed in local negotiations over contested roles, responsibility, and objectives. The types of contests that may arise in implementation to include not only overt conflict between interest groups, but also cooptation, agent discretion when shielded from observation, and strategic action aimed at excluding interests or institutionalising dominant interest perspectives. In this extended

form, actors contest and negotiate implementation locally through their actions, rather than by seeking change to the policy itself.

I use two primary insights from actor-network theory: translation (Callon 1986), and durability (Latour 1991). Translation is the process through which actor-networks arise, stabilise, and dissolve or are absorbed into larger networks. In translation, actors enrol others to support of a position, argument or interest, and in this way augments Schattschneider's theory of politics by describing the politics of representation in dynamic terms. Actor-network theory views all social conditions as networks within which actors are defined through their interactions with other actors (Callon 1991; Law 1999). Being defined through interactions also means that all actors, whether individuals or organisations, human or non-human are themselves actor-networks (Callon 1991). They are not pre-existing structures, but are instead formed through interaction with other actors, and their form or substance is drawn from these relations (Callon 1991; Latour 1991). This leads to the understanding that all structured social relations are to some degree unstable and may be decomposed into the components and strategies that led to their formation.

Durability is the process by which actor-networks become stabilised and the social relations in which they are based are rendered invisible, thereby reducing ambiguity and the instability that results (Latour 1991). As actor-networks may draw together a variety of social and technological entities in their production, these durable networks may be human or non-human. While at first blush the notion of non-human actors seems absurd,⁷ this acceptance is based in the recognition that the underlying connections represented in technological objects or habits of practice, are themselves essentially social. These durable intermediaries are actors in the networks they inhabit in the sense that they are "able to associate texts, humans, non-humans and money" (Callon 1991, 140), and put "other intermediaries into circulation" (Callon 1991, 141). In policy terms, durable intermediaries serve as a form of portable expertise (Latour 1991), that can be circulated by central actors to ensure that implementation decisions are consistent. But this is not the sole role of the document, as it may also serve to obscure unproven assumptions that support the policy, directing practice, and representing central actors in both local negotiations and in efforts to enrol additional support for the

⁷ Actor-network theory is not unique in its admission of things into society. An early example is Winner (1980) who explored the underlying social and political content of technological innovation. To Winner, there is considerable latitude in the way a new technology will be used, but, once this use becomes set, change is difficult. "For that reason", he continues, "the same careful attention one would give to the rules, roles, and relationships of politics must also be given to such things as the building of highways, the creation of television networks, and the tailoring of seemingly insignificant features on new machines." (Winner 1980, 128). See also Engstrom and Blackler's (2005) recent overview of the movement to rethink the social to include objects.

central actor's authority. Thus, policy documents alternately reflect and mask the underlying social arrangements that have arisen in past contests over policy.

1.6 Form of the Thesis

My exploration of the implementation of archaeology policy in Ontario, Canada is based on reducing the problem statement to a series of smaller questions. Each of these questions is addressed in a separate chapter of the thesis, and the narrative is developed over four chapters. I begin with a broad overview of the implementation literature relevant to the research, and end with specific examples of implementation in three case studies.

In Chapter 2, I review the implementation research literature to address two basic questions: 1) does this literature provide a theoretical rationale for treating implementation as a network?; and 2) assuming that implementation networks are supported by the literature, does the broader political and social science literature identify effective means for exploring the social arrangements underpinning these networks? Through this literature review I identify that policy implementation is conceived as a network, even as past research focus has not always been on the multiple, synchronous exchanges that constitute these networks. Social science literature is also identified that provides for the exploration of these networks in a way that allows the form of the network to be revealed in its performance.

I then move to a discussion of the public policy and social science theoretical literature I will use to frame my analysis of implementation networks. Schattschneider's (1960) theory of politics argues that interests arise and mobilise to compete for political success. In this theory politics, including the politics surrounding policy implementation, consists of numerous, simultaneous conflicts among interests. The nature of the conflict is not defined in terms external to the conflict, but rather by the composition of interests engaged. The outcome of each conflict is determined in large part by the scope of the conflict; that is, on the number and range of objectives among these engaged interests. Also in this chapter, I discuss my extension of this theory using actor-network theory and agency theory seek to better account for the social conditions affecting implementation.

In Chapter 3, I narrow my focus to regulatory policy, the distribution of benefits that arises in regulation, and the regulation of archaeology. My review in this chapter begins with consideration of whether archaeology constitutes a public good or a private interest. The public good argument is a common rationale for continued legislative protection of both archaeological sites and practice, but asking this question makes it easier to distinguish between regulating archaeological practice and the legislative protection for archaeological

sites. I then move to include a historical overview of archaeology policy in the United States as both the product of political contests, and as a key element in the template subsequently used in formulating archaeology policy in many other western jurisdictions. In the United States example, archaeology regulatory policy established the relationship between development planning and advance archaeological investigations. This relationship subsequently shaped the field of cultural resource management, and institutionalised a number of assumptions about archaeological resources, archaeological practice, and the role of the state in archaeological resource protection. In this chapter, I also review several key international conventions, and provide an overview of archaeology policy in other Canadian provinces and territories. In this review, the broad similarity of form shared by contemporary western archaeology policy is noted, and related back once more to institutionalised assumptions and practices that arose in the United States policy and implementation contests.

Chapter 4 draws the focus closer onto Ontario, to explore the operational conditions for implementing archaeology policy in the province. I begin with a review of the Ontario Heritage Act, as it pertains to the provincial interest in archaeological resources, and the role of licensing archaeologists to act on behalf of the province in addressing this interest. In licensing, the provincial agency responsible for archaeology policy seeks to ensure compliance by attaching specific terms and conditions for practice to licensing that reduce discretion. Also, administrative direction to organise horizontally as a means of improving service delivery and efficiency institutes relationships between a number of provincial agencies in implementation. Responsibility for implementing archaeology policy, delegated to agencies concerned with land and resource planning, is then delegated on to local planners. This additional delegation creates an effective distance between local actors who are responsible for implementing some aspects of policy, and the provincial agency responsible for the Act. In an attempt to bridge this separation, documents addressing common questions or required practices are circulated; however, the local actors, and the documents circulated to direct them creates an overall increase in the complexity of the implementation network. Concurrent to this increase in complexity, are provincial agency response to internal administrative constraints on implementation, specifically the focus on specific, measurable, and short-term goals necessary to meet the results-based planning targets that accompanied the horizontal management directive.

Three cases where archaeology policy implemented through networks are described in Chapter 5. In each case, archaeological resource protection is not central to any of the implementation networks described, a common condition for almost all archaeology policy.

The first case concerns municipal land development, and sees the implementation of archaeology policy distributed across a network centred on the Planning Act, and built through horizontal management directives and delegation of decision-making authority. The second case discusses archaeological practice when it is limited to a technical role in Cemeteries Act investigations initiated when human remains are discovered. A context of expanded scope characterises implementation of archaeology policy in forest management planning. Scope expansion occurs in relation to the focus of policy, expanded from archaeology to a more inclusive set of cultural heritage values, participation of a wider range of qualified individuals, and the regional focus of planning that draws in multiple stakeholders, including Aboriginal communities.

In the discussion of these cases, I focus on the identification of the actors engaged in the network, how they engage any implementation contests that arise, and the role of policy documents in these contests. The form of the networks is related to the administrative structures imposed by the provincial government, broad social concerns, and the local negotiations over implementation. Delegation to local actors creates the horizontal administrative structure sought by senior management, but in this the provincial agency responsible for archaeology policy is distanced from the local decision-makers. The intermediary documents circulated to local actors play a contradictory role; they give form to implementation, and also provide a basis for contesting the requirements of individual participants without involving the absent provincial actors. Still other documents, including archaeological reports and the recommendations of these reports, especially where they are inconsistent with policy direction, enter these local contests. As actors within already extensive networks, these documents increase instability, and in this reduce the ability of the provincial agency to steer implementation towards their desired outcomes. Instead, outcomes are negotiated by local actors, based on partial, oppositional, or contested knowledge and in response to the local pressures deriving from a range of other interests with whom they must also negotiate.

Finally, in Chapter 6, I discuss the results of this exploration of archaeology policy implementation in light of the theory engaged, and the specific examples derived from the cases. I speak to the relationships that form among actors in these networks, and how local contests, set in the context of broad social considerations affects archaeology policy, its implementation and the outcomes achieved. I consider the potential that this research holds for addressing any future challenges that the implementation of archaeology policy may face, including the question of how indigenous interests can be accommodated in archaeological

practice, especially in the context of land and resource development. The cases, particularly the concern for aboriginal engagement in forest management planning, describe a way forward, but it is one in which the fortunes of archaeological practitioners are on the wane. I also expand the discussion to assess the success of the theoretical and methodological approaches used in the research, and make recommendations for future research.

Chapter 2

Implementation Research Literature

2.1 Introduction

In this chapter, I first review the policy implementation literature to provide a theoretical rationale for treating implementation as a network. Research shows that implementation engages networks of actors in mutually dependant interactions bound by structural and social conditions. I then look more broadly at some of the political and social science literature to identify effective means for exploring the social arrangements that underpin these networks. From this literature, I identify theoretical approaches to networks – how they are formed, maintained, and become stable, and how they eventually either dissolve or become institutionalised within larger networks.

In the first section I review the implementation literature. The early literature describes implementation as reliant on negotiation and compromise among networks of policy actors, and how policies are altered as a consequence of this negotiation. Later implementation research came to be overshadowed by the broader concerns of governance networks and the hollow state, and from this interest in governance came a focus on the managerial control of networks. In two important papers, O'Toole (1997a; O'Toole and Meier 2004) called for implementation researchers to both “treat networks seriously” (1997a) and to consider the democratic consequences of implementing policy through networks (O'Toole and Meier 2004). In the latter paper, the authors suggest that early insights offered by Schattschneider's theory of politics potentially offers the means of moving beyond the managerial focus of most contemporary network research to consider the operation of implementation networks, their social content, and distributional consequences.

In the second section I review Schattschneider's (1960) theory of politics, in which he argues that interests arise and mobilise in order to compete for political success, and that this success is recorded in statute. Schattschneider's theory views politics, including the politics of policy implementation, as consisting of numerous, simultaneous conflicts among interests. The nature and outcome of these conflicts depends in large part on the scope of the conflict; that is, on the number and objectives of the interest groups engaged. In the second section, I extend this theory to better account for the social conditions affecting implementation networks when additional actors are engaged. First, I review aspects of actor-network theory (Callon 1986; Latour 2005) that suggest that local political contests may be seen as

constituent parts of a broader network, in this case the implementation network for regulatory policy. Actor-network theory is also used to argue that the scope of a political conflict expands not only as human interests enter the contest, but also when documents – in which earlier political contests are embedded, are introduced as intermediaries between interests. I then review Agency theory (Eisenhardt 1989; McCubbins, Noll, and Weingast 1987) as a mechanism for describing how networks grow through delegation, and how delegation leads to local contests which in turn contribute to implementation outcomes.

At this point it is important to recognise that the term agency may be ambiguous, since it is a common term used to signify different theoretical concepts depending on the research context. Archaeologists will be more familiar with the term agency in relation to Giddens' structuration theory (Giddens 1979). Here, structure is something normative and immutable that constrains agency, while agency is individual practice or collective experience that refracts and constitutes structure. As Joyce and Lopiparo (2005) clarify, material culture structuration encompasses both the “continued, repeated, stylistically similar actions we recognize as traditions” (2005, 365), and reflects both the structure of culture and the response of culture to the traditions and innovations expressed in agency. To be clear, this thesis is concerned with agency theory, not structuration. Agency is used in reference to the body of theory concerned with the relationship between principals and agents that forms through the process of delegation, and is discussed in greater detail in Section 2.3.3. I also use the word agency to refer to organisational entities, specifically a subset of a government organisation charged with performing particular tasks. Thus, a ministry or a municipal approval authority is an agency.

I review the implementation literature to demonstrate that there is a tradition of describing the role of networks, and of local negotiations among actors in implementation. This is directly relevant to the central topic of this research. Archaeological regulatory policy is based in the view that there is a public interest in archaeological resources, but the implementation literature, by its focus on negotiated outcomes to implementation raises questions of how the stated goals of policy are realised in practice. In archaeological resource protection, the dynamics of implementation through a network may have very real consequences for the effectiveness of the policy, for the form of archaeological practice, and ultimately for the protection of the public interest in the archaeological resource. In addressing these questions, it is important to identify the extent to which the central administrative actors can control for public good outcomes in the face of local negotiations among private interests.

2.2 Policy Implementation and Networks

Implementation is action to achieve policy objectives; means are enacted, and ends pursued. The initial scope of implementation is defined in the written or stated policy, which defines “the arena, the identity and role of the principle actors, the range of permissible tools ... [and] by supplying resources” (Pressman and Wildavsky 1984, 148). More broadly, implementation is “what develops between the establishment of an apparent intention on the part of government to do something, or to stop doing something, and the ultimate impact in the world of action” (O’Toole 2000, 266). The action taken on behalf of the policy is considered distinct from the impact on the policy problem.

Early concepts of policy implementation drew on Weber’s (1946) models of bureaucracy. However, while hierarchical authority and task specialisation within bureaucratic organisations can explain administrative behaviour in implementation, it could not, and did not account for the actions of the regulated. Starting in the 1960s, implementation researchers began to replicate the insights of policy analysts regarding the role and influence external actors exert on the final form of policy. The complexity introduced to implementation by these external actors was shown to limit administrative ability to determine implementation outcomes, or even to some extent, to control for network membership. More recently, implementation research has been overshadowed in the literature by concern for governance networks, and the management of the hollow state. However, as I discuss below, this interest in network governance has refocused some research on the local negotiations arising from the delegation or assignment of policy responsibilities to private or local actors influences implementation outcomes.

While I present this literature as a linear development, it is not the case that network governance concepts emerged from implementation studies. They are related, however, through a combination of historical factors. Early implementation studies assumed that implementation was “an essentially top-down, administrative and hierarchical follow-on process” (Barrett 2004, 252), a view drawn from Weber (1946) and Taylor (1916). Concerns about policy effectiveness and implementation shortfalls in the 1960s and 1970s led to implementation studies that examined the shortcomings of bureaucratic rationality, as well as the influence of negotiated outcomes and bureaucratic discretion on implementation. New public management in the 1980’s, sought to re-establish central authority in implementation, demanding that implemented outcomes be measured against clearly stated policy objectives (Aucoin 1990; Hood 1991; 1995).

The ideological underpinnings of new public management also led to calls for increased accountability by bureaucrats, public sector reform, and the introduction of market competition for many public services (Barrett 2004). Questions of how to manage this public-private mix led to a renewed focus on the negotiated nature of policy implementation, concluding that the state could not control so much as steer (O'Toole 1997a; Rhodes 2000). Thus, while new public management was successful in introducing business management models to the administration of state bureaucracies, it was not as successful in increasing central authority over implementation. Instead, by expanding the range of participants, and multiple allegiances among these actors, the scope of the negotiations accompanying implementation expanded, ultimately destabilising implementation through additional complexity (Barrett 2004). In this way the dominant trends in implementation research seem to have swung between description and prescription, and between calls for strong central authority, and more discretionary, negotiated approaches (Aucoin 1990).

Overall trends in implementation studies seem to swing between opposing research poles: prescriptive and descriptive, or local and global interests.⁸ Nevertheless, research over the past forty years has an abiding interest in the role of local actors in implementation networks and their influence on policy outcomes. This supports the focus on network relationships underpinning the exploration of archaeological regulatory policy used in this thesis. Archaeological policy is implemented not only by the agency responsible for the policy itself, but by a network of archaeologists, developers, planners, the public, and descendant populations. Implementation outcomes are affected by policy as well as professional norms and a need to be financially profitable. In networks, I find a methodological focus that admits consideration of the local and social conditions that contribute to policy outcomes, and allows the research to avoid restating normative positions of how archaeological sites and practice should be regulated.

2.2.1 Implementation Literature

As a distinct field of study, implementation research began to emerge from the broader fields of policy and organisational research (cf. March and Simon 1958) in the early 1970's with a major study by Pressman and Wildavsky (1984; cf. Lynn 1996; O'Toole 2000). This work, along with work by Derthick (1972), Bardach (1977), detailed the organisational aspects of policy failure (Sabatier 1986; Lynn 1996; O'Toole 2000). This research consisted primarily of case studies that were focussed on practice, and did not develop any general theory of

⁸ In a relatively early paper Menzel (1987) noted that there was consensus that an implementation problem existed, there was no coherent direction in resolving or studying the problem.

implementation (Bardach 1977; O'Toole 2000). In this first generation of implementation research, the documentation of failures became the norm, "to the preclusion of [research into] the workaday successes" (DeLeon 1999).

This early research provided insights which are descriptive, yet insightful. In response to questions of why policy failed, a number of key findings were made. Vague policy objectives were seen to increase operator discretion (Lipsky 1980). An increase in the number of actors involved in implementation increased complexity by introducing differences of interpretation, and, diminished the ability of any one actor to coordinate actors (Barrett 2004). Discretion and complexity leads to "unforeseen consequences"⁹ to policy, and over time policy that evolves in implementation (Pressman and Wildavsky 1984, 223). This evolution, an outgrowth of the ongoing negotiations required for coproduction of policy outcomes, was seen as disconnecting the stated intent of policy and the operational aspects which change to reflect emergent contextual conditions. These contextual conditions include actors outside of government who, through the negotiations leading to their participation, exert considerable influence on the nature and focus of implementation. Thus, for most administrators "it is intelligent to ... adjust programs to face [these] facts" (Pressman and Wildavsky 1984: 204).

A second generation of implementation research was more comparative and analytical, and sought to resolve research issues such as appropriate sample size and the identification of useful analytic variables (Sabatier 1986; Sabatier and Mazmanian 1980; Goggin 1986). One of the principle debates through this early phase concerned the research perspective: should research be top-down, starting with a policy decision by central government then tracing the actions of the implementing actors (Sabatier 1986, 22),¹⁰ or should it proceed from the 'bottom-up', beginning with front line operators and tracing these actions to their policy origins (Elmore 1978; 1980; Hjern and Porter 1981; Hjern 1982). By acknowledging the complexity of implementation, this second generation led research away from the earlier models of command chain implementation based on a Weberian bureaucratic ideal (Sabatier 1986), and led to formal recognition of the multi-actor nature of implementation (Sabatier 1986; O'Toole 2000).

⁹ "Policies with unforeseen consequences are being implemented daily. The responsibility for generating expected results is in the hands of implementers, yet the very act of implementing a policy may result in its undesigned consequences. Are these consequences good or bad? That depends on how much we value spontaneity" (Pressman and Wildavsky, 1984, 223).

¹⁰ Pressman and Wildavsky (1984) is an example of the top down approach, while Lipsky (1980) is an example of the bottom up approach. DeLeon (1999) tends to believe that implementation research was an attempt at seeking 'structural' reasons for policy failure that avoided blaming either those who crafted the policy, or those with operational responsibility. This suggests that both perspectives were incorrect, in their separation of political action from policy operation.

The top-down approach viewed implementation from the perspective of managerial leverage, the so-called “veto-points” of Pressman and Wildavsky (1984). This approach sought to identify “specific variables and causal relationships” in order to build a “causal theory” of implementation that “makes predictions possible” (Sabatier 1986, 23; 37). From the top-down perspective, successful implementation is a matter of conformity with directives issued by state actors (Barrett 2004). While this idea of directing conformance seems to underestimate the specification and policing costs required to manage this approach (Mitnick 1975, cited in Waterman and Meier 1998), it does anticipate subsequent interest in steering governance networks. Top-down studies are viewed as highly prescriptive and directed to developing better mechanisms for managing implementation to meet proposed policy outcomes.

The bottom-up approach was largely descriptive, with research directed to mapping the multiple relations of implementing actors which developed when they operated within a complex context of policy, operator discretion, and managerial direction (Sabatier 1986). Critics of this approach saw in the bottom-up approach a failure to develop “much of a substantive theory and thus is poorly equipped to make predictions” (Sabatier 1986, 37). Also, in the absence of a guiding theoretical foundation, researchers tended “to regard virtually *any* set of operating relations as necessary, perhaps even optimal” (O’Toole 2000, 275). Nevertheless, the bottom-up implementation research recognised that implementation occurred in the context of complex negotiations among actors, whether based in operator discretion (cf. Lipsky 1980), or unforeseen circumstances (Pressman and Wildavsky 1984).

The quantitative focus of the top-down approach provided an opening for the new public management (NPM) movement, which sought to re-focus public administration and policy research onto questions of managerial reform along the lines of private-sector business models (Aucoin 1990). Research was directed to ways of managing implementation to conform to policy targets. Couched in rhetoric of reinventing government, new public management studies addressed ways of reducing operator discretion through increased managerial control, results-based planning, and automation (Hood 1991; 1995). The public administration discourse was replaced with the language of business management: “planning and policy making became imbued with concepts of strategic management, and concerns about the process of implementation were superseded by emphasis on change management and performance targets” (Barrett 2004, 258).¹¹ The problems of implementation were to be

¹¹ Barrett also credits NPM with the ideologically driven separation of policy-making and operations in bureaucratic administration (Barrett 2004, 258).

solved through the use of measurable objectives, adequate resources, and the central control of implementing agencies (Barrett 2004, 258).

For many researchers, this managerial approach aggravated other concerns. First, replacing public with private actors and imposing stricter controls over discretion, did not alter the fact that implementation of policy required participation of actors outside of the control of a hierarchical authority. Tightening of central control threatened the “important collaborative and network links needed for implementation” (Barrett 2004, 259). Second, with managers responsible for meeting specific targets, they would be less inclined to seek compromise among competing interests (Barrett 2004), and more likely to pursue a limited subset of implementation targets (Wilson 2000).

Notwithstanding the theory-building focus of the second generation, research continued to be “long on description and short on prescription” (Elmore 1980, 601), and produced a “bewildering array” of variables, models, and research designs (O’Toole 2000, 264; 281). This led to a call for a third generation of implementation research, more scientific than previous work, and better linked to clear empirical theory (Goggin, et. al. 1999). Ten years on, consensus on either method or theory was elusive. Quantitative methods seeking predictive theories of implementation outcomes (O’Toole 2000), and explaining learning in the policy process (O’Toole 2000; Sabatier 1991), are dominant; however, a number of researchers support an increasingly empirical approach.

DeLeon (1999) resists the call for more data and statistical analysis, arguing instead for improved case study research. He suggests that the complexity being observed in the quantitative studies confirm “what the early implementation scholars apparently knew best ... that the complexity of the implementation process is more than daunting, it is apparently impenetrable (if by impenetrable, we mean ‘unmodelable’ and ‘lacking predictive powers’)” (1999, 319). DeLeon further argues that there is no benefit to causal theory “that strives for Pareto optimality with a general neglect of the political world, which does not have equivalent optimal conditions” (1999, 328). The market model, and its insistence on a strong central authority, is held to be inapplicable to questions of policy implementation in the face of democratic realities (DeLeon 1999; Stone 1989). Clearly, the conflicts of the second generation continue in the third.

2.2.2 Focus on Networks and Governance

In retrospect, the networked nature of public administration appears to have been long recognised by public administration theorists.¹² This early literature includes public policy research by pluralists reporting network patterns in studies of issue networks (Hecló 1978), iron triangles (Ripley and Franklin 1981), private sub-governments (Freeman and Stevens 1987), resource dependency theory (Rhodes 1981), and advocacy coalitions (Sabatier and Jenkins-Smith 1983). These studies considered the political effects of external actors on policy formulation by the state, rather than the implementation effects of these groups once the form of the policy was established. Pressman and Wildavsky (1984), with a specific implementation focus articulated the need for participation by multiple state and external actors for successful implementation.

Recognition of networked relationships among policy actors may be traced even further back than these early views. Nascent expositions of network effects may be found in studies of capture and cooptation (Selznick 1949), and political conflict (Schattschneider 1960). Selznick's *TVA and the Grassroots* (1949) was primarily focussed on the pragmatic and strategic concerns facing local public administrators working to implement federal policy. The role of dominant local interests external to the state led to Selznick's exposition of two strategies of power: capture and cooptation. Cooptation in particular is a significant element in the formation and stabilisation of networks. By combining the interests of a dominant external group with those of the regulatory agency, the success of implementation is more certain, even as the primary focus of implementation becomes corrupted or altered to benefit a private interest.

In *The Semi-Sovereign People*, Schattschneider (1960) acknowledges the complexity of interaction among actors involved in politics in his view that politics is based in conflict among interests. Conflict is adjudicated by the state with the victory by one interest over another being recorded in the form of policy. Schattschneider also views the state as holding private interests, making it one among many special interests. The state is both arbiter and competitor, and develops its position through a responsive regard to special interests and what it defines as the public interest. The opportunity for abuse that arises from this dual role is checked only by the potential that a competing interest may attempt to destabilise the conflict by drawing in other actors and expanding the field of conflict.

¹² Perri 6 (2004) writes that issues of 'joined-up' government can be traced at least as far back as policy debates in Britain in the 1830's.

Notwithstanding these early network perspectives, the primary context of current research into implementation networks is found in the literature on networked public administration, collaborative management, and policy networks.¹³ It is now generally acknowledged that contemporary public administration exists in a “complex ecology of institutions, actors, rules, values, goals ... and cleavages” (Olsen 2005, 7), with effective implementation within this ecology reliant on networks of cooperating interests (Arts and Tatenhove 2005). This research posits networks as a response to instrumental concerns over complexity in the programme environment, and political and resource demands (O’Toole and Meier 2004; Rhodes 2000; 2006).

Public administration and policy research are primarily focussed on governance; both governance through networks, and the governance of networks (Rhodes 2006).¹⁴ The first is based in the normative belief that clear policy direction at the outset and hands-off management in performance will lead to the evolution of functional networks that meet societal and policy requirements. Networks in this view are seen as capable of being both self-governing and socially beneficial. Network evolution arises through a “muddling through based on provisional knowledge and diverse, local policy responses to contested definitions of problems” (Rhodes 2000, 361). The second view is that, while networks are inevitable in implementation, achieving the policy outcomes sought by the state requires an assertion of authority on the part of the central actor by which the network may be steered (O’Toole 1997a; Huxham and Vangen 2005). This managerial approach may favour dominant interests, but the greater concern among researchers is that it seems to run counter to the market ideology underwriting the notion of self-governing networks (Olsen 2005).

This research has identified the benefits of governance through networks as including increased effectiveness, especially when “implementation involves haggling” (Rhodes 2000, 355). Bargaining among implementing actors promotes “enriched democracy in a sophisticated polity”, especially when placed in contrast to the worst of the hierarchical and market based forms of government (Greenaway, et al. 2007, 718). However, haggling does not necessarily protect the public interest; those actors who have the resources to engage in negotiation may have been included for private or strategic reasons. For example, inclusion in a network can be a strategy for containing actors who otherwise would interfere with

¹³ In the public policy and administration literature networks are defined in two ways. The governance literature views networks as the mix of state, market and civil society (Rhodes 1997), while the implementation literature sees networks more generally as arising from negotiations and interactions among local actors (Arts and Tatenhove 2005, 345).

¹⁴ Governance “*is* a set of interconnected events and communicating people ... characteristic of much policy making in advanced industrial democracies” (Rhodes 2006, 434).

implementation (Selznick 1949; Pressman and Wildavsky 1984).¹⁵ It is also clear that network actors pursue private or special interests in negotiation. Network participation is contingent on the overlap between their interests and policy intent (Rhodes 2006). The notion that a network in which all members benefit may in fact be a closed network is not new (see Hecllo 1972; 1978; Ripley and Franklin 1981; Mulgan 2003). Networks in which select actors (those with resources) haggle among themselves to ensure conditions of mutual benefit (Rhodes 1981; 2006), must remain closed to change to reduce the destabilising potential of introducing new actors (cf. Schattschneider 1960; Meier 1997).

Questions of democracy and the balance of power among network actors have led researchers to enquire about the democratic consequences of network governance (O'Toole 1997a; 1997b; Peters and Pierre 1998; Considine and Lewis 1999; DeLeon 1999; Ansell 2000; Bogasson and Musso 2006; Klijn and Skelcher 2007; Klijn 2008). There has been similar interest in the "hollowing out of the state" (Milward and Provan, 1993; Rhodes 1994), where state functions are implemented by local actors (cf. Vincent-Jones 2002; Bogason and Musso 2006), and "joined-up government" (6 2004) where these functions are distributed horizontally among state, local and private actors.

At issue is the concern that in networks the central role of the state is diminished. The lack of central accountability arises in the "process of continuous exchange between governors and governed" (Stoker 2006, 53), typical of networks. Without the state at the centre coordinating this continuous exchange, "accountability disappears in the interstices of the webs of institutions that make up governance" (Rhodes 2000, 77). Accountability disappears along with authority, since "whenever work is delegated, the delegating person loses some control ... When this delegation includes administration of rules, discretion in application of the rules is also delegated" (Hupe and Hill 2007, 281).¹⁶ Diffuse responsibility leads to "buck passing [which] is much more likely in networks because responsibility is divided" (Mulgan 2003, 211, cited in Rhodes 2006, 439). So in networks, accountability rests with the network members (Mulgan 2003), a condition that has led John Dryzek to note that "'speaking truth to power' becomes very difficult when power itself is dispersed and fluid" (2006, 199-200).

¹⁵ In this way network administration may suffer from the same shortcomings as policy communities: "a policy community has ... a limited number of participants with some groups consciously excluded; frequent and high-quality interaction between all members of the community ...; consistency in values ... the ideology, values and broad policy preferences shared by all participants (Rhodes 2006, 428).

¹⁶ The principal-agent problem, where moral hazard ensues from an assignment of responsibility from a principal to an agent. Moral hazard is found in the information asymmetry between principal and agent which creates an opportunity for the agent to cheat or shirk this responsibility up to a limit beyond which the principal would become aware of this behaviour (see Waterman and Meier 1998).

But this simply returns us to an earlier concern: network membership is limited, and it is “common for networks to be closed to public scrutiny, a species of private subgovernment” (Mulgan 2003, 225, cited in Rhodes 2006, 440). The increased discretion conditioned under divided authority increases the potential for competition among priorities, which, in turn, contribute to implementation failure or unintended outcomes.¹⁷ Here, Pressman and Wildavsky’s (1984) observations regarding joint action in policy implementation arise once more: small variances in support for a policy among implementing actors holds significant consequences for the final outcome. As the number of negotiated actions is increased, “the possibilities for consensus are diminished, and unexpected [outcomes] ensue” (Pressman and Wildavsky 1984, 220).

Concern for these unexpected outcomes has led other researchers to consider means of network governance or steering. The idea of collaborative approaches to governance have emerged from the notional self-governing network, based in “relations of trust” (Bevir and Rhodes 2003, 55), rather than a central authority. But without an authorised actor coordinating this trust, networks hold even greater potential to produce outcomes that are beneficial to private interests rather than intended outcomes. While “networks bring together many actors in policy negotiation, increasing the acceptability of that policy and likelihood of compliance” (Rhodes 2000, 360), this does not necessarily address Miliband’s (1969) concern that negotiated implementation leads to policy that is formulated in a manner primarily sympathetic to the interests of the regulated, or the political interests of the state.

Rhodes (2006) describes three means for controlling networks, each of which comes with a cost. These are: 1) instrumental control; 2) institutional change, and; 3) control through interaction. Instrumental control returns hierarchical authority to the network. The risk here is the potential for “recalcitrance from key actors” (Rhodes 2006, 432), since even “gentle pressure relentlessly applied is still a command” (Rhodes 2000, 360). Institutional change requires incremental change toward joint problem solving, but this incremental change is susceptible to all of the concerns of direct negotiation over implementation. In particular, the “incentives, rules, and culture [of a network] are notoriously resistant to change because networks privilege a few actors, who equate their sectional interests with the public interest ... [and within networks] they are well placed to protect [these] interests” (Rhodes 2006, 433). Control through interaction is a form of negotiation, which can lead to compromise or

¹⁷ Consider Susskind’s (2006) negotiated approach to policy development, in which he advocates long term negotiations which begin by seeking mutual gains, and initially avoiding issues centred on deeply held beliefs (cf. Salmon 2000; Rein 2006). This could easily produce private outcomes if the initial membership of the network engaged in the negotiating represented only a few private interests.

satisficing¹⁸ (Rhodes 2006, 433). Furthermore, negotiation is also a strategy in bargaining for advantage, making it unlikely that cooperation would be the primary motivation for most external interests. As Galston (2006, 544) notes, “policies founded on the premise that individuals are principally motivated by civic altruism are bound to fail”, as powerful actors will only act within the bounds set by self interest, authority, contract, or constraint.

Nevertheless, a significant number of public administration and implementation researchers see it as the state’s prerogative to steer networks towards outcomes that support state priorities. For example, O’Toole recommends a “practical agenda” for public administrators dealing with networks, which extends beyond simply learning negotiating skills and mapping a hierarchical management model onto a network of actors they do not directly supervise and cannot effectively monitor (1997a, 47-48). In addition to determining the extent and function of the network, administrators are advised to build trust with network actors, and to improve the centrality of the administrator’s agency through the use of information and support for preferred choices. More significantly, O’Toole recommends administrators “act to *alter* the network structure toward a more favourable array ... shift network membership toward more supportive coalitions; locate key allies ... alter agreements among parties ... [and], act to limit uncertainty and complexity” (O’Toole 1997a, 48). In this, it appears that O’Toole is calling for the state to declare its position as a special interest within the network.

This concern for negotiated outcomes has led some researchers to recommend an additional level of regulation – a “regulation of self-regulation”, or “metagovernance” (Sorensen 2006, 99). In networks, the fundamental agreement between the governed and those who govern is unilaterally altered by distributing “governing capacity to relatively autonomous public institutions and to networks of public and private actors” (Sørensen 2006, 99), leading to a “fragmented, functionally differentiated political system” (Sørensen 2006, 99).

Metagovernance “is an indirect form of governing that is exercised by influencing various processes of self-governance” for autonomous self-governing networks (Sørensen 2006, 100). The theoretical focus of metagovernance is a “hands-off” approach to the network in which state seeks only to persuade actors in terms of operational process (Sørensen 2006; Sørensen and Torfing 2005; Rhodes 2000; Bogason and Musso 2006).

In this “new style of hands-off management” the state establishes the framework for network functioning, but maintains “an arm’s length relationship” (Rhodes 2000, 356). The state acts as referee in this “decentralized negotiating style which trades off control for agreement”

¹⁸ Finding an adequate solution, rather than a preferred or ideal solution to a problem.

(Rhodes 2000, 360). Central government action is simply seen as antithetical to networks unless the state accommodate the interests of network actors and accept the outcomes of negotiation, “agreeing with the objectives of others, not just persuading them [of the state’s position] or resorting to sanctions when they disagree” (Rhodes 2000, 360). But again, as with governance networks and implementation networks, the self-regulated network “can also be confounded by ... political context in which they are embedded ... So, whatever the governing structure, there is a high probability that it will produce unintended consequences because of political context, inappropriate conditions, and the unpredictable impact of social knowledge” (Rhodes 2000, 355).

2.2.3 Summary – Implementation Networks

Implementation networks are both social and complex, as reflected in a burgeoning literature that acknowledges the use of “multiple linked social actors, often multiple organizational actors, to achieve collective purposes” (O’Toole and Meier 2004, 681). However, most researchers remain focussed on issues of network management, performance measurement, and the development of empirical theory (O’Toole and Meier 2004). Management is not apolitical, and this managerial approach to networks may reflect a general “blindness toward the distributional consequences of network actions” (O’Toole and Meier 2004, 681; 683; cf. O’Toole and Meier 2006).¹⁹ The drive to make networks more efficient and manageable is not matched by any concurrent effort to make them more democratic than the hierarchical or market alternatives (Sorensen and Torfing 2005).

Active network management requires a manager “that is willing to actively shape a network through manipulation of the collective agenda and playing politics” (Huxham and Vangen 2005, 222-227). In public administration O’Toole and Meier (2004) see this type of strategic action by the state as a “dark side” of networks (O’Toole and Meier 2004, 681). Dark side strategies include distancing dominant network actors from politically volatile policy issues using diffuse networks, steering implementation by limiting participation, and cooptation. The use of networks to respond to complex social conditions may lead to the strategic use of complex networks, both to obscure policy intent, and to “tilt the table” (O’Toole and Meier 2004, 684; cf. Schattschneider 1960).²⁰ But limiting complexity can also reinforce the

¹⁹ “Whereas democratic legitimacy is an inherent feature of the rule of government in parliamentary democracy, there is no semblance of any guarantee that network governance will be democratic. It is not even clear how we construct relevant criteria for assessing the democratic performance of a governance network. Here lies an enormous question ... governance networks might prove to be an efficient means for governing society under certain conditions, but are they democratic?” (Sorensen and Torfing 2005, 207).

²⁰ Although O’Toole and Meier’s article is titled “Desperately Seeking Selznick” (2004), they make a strong case for researchers to also return to Schattschneider’s 1960 book, “The Semi-Sovereign People” (1960) as a

dominance of some interests. As Mills (1956), Schattschneider (1960), Miliband (1968), and others have previously observed “networks are more likely to be populated by actors and organizations that already possess political resources” (O’Toole and Meier 2004, 685). Loading a network with sympathetic actors is the best way to ensure that outcomes desired by these actors are achieved, but this may come “at a price” (O’Toole and Meier 2004, 685). Among the costs are informal cooptation (O’Toole and Meier 2004; cf. Selznick 1949), where state actors or others “sacrifice the primary agenda of policy ... in the interests of survival” (O’Toole and Meier 2004, 684).²¹

Understanding implementation “requires recognition of the multi-actor character of policy action” (O’Toole 2000, 266), the social context in which implementation takes place. The state is not the sole actor in implementation; the consent of other implementing actors is necessary, and is gained through reciprocal exchanges (cf. Edelman 1960; 1964; Miliband 1969). Implementation, then, is “a point of departure for bargaining among implementers” (Pressman and Wildavsky 1984, 166). This bargaining occurs within “complex chains of reciprocal interaction” (Pressman and Wildavsky 1984, xxvi), where central actors “trade off control for agreement” (Rhodes 2000, 360). As with all political contests, there is no certainty that negotiation will be free or fair (Miliband 1969). It may be coordinated by the state, but “cannot be coerced” (Pressman and Wildavsky 1984, 134). Coordinating matters such as compliance through negotiation may mean that “policy may be modified, even to the point of compromising its original purpose” (Pressman and Wildavsky 1984, 134; cf. Miliband 1969). Rhodes (2000, 355) considers this a normal condition of networks, going so far as to state that a regulator’s efforts to maintain focus on original policy intent may confound negotiations and coordination within implementation networks.

Negotiations do not precede implementation, they are ongoing and continuous. In multi-actor implementation, actors external to the state are “more than passive recipients of publicly initiated effort; they are among the parties who have to be active toward implementation, through coproduction or in some less direct fashion” (O’Toole 2000, 266). Implementation is

starting point for new thinking about research into implementation networks. I believe that there is value in this suggestion, perhaps more than the authors themselves anticipated. In this theory of politics, Schattschneider describes how politics embed conditions of simultaneity and constant conflict which lead to fluid social conditions in which socially mediated ‘structures’ are in a state of continuous re-creation. If researchers were to ask how these ‘structures’ can be fluid and constantly being recreated, the answer could well be that the researchers themselves have frozen the fluid social in order to study it *post mortem*.

²¹ Participation in rule-making is a more effective strategy than opposing change. Golden (1998) has shown that opponents new regulatory rules are less likely to gain concessions from state agencies, while ‘supporters’, even when they are acting to protect narrow special interests, are more likely to have their positions reflected in the final rules. Thus, participation in advance of hearings or behind the scenes would allow special interests to be seen as supporters of a public interest which coincides with their own private interest (cf. Schattschneider 1960 [1983]).

a network of local negotiations in which “each actor deploys its resources [political, financial, and informational] to maximize influence over other players without becoming indebted to the others” (Rhodes 2006, 431). These calculations of cost and indebtedness are local, and rarely consider the original policy intent. This shifting ground of coproduction brings us back to Pressman and Wildavsky’s wry observation: “Implementation is no longer solely about getting what you once wanted but, instead, it is about what you have since learned to prefer until, of course, you change your mind again” (Pressman and Wildavsky 1984: 234).

In the recent research contests over how implementation or governance networks should be viewed several insights have been revealed. First, the implementation and governance literature has shown an abiding interest in the role of local actors in implementation networks and their influence on policy outcomes. The relative influence of local actors over implementation outcomes varies according to the number of actors involved, the extent to which their private or special interests overlap with policy intent, the overall visibility of these negotiations, and the costs the administrative agency may be willing to assume for specification and monitoring implementing actors. For the research described in this thesis, the focus is correctly set on the network of archaeologists, developers, planners, the public, and descendant populations engaged, in some way or another, with implementing archaeological policy. That is, the research, to the extent that I can identify actors, and their interests and objectives regarding the policy it may be possible to identify the social and political forces acting on policy to generate particular outcomes.

2.3 Schattschneider’s Theory of Politics and Implementation Contests

In this section, I review Schattschneider’s (1960) theory of politics, and then extend this theory to better account for the social forces active in policy implementation contests. My purpose in this review is to develop theoretical support for my exploration of the local social exchanges and negotiations that give rise to particular outcomes in the implementation of archaeological policy.

Schattschneider’s (1960) theory of politics develops the argument that private interests arise and mobilise in order to compete for political success, and this success is recorded in statute. Politics, including the politics of policy implementation, consists of numerous, simultaneous contests among interests. There are several key insights to this theory, including: 1) that interests arise in response to a pre-existing bias; 2) that the strategic management of the scope of conflict is critical to success; 3) that scope is determined by practices of inclusion and

exclusion; 4) that the outcome of these political contests is at best a fleeting stability, and; 5) new contests may arise which absorb and redefine earlier contest outcomes. However, this theory is limited in its original exposition to political conflict among large, identified actors seeking political resolutions to conflict in the form of statute, or gaining public office.

My interest is to extend Schattschneider's theory beyond overt political conflict between identified actors, and apply it to policy implementation. I propose to extend this theory to policy implementation as a basis for exploring the social condition of implementation networks, and the local negotiations required when interrelated actors are engaged. In his exposition of the theory, Schattschneider acknowledges the social and strategic aspects of politics, and my interest is to extend the logic used in the theory to other types of contests that may arise in implementation. If "the quarrel in politics is as apt to be about the means as about the ends", and deals "largely with procedure rather than substance" (Schattschneider 1957, 936), then policy implementation, particularly when it engages a network of disparate actors, is eminently political. In my application, implementing actors may contest both the action required, and their responsibility for this action based on their private interests negotiated in the context of local social conditions. That is, the actors contest policy and their roles in implementation within a dynamic local context, rather than by seeking change to the policy itself. These local contests are of a wide variety, and may be based in representation through delegation, or cooptation, or through the exploitation of one conflict as a means for suppressing another, or for exclude other interests from negotiations.

In extending Schattschneider's theory to account for the social dynamics inherent in implementation, I draw on insights from actor-network theory (Callon 1986; Latour 2005). In actor-network theory, all actors, whether human or non-human, individuals or organisations are also actor-networks, and exist through their social relations rather than being seen as pre-existing structures. Actors are formed through their interaction with other actors, and as such represent a network of relations to other (earlier) actor-networks. In this, policy instruments circulated as a means of directing or controlling negotiations also act; they represent a different set of interests and objectives than the actors they are meant to mediate between, and in analysis, can be decomposed to reflect the complex interactions and normative assumptions they represent. Policy documents with contradictory content may be mobilised in support of different positions of policy requirements and in this may be seen to be negotiating implementation independently of the human actors who initially put them into circulation within the implementation network. This perspective also encourages exploration of organisational action by considering the actors within the organisation both in terms of their

defined roles as well as in the context of other network associations. Managers, for example, may be analysed in a different context than front-line bureaucrats holding technical or subject expertise.

Extending Schattschneider's theory of politics using insights from actor-network theory facilitates the exploration of the complex network relations that arise in policy implementation. For archaeological policy specifically this raises a number of questions such as who the network actors are, how they are engaged in the network, and what their interest is relative to the stated objectives of archaeological policy. Questions also arise of whether the network relies on the exclusion of actors or interests, and what normative assumptions exist, but are operationally invisible to the actors engaged.

2.3.1 Schattschneider

In this section, I review Schattschneider's (1960) theory of politics. Taking the lead of O'Toole and Meier (2004), I consider how this theory may offer one approach to moving beyond the managerial focus of most network research, and to highlight the social content and policy consequences of implementing policy through networks of actors. I note here that I prefer to use the term contest to conflict in applying this theory, as it signals not only the challenges raised between interest in implementation, but also the contested nature of many underlying concepts which gives rise to the political contests.

Schattschneider (1957; 1960) sees politics as inherently strategic. The primary strategy engaged by political actors is the exploitation and suppression of conflict to achieve public or private objectives. The dynamic of political conflict is such that contests can emerge over objectives, as well as the means of achieving these objectives (Schattschneider 1957). The dynamic condition of politics makes it "sensitive to changes in the dimension and nature of the conflict ... specifically ... that relatively slight changes in the intensity, visibility, direction, and scope of conflict are likely to produce great consequences" (Schattschneider 1957, 937). Intensity relates to the level of public involvement, while visibility concerns the awareness that individuals or groups have for the consequences of a political contest (Schattschneider 1957). In terms of the latter, it could be argued that developers and foresters have an acute awareness of the costs attending archaeological assessment relative to their overall profit from their enterprise; forestry, with smaller profit margins than land development, will be more acutely concerned with the cost of archaeological assessment than a large property developer might.

My use of Schattschneider's theory of politics will focus primarily on the other two dimensions: direction and scope. The concept of direction related to the wider social trends that provide context for political contests. Not all contests become public for two reasons: different conflicts interfere with each other, and more intense conflicts displace those that are less intense (Schattschneider 1957; 1960). Contests interfere with each other when they demarcate lines of "cleavage" in society: when society is divided in one way on one issue, and another way on a different issue, it becomes difficult for any representative to mobilise broad support for their cause.²² But where these lines of cleavage coincide, they act to reinforce, rather than suppress contests that then become prominent. The intensity of conflicts may accentuate the cleavages also, with more intense contests obscuring smaller, less intense contests. I return to this idea in Chapter 5, where I suggest that the contest in forest management planning centered on aboriginal traditional and Treaty rights in land use planning, displaces contest attending archaeology policy. Displacement occurs because lines of cleavage that divide individuals, also recombine them along different lines; contests are possible over an infinite number of issues, but those that prosper in politics "all depends on what we want most" (Schattschneider 1957, 940; 1983, 66). Social cleavages represent the priorities of the participants in the contest.

Scope relates to the socialisation or privatisation of the political contest, and concerns the number of interests engaged in the contest, how the public is mobilised in a conflict, and how the parameters of the contest are defined. Groups that organise politically form in relation to interests, or a political bias, resulting in membership requirements that include some and exclude others (Schattschneider 1960). The interests represented by groups, and the ways in which group memberships are constructed, and the stories used to mobilise support (cf. Stone 2002), also define the range of issues to be contested: "some issues are organised into politics while others are organised out." (Schattschneider 1983, 69). The political contests aimed at gaining advantage in policy or implementation exist in a fluid social context, governed in part by the scope of participation. One interest may see its aspirations undone through appeals by another to the wider public, since making any conflict more public upsets any prevailing balance of power (Schattschneider 1983, 11; 37). Scope expansion increases the number of interests involved in a conflict, and the scope of a conflict influences its outcome (Schattschneider 1983, 6). Scope is thus important strategically; dominant interests will seek to restrict the scope of conflict, while an expanded scope facilitates change by introducing

²² An example might be contests over employment insurance reform and tax reduction. For business owners, employment insurance may guarantee that a trained work force is available to them as business cycles fluctuate. Supporting this insurance means that some tax levies are required, and this may cancel out or ameliorate their concern for tax reduction.

new actors, powers, and alliances.²³ That is, any conflict between A and B will change when C becomes involved “no matter what [C] does” (Schattschneider 1983, 2). This occurs regardless of the relative power of A and B, since the involvement of C makes the conflict more complex, and complexity destabilises (Schattschneider 1960). This leads to the proposition that “when the scope of conflict is [expanded] ... there is a great probability that the original contestants will lose control of the matter” as new participants are introduced (Schattschneider 1983, 11).

Control over the scope of a contest is a strategy for determining the stability and predictability of outcomes. A dominant interest that benefits from the *status quo* will seek to control the scope of the conflict, by limiting publicity and restricting the number of interests engaged. Their challengers, on the other hand, will seek to expand the scope of the contest, either by redefining it in broader terms, or by drawing in additional interests or engage public sympathies. In seeking political success, organisation may include strategic consideration, such as increasing the visibility of their position by aligning it with broader social movements (Schattschneider 1983, 74). Strategy, in Schattschneider’s theory extends beyond simply forming teams. Agenda control can serve to limit the entry of new participants to a conflict (cf. Kingdon 1984), but so also can procedural complexity: “procedures which lend themselves to delay and structural complexities which postpone decisions tend to socialise conflict by providing occasions for the kind of agitation that is likely to increase the scope of conflict...” (Schattschneider 1957, 941). Scope, in combination with the presence of broad social cleavages, holds the potential to socialise contests. “Sectionalism” and local contests tend to have restricted scope, while “horizontal, national cleavages inevitably extend the scope of conflict” (Schattschneider 1957, 942), and it is in this way that “the direction and scope of cleavages are related” (Schattschneider 1957, 942).

The mobilisation of bias also defines interests broadly as public, private, or special interests (Schattschneider 1983, 170). An interest understood to be shared by “substantially all members of the community” (Schattschneider 1983, 23), is a public interest. A public interest may not benefit all members of society equally, but is defined in policy “in spite of the fact that there may be some outlaws” (Schattschneider 1983, 24). Private interests represent a focussed interest shared by few members of a community, and may be directed to “some version of the common good” (Schattschneider 1983, 26). A special interest benefits only a specific group, which promotes their interests, and may actively “exclude others and may be adverse to them” (Schattschneider 1983, 23). These interests are sometimes difficult to

²³ The ‘privatisation’ or ‘socialisation’ of conflict (Schattschneider 1983, 11).

discern in conflicts because representing a special or private interest as beneficial to the wider public good is an effective strategy for gaining political advantage. In addition, the state's role in defining the public interest blurs the distinction between the public good and the state's private political objectives. In such conflicts, Schattschneider sees the public interest relegated to a "no-man's land" (Schattschneider 1983, 120).

It is possible to identify the implications of Schattschneider's theory of politics to the study of policy implementation networks. Policy, in Schattschneider's view, marks the point where the state "ratifies the victories of the successful coalitions [by recording] the terms of the surrenders, compromises, and conquests" (Schattschneider 1983, 43). But these victories are transitory, with implementation engaging actors in new contests between "those seeking to put policy into effect and those upon whom the action depends" (Barrett 2004, 253). These contests are continuous in Schattschneider's theory: interests that prevail in one contest cannot be assured of continued success as the conflict evolves. The successful interests must remain vigilant for potential challenges from new stories that reframe past conflicts, or that may introduce new interests and expand the scope of conflict. Thus, within implementation networks, a range of contests may be expected.

Local implementation contests which tend to have restricted scope of participation may pursue local objectives, or seek to reframe policy and draw in additional participants in light of other broad social cleavages which contextualise local practice (Schattschneider 1957, 942). The administrative complexity, including rules for compliance may further socialise implementation (Schattschneider 1957, 941), reducing the ability for the network to achieve the original policy objectives. In this sense, new policy direction, documents, as well as documents derived from earlier implementation-driven research, may be used in determining local implementation responses. Finally, implementation networks for policy direction in one area may be faced with new challenges resulting from a "flank attack by bigger, collateral, inconsistent, and irrelevant competitors for the attention and loyalty of the public" (Schattschneider 1983, 66). These competitors may emerge from alignments beyond the original policy contest, and promote a new policy or implementation vision that subsumes the policy in a new story and a new contest. Switching the basis of conflict to align with new social cleavages or otherwise is "the most devastating kind of political strategy" (Schattschneider 1983, 71), and may reduce established interests to "diehard minorities which want to continue the old fights" in isolation from the overall efforts of the implementation network (Schattschneider 1983, 73).

Scope also concerns questions of inclusion and exclusion, and from this the distributional consequences of policy and implementation contests. Once one of the “billions of potential conflicts” (Schattschneider 1983, 64) becomes the focus of a compelling story (Stone 2002), organised interests begin to coalesce. The narrative defining the purpose of an interest may also define the interest group’s objectives, or the social characteristics of what they oppose. Here, it is not necessary for an organised opposing interest to exist; strategically it is better if this interest is created and defined in the organising story so that opposition, when it emerges, can be contained. In this way, the first contest is one of representation (cf. Catlaw 2007), first of the organised interest, and in some cases of the public as well.

Once the organising story gains salience the state may engage in the contest. The contest, adjudicated by the state, will also consider the private interests of the state in the outcome. Depending on the array of positions participating in the contest, it may be resolved in an adversarial contest, or by negotiation. In these contests or negotiations, the scope of the contest may be reduced in order to focus on central issues, which may in fact represent potential areas of mutual gain by the negotiating actors.²⁴ When the interest of the state is regulatory, the focus will be drawn to those aspects of the organising story that can be bureaucratised, defined as unambiguous, tangible, and manageable tasks (cf. Wilson 2000). The policy and implementation approaches that arise will stabilise these contests, and define the roles of the interests involved. These roles will reflect the constraints imposed by the policy and by the negotiated implementation, directing “each member of the crowd [to find their] place ... because [their] alternatives are limited” (Schattschneider 1983, 58). This stability holds until new stories emerge that challenge the policy or the representatives defined in policy (Baumgartner and Jones 1993), new interests and alignments emerging in response to these new social conditions, or where the policy outcome is encapsulated in a new and larger contest.

2.3.2 Actor-network Theory

While Schattschneider’s theory of politics provides valuable insight into political contests, it does not completely account for the dynamic relations inherent in networks. For this I turn to concepts developed in actor-network theory, a critical social theory pioneered in the 1980s (Callon and Latour 1981; Callon 1986; Latour 1987; Law 1987). The theory is based in social constructivism, and its proponents argue that its primary analytic benefit is as a critical

²⁴ For example Susskind (2006), advocates long term negotiating which begins by avoiding issues centred on deeply held beliefs, but rather on seeking mutual gains (cf. Salmon 2000; Rein 2006). Where the negotiation or contest includes only a few dominant actors, these mutual gains may subvert the broader symbolic intent of the policy being implemented.

theory (Latour 2005; cf. Whittle and Spicer 2008 for a dissenting view). By rejecting *a priori* socially constructed dichotomies, such as the distinction between society and nature, or between human and non-human actors, they believe that assumptions embedded in social interactions can be exposed more effectively. Analysing these dichotomies frees the researcher from explaining or defending them, returning the researcher's focus to networks and their effects (Latour 1983). Concepts arising from within actor-network theory have been applied to a range of social science research, including public administration and public policy research (see, for example Feldman, et al. 2006; Hunter 2008)

I use two concepts from actor-network theory, translation and durability, in this research. Translation is the process through which actor-networks arise, stabilise, and dissolve or are absorbed into larger networks. Translation augments Schattschneider's theory of politics by describing the politics of representation in dynamic terms. Actor-network theory views all social conditions as networks within which actors are defined through their interactions with other actors (Callon 1991; Law 1999). Being defined through interactions also means that all actors are themselves actor-networks (Callon 1991). This leads to the understanding that all structured social relations are to some degree unstable and may be decomposed into the components and strategies that led to their formation. Durability is the process by which actor-networks become stabilised and the social relations in which they are based are rendered invisible (Latour 1991). As actor-networks may draw together a variety of social and technological entities in their production, these durable networks may be human or non-human. While at first blush the notion of non-human actors seems absurd, the position is based in the underlying connections that are represented in technological objects or habits of practice are essentially social. In the present research, the benefit of this perspective is important in the analysis of policy documents, and of the role that policy documents fulfil in complex implementation networks. These roles include obscuring unproven assumptions, directing practice, and representing central agency actors in local negotiations.

In translation, actor-network theory posits that social interaction among individuals is based in the ongoing creation of networks which define both the actors and the relationships among them. Networks are created when one actor, referred here as the focal actor enrolls others in support of proposals to address some social condition which is viewed as problematic. The focal actor proposes a solution to the social condition, assigns specific roles to the enrolled actors, and present themselves as essential to resolving the problematic condition (Callon 1986). Building these networks is a two-step process in which the focal actor first combines existing social material, such as texts, normative assumptions and modes of practice and uses

this to interest local actors in the network. Then, the focal actor combines the enrolled actors by defining their roles within the network and acting as their representative in the resulting actor-network.²⁵

Callon recognises that enrolling others to a particular view of the social condition is not always based in complete candour, with a range of strategies from “seduction” to “force” being employed (Callon 1986, 208). The primary strategy, however, is for an actor to present their view of the social condition as the truth, obscuring the underlying social construction in the hope that others may be willing to accept this construction without further proof (Callon 1986). Upon enrolment, the focal actor is under no obligation to respect the self-definition of the enrolled actors (Murdoch 1997), and may represent in any way the focal actor wishes as long as the outcome is, for them, successful (Callon 1986). This process of enrolling, and then displacing others in representation is known in political science literature as well. For example, Stone:

Representation thus has a dual quality: representatives give expression to an interest by portraying an issue, showing how it affects people and persuading them that the portrait is accurate; and representatives speak for people in the sense of standing for them and articulating their wishes in policy debates. The paradox is that what representatives say when they speak for their constituents is not the constituent’s own words, but words the representative composed and used to persuade their constituents in the first place (Stone 2002, 215).

Once actors are enrolled in an actor-network, they are mobilised in support of the premise on which the network has been constructed. The strength of the focal actor derives from the stability of the network they have created, and network stability relies on reducing ambiguity. Ambiguity is at its greatest when the socially constructed aspects of the network remain visible. While these are visible, the enrolled actors may question and reject the underlying assumptions of the network, and external competitors can destabilise the network by promoting a competing construction of the social condition and necessary corrective. Stability, therefore, relies on the socially constructed facts on which the network is based becoming and remaining invisible (Latour 1991).

Reducing ambiguity and stabilising networks depends in large part on replacing human actors and negotiated networks with durable representatives. As used in actor-network theory,

²⁵ Lee and Brown (1994) note that one of the roles that may be designated is the role of the excluded, either deliberately as constituting some part of the social problem to be corrected, or inadvertently, thereby reinforcing an existing social disadvantage.

durable means that the actor-network created through negotiation is reduced to a single entity whose origins and social content are obscured. This entity may be a human representative, but may equally be a non-human object, a rule, or a practice. In policy, the final form of a policy renders the underlying assumptions, negotiations, and dissent invisible, allowing the policy to be presented, not as one among many potential approaches to regulation, but as the *only* approach. As networks grow in complexity many of these earlier networks become even more invisible as they are displaced in subsequent negotiations. New networks are negotiated using stable networks as support without revisiting the assumptions or conferring with the actors enrolled at the time the earlier negotiations took place. When a durable entity that has come to represent a network is mobilised in a later contests, the actors enrolled by the earlier network are deemed present (Latour 1991). But if they are misrepresented, these actors have limited opportunity to re-enter the negotiations. Policy, as a durable entity sheds the history of its formation to become “self-evident” (Callon 1991, 144). These durable entities can then be transported to other locations without distortion, to be used in negotiating new actor-networks (Latour 1991). These new networks can be built using embedded premises that may not apply in the place or at the time they are mobilised. Thus local actors can be excluded from negotiations, displaced and denied a role in bringing local experience into a network.²⁶ I will expand on this concept in Chapter 3, where I discuss the development of archaeology policy developed in response to one set of local conditions, which then serves as the model for policy on other jurisdictions and under other conditions.

Networks grow by reducing uncertainty and the rendering the social construction on which the network is based invisible (Callon and Latour 1981). The power gained through a successful translation is transitory, as other actors may challenge the network on many fronts. Internal challenges may arise from questions of representation or the validity of intermediaries (such as the form or content of rules). External challenges may see a new actor defining the social condition differently and offering a new solution. Internal challenges can break networks apart, while external challenges have the effect of drawing local actors and networks away from the larger network and into new alignments (Callon and Latour 1981; Callon 1991). Any actor, who gains a position as spokesperson for a significant body of less powerful actors, may find their role simplified, with their voice heard in the service of a network not of their own making. For this reason actor-network theory does not support the notion of enduring centres of control within society, as this suggests that elements within society have an greater capability to issue orders that will be obeyed by others. Instead actor-

²⁶ Latour (1993) does not see categories as normatively based. Instead, social categories are projected onto nature, and then reimported as support for political objectives.

network theory views power and control as something that “may, temporarily, become centred” (Lee and Brown 1994, 92).

Growth of actor-networks is based on “punctualisation” whereby entire networks are converted into single points in newer, larger networks (Callon 1991, 153). The resilience of larger networks, manifest as policy or administrative agencies, appear resilient due to the invisibility of the actor-networks they subsume. But in actor-network theory, these networks are not fully hidden: their invisibility is itself an actor in the network which may be discovered and re-problematised by another actor (Lee and Brown 1994; Latour 1999). The growth of a network is also the function which can signal its downfall. Actors may define themselves as allied with other actors, submerging themselves in a large network a trade-off for additional power (Callon and Latour 1981, 295). Durable intermediaries, put into wide circulation, become available for use in other networks, or in challenges to existing networks (Callon 1991). Macro-actors that absorb large pre-existing networks may be challenged by local actors, particularly when global and local rules conflict. Local actors may observe contradictions between rules, and see this as evidence of inherent ambiguity. Resolving this ambiguity may require new constructions of the social condition, drawing actors and energy away from old networks into new networks, which in turn can grow, displace local actors, and create new actor-networks. Translation, as such, is an ongoing process that creates or contributes conditions upon which subsequent translation begins (Latour 1991; Callon 1991), with each sequence of translation defined by a researcher being a segment of a longer historical sequence (Latour, 1991; Lee and Brown 1994).

2.3.3 Other considerations

Actors in implementation networks enact roles specified by policy. However, to achieve enrolment actors must negotiate, and in these negotiations a range of devices are employed, including policy texts, professional norms, accepted practices, and established narratives (Callon 1986). Tasks that are defined in policy negotiations are assigned or delegated to actors engaged in implementation. While actor-network theory describes in general terms how actors are enrolled, two means by which roles are defined in implementation, cooptation and delegation, have also been described in the public administration and policy literature. Cooptation and delegation, both of which are forms of representation, are also means for building networks, and can be seen as the basic form of relationship between implementation actors.

Formal cooptation occurs when there is symbolic power sharing between actors in order to build local legitimacy for a policy or programme. Actual regulatory authority is not transferred to local actors, but is retained by the central actor. External actors are brought into the structure of the organisation in order to build “an aura of respectability [which] will be gradually transferred from the coopted elements to the organization as a whole” (Selznick 1949, 260). Informal cooptation occurs when there is an actual sharing of power. Informal cooptation arises when an actor seeks to align itself to the locally powerful interests to avoid conflict and enable programme delivery. Cooptation is a mechanism of adjustment to demands in the agency’s environment. Informal cooptation leads to an actual transfer of power, reciprocity in this transfer often includes a role for the external interests in the policy and decision-making structure of the agency. This informal arrangement is normally maintained in a “shadowland of informal interaction” (Selznick 1949, 261).

Delegation gives rise to the concerns addressed in agency theory. Agency theory (Stigler 1971; Eisenhardt 1989; Spiller 1990), focuses on the relationship that forms between a principal, who delegates or assigns a task, and an agent who undertakes to perform the task (Eisenhardt, 1989). Agency theory posits that in relationships based in delegation, principal and agent operate under conditions of information asymmetry, where the agent has information not available to the principal, and goal conflict, which can lead to agent to pursue goals that are not in the principal’s interest. In turn, this exposes the principal to two agency problems: adverse selection and moral hazard. Under adverse selection, an agent may misrepresent their ability to carry out the assigned tasks. Moral hazard is the condition where the principal cannot know whether the agent is completing the task as assigned (Eisenhardt, 1989).

In delegation, a principal delegates responsibility for undertaking a task to an agent, but the principal can never be certain that the agent will carry out the delegated responsibilities as directed. Delegation gives rise to the problems of goal conflict and monitoring arise (cf. Waterman and Meier 1998). Under conditions of information asymmetry the agent has information not available to the principal. This makes it difficult for the principal to know that the delegated tasks have been completed. Where the goals of principal and agent conflict an agent may pursue goals that are not in the principal’s interest. Goal conflict may be assumed for most relationships formed by delegation, but is heightened in network conditions where multiple principals, each holding some degree of political legitimacy, exist (Waterman and Meier 1998). Even bureaucratic relationships, where goal conflict can be limited (Waterman and Meier 1998), it would be incorrect to suggest that they are “unaffected by

externalities thrown-up by the socio-political world within which they are situated” (Dunlop and James 2007, 404).

Under conditions of information asymmetry, agents may be shielded from observation (Holstrom 1979), providing “slack” (Levine and Forrence 1990; Sharfman, et al. 1988), under which the agent may engage in discretionary action (McCubbins, Noll, and Weingast 1987). Discretionary action becomes policy when the actions taken result in irreversible decisions (McCubbins, Noll, and Weingast 1990). But the use of slack is not automatically at odds with the principal’s objectives: while some agents may use slack to shirk, or pursue private gain, they may also choose to pursue public benefits (Levine and Forrence 1990; McCubbins, et al. 1987; Kalt and Zupan 1984).

The challenge for any principal is to construct the relationship so that the agent will behave in ways that are consistent with the interests of the principal by closing this information gap and monitoring. This is not costless for the principal (Levine and Forrence 1990; Waterman and Meier 1998),²⁷ but to the extent that the principal can monitor the agent, and gather information and expertise in the delegated area (Dunlop and James 2007), they can gain compliance. Overall, however, there is a limit to monitoring costs, beyond which there is no clear benefit to the delegation (Levine and Forrence 1990; Waterman and Meier 1998).

2.3.4 Summary – Theoretical Considerations

In this section I have attempted to build on O’Toole and Meier’s (2004) suggestion that the way forward in implementation research may include a look back at earlier theoretical work in public policy and administration. Specifically, I consider Schattschneider’s (1960) theory of politics as a basis for exploring the local negotiations that occur in implementation when a network of actors is engaged. Schattschneider’s theory primarily concerns macro-level political actors engaged in overt conflict. In extending this theory to address the complex, simultaneous negotiations that are inherent in multi-actor implementation networks, I draw on insights from actor-network theory (Callon 1986, Latour 2005).

Treating implementation networks as actor-networks extends the scope of analysis to include the local negotiations between human actors, and between human actors and documents that

²⁷ Levine and Forrence note that “in a world where information is costly, slack is also inevitable” (1990, 180). Wherever “monitoring costs are so high as to practically prevent principal A from observing agent B’s behavior, then B has no incentive to conform her behavior to A’s views” (Levine and Forrence, 1980, 174). High monitoring costs limit monitoring, leaving the agent is free to exercise their discretion unobserved. Waterman and Meier (1998) cite Mitnick (1975) in suggesting that two costs arise in monitoring: 1) a specification cost to identify compliance requirements; and 2) a policing cost to monitor agents. Principals must determine the net benefit in relation to these costs, with the result that there is an inevitable loss of control in a principal-agent relationship.

serve as intermediaries between actors. The social constructivist basis of actor-network theory allows the actors in implementation, whether individuals or organisations, to be defined and decomposed on the basis of their associations, interests and underlying assumptions from which they operate. The strategies used in creating temporarily stable network formations have a significant impact on the implementation outcomes of policy. But by considering implementation as an actor-network I seek to draw my research focus away from the macro-level concerns of managerialism and politics, to the local negotiations by which actors are enrolled and enrol others, and how they negotiate their implementation responsibilities based on their own concerns.

Actor-network theory is not the typical lens through which policy implementation is viewed; however, the perspective provides an opportunity to consider implementation as a dynamic and locally negotiated practice. Local negotiations and their consequences for implementation are not unknown to public administration and policy researchers. Wilson (2000), citing Selznick (1949), reflects this when he suggests that “any government agency that vests its operators with much discretion will have the tasks of these operators defined by the pressures of external interests” (Wilson 2000, 73).²⁸

When a network of actors is engaged, this discretion is also increased, and uncertainty increases accordingly. Moving to an actor-network perspective puts into operation Pressman and Wildavsky’s (1984) point that policy outcomes may be explained “in terms of social forces capturing and corrupting the implementation process” (Pressman and Wildavsky 1984, 143). In archaeological policy, these social forces extend the implementation network well beyond a binary relationship between the implementing agency and the archaeology practitioners, to include a range of other interests with whom they must negotiate, such as agencies with overlapping mandates, development proponents, planners, descendant populations, and the public (Skeates 2000).

²⁸ This summarises an earlier debate about the nature of regulatory policy, in which authors such as McCraw (1975) argued that regulatory policy was directed to achieving some public good, in contrast to others, notably Stigler (1971), who noted that regulatory bodies were frequently captured by the dominant interests among the regulated. Stigler (1971) traced the problem to his observation that the demand for regulation was often related to the size of the group of potential beneficiaries of regulation, and to the size of the potential benefit to this group from regulation. Excessively large beneficiary groups were seen as being too difficult to organise successfully, compounded by the problem of ‘free-riders’ who benefit, but do not contribute to the group (cf. Olsen 1965). As well, political calculus was seen to affect decisions on regulation in which potential campaign contributions from the regulated were balanced against potential votes, from the non-regulated (Stigler 1971; cf. Dal Bo 2006).

2.4 Chapter Summary

In this chapter I have presented an overview of the implementation literature to emphasise the view that implementation is dependant on networks of actors operating within a complex social context of policy, operator discretion, and administrative direction. My purpose in reviewing this literature was to reinforce the perspective that implementation is both social and complex, and in a burgeoning literature is acknowledged as requiring “multiple linked social actors, often multiple organizational actors, to achieve collective purposes” (O’Toole and Meier 2004, 681). Notwithstanding, I note that most research remains focussed on issues of network management, performance measurement, and the development of empirical theory (O’Toole and Meier 2004).

Policy implementation, regardless of how many actors are involved, has consequences beyond the defined boundaries of the implementation network. These include distributional consequences that arise from conflict or competition within the implementing network, and from institutionalising the exclusion of some social actors. It is unlikely that insight into the distributional consequences of implementation will arise as an incidental or collateral benefit to research otherwise focussed on implementation success or administrative efficiency. The managerial focus is currently predominant in the literature. But this focus tends to institutionalise aspects of implementation, rather than viewing them as constructs to be analysed. Institutionalising the view that administrative agencies are representative of the public interest limits opportunities to explore the possible exclusion of legitimate private interests which may, in fact, better represent a public good. One case in point is the recognition of indigenous and archaeological private interests in the public interest arguments for archaeological regulatory policy.

This focus on the management of networks fails to account for the complex social and political environment in which implementation takes place. For this reason I follow O’Toole and Meier’s (2004) suggestion that earlier insights of Schattschneider (1960) potentially provides one way of moving beyond a focus on management to consider how implementation networks form and operate, their social content, and distributional consequences.

Schattschneider’s theory of politics provides several insights into policy as politics, including: 1) the role of bias in the formation of interests; 2) that strategic management of the scope of conflict is critical to success; 3) that scope is a function of inclusion and exclusion; 4) that the outcome of any political contest is at best temporary stability, and; 5) new contests may arise which absorb and redefine earlier contest outcomes. However, this theory is limited in its

original exposition to overt conflict between large, identified actors seeking a political resolution.

I take the position that this theory can be applied to policy implementation, and describe how it may be used to account for the social conditions underlying implementation networks and the local negotiations required when interrelated actors are engaged. I expand on the types of contests that may arise in implementation to include not only overt conflict between interests, but also cooptation, actor discretion when shielded from observation, and strategic action aimed at excluding certain interests or institutionalising dominant interest perspectives. In extending Schattschneider's theory to account for the social dynamics inherent in implementation, I draw on insights from actor-network theory (Callon 1986; Latour 2005). The social constructivist nature of actor-network theory allows any actor, organisation, individual, or policy instrument to be decomposed to expose the complex interactions from which it was formed. This perspective encourages the exploration of organisational action by considering the actors within the organisation both in terms of their defined roles and their associations with other, overlapping networks. In addition to decomposing normative actors into constituent parts, actor-network theory also provides a more dynamic account of how networks form, dissolve, or disappear (intact) as they are absorbed into larger actor-network formations.

The challenge in implementation research is not finding a forum within which deliberative democracy can be practiced, but in analysing and exposing the nature of the actors involved in implementation. Structural actors – organisations and institutions – that are given distinct status on normative grounds that there must be some form of administration are granted the authority to steer implementation towards specific outcomes. Unanalysed, the private interests of these actors are conflated with the public interest. But actions by some organisational actors may be based in operator discretion (cf. Lipsky 1980), while others may be designed to satisfy administrative objectives (Wilson 2000).

There are other actors as well. Groups that were excluded intentionally or otherwise in the original struggle over policy remain as actors with interests relative to the distributional consequences of policy outcomes. Thus, addressing democratic shortcomings to policy or its implementation also requires the identification of these invisible actors, who are excluded from implementation networks and often overlooked as being 'otherwise represented' by more dominant actors. Although these groups may seek or be sought out by collaborative managers or discursive democrats, their participation may not arise until the implementation network is in place; then they are consulted as outsiders to a process in which most of the

benefits have been earmarked. For these actors, the greatest hope for meaningful inclusion comes from an exposition of the dominant actors as a means of challenging hegemony and changing the scope of policy and implementation. Among the actors to be analysed are those defined in the most radical sense: the policy documents, legal agreements, and administrative rules that guide or constrain the action of others.

In the next two chapters I explore the complex network relations that arise in policy and its implementation. For archaeological policy this raises a number of questions, such as: who are the network actors, how these actors are enrolled in the network, what is their relationship to the policy objectives or the central agency overseeing implementation, and what is their interest relative to the stated policy objectives. Questions also arise of whether the network relies on the exclusion of actors or interests, and what normative assumptions exist, but are operationally invisible to the actors engaged.

In chapter 3, I review the nature of regulatory policy, and the regulatory archaeological policies of several jurisdictions with similar political and colonial histories. In this review, I discuss the form of archaeological policy and how it shapes practice. In addition, I develop the argument that cross-jurisdictional borrowing by policy makers, similar to the exchange of ideas on the jurisprudence associated with indigenous treaty law, has institutionalised the exclusion of indigenous interests in this policy. In Chapter 4, I draw my focus to Ontario, Canada, and discuss how both the regulatory policy on archaeology and broader government initiatives around horizontal management create complex implementation networks, separate the central regulatory agency from local negotiations, and cause a number of intermediary documents to gain prominence as actors in implementation. In Chapter 5, I attempt to map out the implementation networks that have developed under these conditions in Ontario, by way of three case study examples. In the case studies my focus is on the manner in which policy objectives are altered through negotiation when network actors are faced with conflicting or vague policy objectives, multiple principals, or more directly in the face of formal cooptation or are shielded from direct observation by the central agency responsible for implementation. In this chapter, my concern is to identify which actors are engaged in negotiating the actions required by policy, and how these negotiations alter or otherwise affect policy outcomes.

Chapter 3

Regulation of Archaeology and the Distribution of Benefits

3.1 Introduction

In Chapter 2, I reviewed implementation literature, with a focus on the social context of policy formulation and implementation. Noting Schattschneider's (1960) theory of political contests, I linked the concepts of how the scope and direction of a contest influences outcomes to similar concepts found in actor-network theory (Callon 1986; Latour 2005). In particular, I noted the role of non-human actors as participants in these contests, and the means described in actor-network theory for the social content of policy can become stabilised, and rendered invisible (cf. Callon 1986; 1991). As the social content becomes obscured, the policy becomes increasingly durable, allowing for its use in subsequent contests (Latour 1991). With each iteration of use, these products of earlier contests, and the unquestioned assumptions on which they are based become increasingly institutionalised, and continue to support the objectives of the successful interests. Where one group has become co-opted by another, policy is stabilised by agreement (cf. Baumgartner and Jones 1993); but as a critical theory, actor-network theory informs the researcher that this stability is not assured (Callon 1991). The social arrangements and political contests that lie behind the policy remain available for analysis, and in this analysis the groups active in these contest, the groups excluded, and the biases around which the contest was organised can be discovered.

In this chapter, I provide an overview of the theoretical literature on regulatory policy, paying particular attention to the way in which policy assigns roles and distributes benefits in implementation, and how this body of theory relates to archaeology policy and its implementation. Important to this discussion of regulation and the roles that are assigned different actors is the question of how public policy may come to reflect private interests. Using Schattschneider's (1960) definitions of public, private and special interests, I argue that the public good argument in support of archaeology regulation favours private archaeological interests.

I then consider archaeology regulatory policy from a historical perspective, in order to identify and describe the policy contests which have led to contemporary archaeology policy. Carman (2002) has stated that archaeology policies across most western countries are broadly

similar, even as they have adapted to local conditions, while in Canada, provincial and territorial policies “usually say essentially the same thing.”²⁹ I review this history in order to identify the key contests in which the meaning and purpose of archaeology was defined. In this review, I also discuss how successive policy enhanced the stability of the underlying policy concepts, by drawing upon them in subsequent policy development without re-examining the assumptions on which they were based. Through this discussion I trace how the particulars of individual contests can create lasting influence on archaeological practice, including the continued exclusion of groups from policy development and implementation.

3.2 Regulation

Archaeological regulation seeks the protection of archaeological sites, artefacts and data, primarily through the regulation of practice. Regulation of any activity by the state requires that the regulatory rules are outlined, and the authorised actors identified. In this section I describe the way in which archaeological practice is regulated. I describe how archaeology regulation is passive in terms of sites, but active in terms of practitioners: sites are protected by regulating access to them.

3.2.1 Regulatory Policy

Policy includes several embedded concepts. It may describe “a rational course of organizational action predicated on knowledge” (Parsons 1995, 43), as well as specific proposals for action, the identity of the authority directing this action, and the proposed means for achieving goals (Salisbury 1968). Policy may refer to a normative position of public values and related intentions (Colebatch 1998, 3; Bridgman and Davis 2004, 2; cf. Rhodes 2000; 253), but this normative element may also serve a symbolic purpose, providing vigorous language to the preamble of a statute (which generally holds no legal standing), unsupported by the necessary technical direction in the operational clauses (Edelman 1964).³⁰

Policy goals may be normative or strategic, and it is the allocation of resources that will reveal the underlying intent of the implementing actors: the available resources determine the

²⁹ Parks Canada “Unearthing the law” http://www.pc.gc.ca/docs/r/pfa-fap/res-abs_E.asp (accessed 12/05/2009).

³⁰ In these circumstances, the best publicised aspects of a policy may also be the least significant in terms of resource allocations for implementation and compliance. Strategically, the state and regulated interests may benefit when advocacy groups declare their satisfaction with intangible values or preamble wording gained for a policy, while knowledgeable insiders, public administrators and the regulated develop the technical details (Edelman 1964). Looking at this another way, Galston suggests that pursuit of unattainable goals leads to similar hollow victories: “In ordinary political discourse, the concept of feasibility plays three distinct roles: forward looking, as a guide to action; present regarding, as excuse; and backward looking as explanation.” Prior to setting out a policy agenda goal, analysts would ask whether the policy is feasible... “When groups pursue a goal believing it is possible when it isn’t, the opportunity cost is typically high; not only are they likely to be disillusioned, but also they will have foregone other more attainable goods” (Galston 2006, 545).

actions to be taken in pursuit of policy goals (Pressman and Wildavsky 1984, 168; Colebatch 2005, 20). Policy, then, can be broadly defined as a proposal for action toward normative or strategic goals where the authority for this action, and the means to be used in achieving the goals are explicitly or implicitly identified (cf. Salisbury 1968).³¹ For many organisations, the allocation of resources in support of implicit or strategic goals leads to situations where stated policy (what they say they will do), does not align with outcomes (what they actually did). In this lies a rich field of enquiry (O'Toole 1997a; Vincent-Jones 2002).

Regulatory policy comprises one of the three policy types³² defined by Lowi (1964).

Regulation in public policy represents “sustained and focussed control exercised by a public agency over activities that are socially valued” (Selznick 1985, 363). Through regulation, the state attempts to “[allocate] values among members of society” (Meier 1985, 266), or “alter the behaviour of target groups”, through authority, sanction, or financial incentives (Sabatier and Mazmanian 1980, 539-540). The primary tool in regulation is to constrain social action by “directly raising costs and/or reducing ... the alternatives of private individuals” (Lowi 1964, 690) in support of policy objectives.

Regulation literature is not unanimous on the purpose or social value of regulatory policy, reflecting two main orientations: public interest and regulatory capture (Lowi 1964; Ripley and Franklin 1991; Salisbury 1968; Sabatier and Mazmanian 1980; Birkland 2001; Levine and Forrence 1990). The regulatory capture view (cf. Stigler 1971) holds that state regulation is “simply an arena in which special interests contend for the right to use government power for narrow advantage” (Levine and Forrence 1990, 167). The focus of regulatory capture research is competitive regulatory policy (Ripley and Franklin 1991) in which policy instruments are used to “limit the provision of goods and services to ... designated groups” (Birkland 2001, 139). The alternate public interest view is more optimistic, seeing regulation as “[the pursuit of] some conception of the general good, however mean-spirited, messy, and confused the process may seem at any given time” (Levine and Forrence 1990, 167).

Protective regulatory policy is the mechanism for promoting the public interest, protecting the public from adverse effects arising from private activity, such as pollution or fraudulent

³¹ In turn, *public policy* positions these concepts within a field where the state is the principle actor, acting in representation of a broader social collective. Intent represents “what the government, acting on our behalf, chooses to do or not to do” (Birkland 1986, 132). Operationally, “a public policy is an action which employs governmental authority to commit resources in support of a preferred value” (Considine 1994, 3). These definitions draw together the normative values underlying policy, the authority of the state, and the commitment of resources necessary for the realisation of the policy objectives.

³² The other two forms are distributive policy, in which the state provides benefits to specific interests, and redistributive policy, in which wealth in the form of tax revenues is redistributed among broadly defined classes of citizen. Under distributive policy, benefits are seen to accrue to specific interests or groups, while under redistributive policy, the winners and losers can only be seen in broad social groupings (Lowi 1964).

business practices (Birkland 2001). As it deals with broad public interests, protective regulation is believed to have a stronger support from political and central government actors as a counterbalance to the narrow self-interests of the regulated.

Regulation ultimately costs some actors while benefiting others, consequently, there is a political dimension to implementation. Some authors view regulatory policy as an outcome of pluralism in action, in which coalitions form and shift as interests change through the negotiation and implementation process (Lowi 1964; Sabatier 1991). But others suggest that this pluralist view is optimistic, and that the greatest interest in regulation lies with the regulated, who have an abiding interest in concentrating benefits and limiting costs (Wilson 2000). Simply, coalitions are necessary, and serve private interests since unorganised groups rarely realise the benefits of regulation (Stigler 1971; DalBo 2006), and social movements rarely win policy struggles, except in cases where they organise effectively, and their leadership resist cooptation (cf. DalBo 2006). Coalitions drawn from the public do not form in the absence of open conflict over regulatory policy. Mills (1956) suggests that these conditions of open conflict are rare precisely because powerful elites (or at least organised private interests) whose members share with the state long range regulatory goals. These powerful actors divert attention from regulatory policies that benefit them by containing conflict and strategically managing the scope of conflict then it arises.

This distribution of power and differences in the levels of organisation and interaction support Miliband's (1969) position that the implicit assumption that all groups compete on equal terms is wrong. A common culture shared among the political and business elites, and the economic pressure that business can bring to bear on government in pursuit of its purposes give rise to this inequality. Miliband's position is subtle: government can impose controls on business for the public good, or capitulate in the face of "pervasive and permanent pressure" from business. If controls are established, business can subvert these initiatives by working to the letter, rather than the spirit of the policy. The policy then becomes a caricature of sound policy – a set of rules, checklists, and costs that appear to be more like red tape than meaningful action.

In the end, government cannot regulate business without the consent of business: "what is involved here is not ... active resistance [but rather] the *inert* power of business, the failure to do such things as are not positively commanded by the state but merely asked for" (Miliband 1969, 60, in Theodoulou and Cahn 1995). In order to meet political as well as administrative goals, regulation under these conditions requires that the cooperation of the regulated be negotiated and reflected in the policy itself. In this view regulatory policy is usually

formulated to be acceptable in some manner to the regulated groups (Edelman 1964; cf. Miliband 1969), using symbolic, but operationally vacant content, to rally support or contain opposition when necessary. In this view, the pluralist expectation of an external “veto group” arising from within the polity is a “resolute escape from reality” (Miliband 1969, 64).

Policy objectives may be based in a normative view of the world, or strategic considerations of the relative merits of providing a benefit to one group at the expense of another. Insofar as regulatory policy comprises a set of rules for distributing costs and benefits among organised groups, the regulation of archaeology determines who will pay, and who will benefit in achieving the regulatory objectives of resource protection. Typically, the regulated actors share a stronger interest in regulation than the general public, actively participating in policy development and implementation in order to reduce costs and/or increase benefits that the policy may produce. As I discuss in the following section the cumulative success of policy actors over time also serves to reinforce exclusion from participation and the distribution of costs in policy. The question of who pays the costs of regulation may be much broader than simply asking how costs and benefits are distributed in relation to one policy, as costs to excluded groups may have been established in earlier policy contests and are invisible in later policy contests.

3.2.2 Is Archaeology a Public Good or Private Interest?

Archaeology regulation is commonly presented as serving the public interest (Cleere 1989): but does it? As I discuss later in this chapter and in Chapter 4, the regulatory policy that currently exists views restricting access as an important element in archaeological site protection. Under regulation, rights of access and use are granted to qualified persons, and these rights are matched by duties to produce long term and public benefits, rather than private or transient benefits. But does archaeological practice generate broad public benefits, or is the regulation of archaeology primarily for the benefit of a private, archaeological interest? In this section, I consider whether those aspects of archaeology that are the focus of regulatory policy represent a public or private interest. In this, I base my discussion on Schattschneider’s (1960) definition of the interests engaged in policy contests.

Public policy is not simply enacted by the state to achieve some perceived public good. The underlying social condition for which policy is sought must become politically salient and make it into the government agenda before policy action is taken (Schattschneider 1960; Kingdon 1984). The existence of public policy concerning archaeology suggests that an organised group mobilised, and were successful in presenting their position to the state, rather

than arising as a result of a groundswell of interest among the wider public. Since policy requires some level of success in a political contest, it is possible that archaeology policy represents the view of private archaeological interests, and thus serves a private interest, albeit one that shares some objectives with the wider public.

3.2.2.1 Archaeology as a Public Good

Schattschneider (1960) views political contests as involving three broad classes of interest: public, private, and special. Public interests are those shared by all members of the community, and include such things as an unpolluted environment, personal security and certain types of freedom. Private interests are interests shared by only some members of the community, but for which an overall public benefit is identified while a special interest is a private interests that benefits only a specific group. Public interest groups are generally more open in their membership than special interests, whose membership is defined mainly through exclusion. Also, according to Schattschneider (1960), the state has two simultaneous roles in policy contests: defining the public interest that it will promote in the contest, and pursuing private (i.e. political or strategic) goals.

The importance of archaeology, both site protection and study, is based in the belief that knowledge and understanding of the archaeological past represents a significant public concern (Fowler 1984; Cleere 1989; Carman 2002; cf. Taylor 1995). To Carman (2002), the public interest in archaeology arises from the collective public interest in a common history, and as such falls under the control of the state. As a public interest, the state regulates archaeology through rules of practice and bureaucratic administration (Carman 2002, 99). Other authors from the field of cultural resource management have identified the link between archaeological practice and the role of state policy (Carman 2002; Cleere 1989; McGimsey 1972; McGimsey 1984; McGimsey and Davis 1977; Fowler 1982; 1986; Schiffer and Gummerman 1977; Darvill 1987; Adovasio and Carlisle 1988). Cleere (1989) also suggests that “the concepts of ‘cultural resource management (CRM), ‘public archaeology’ and ‘conservation archaeology’ ... are largely synonymous”, and argument developed in the CRM literature of the early 1970s (McGimsey 1972; Lipe 1974; Lipe 1984; McGimsy and Davis 1977; King, et. al. 1977; Schiffer and Gummerman 1977). Identifying the link between policy and practice does not, however, confirm a public interest basis for archaeology policy, especially when the complex interaction among actors engaged in policy formulation and implementation is left unexamined. Instead, this gives rise to a circular argument that all archaeology is public archaeology, because the outcomes arising from archaeological work benefit the public (McGimsy 1972; Carman 2002).

The absence of an abiding interest in archaeological practice among the broader public is reflected in a range of studies by archaeologists that attempt to determine how best to convey the results of archaeological research. A sampling of these studies suggests that archaeologists must combat, among other things, the popular misapprehension of archaeologist stereotypes as either heroic or dotty (Ascher 1960), or to counter the many pseudoscientific claims made in the popular and fringe press (Feder 1984). Fagan recommends that professionals actively engage in teaching archaeology to the “great archaeology-loving public” (Fagan 1977, 119), and to do so with an enthusiasm normally reserved for theoretical debates. Publication of the results of archaeological fieldwork is seen as a normative obligation of archaeological practitioners (Birch 2006; Jameson 1997). Alternately, “public relations” could be developed through the mass media (DeCicco 1988; Potter 1989). However, community archaeology, or tours involving ongoing excavations in public places remains one of the more important means for publicising archaeological practice (Leone, et al. 1987; Wilkie and Bartoy 2000). However, the discouraging news remains that while the public remains interested in archaeology in a general sense, there is limited understanding of local archaeological concerns or policy (Pokotylo and Guppy 1999; Merriman 1991; Carman 2002).

It is interesting to note the reasons given for engaging in public relations by archaeologists, because here the range of purposes is not as great. The threat to archaeological sites from development, looting, and vandalism is a constant concern among archaeologists (Pokotylo and Guppy 1999; Fagan 1977), and public awareness and education projects appear to provide a positive outcome, at least in the latter two regards (McManamon 1991b). Public interest in archaeology helps support archaeological research funding from public agencies, and the development of policy favourable to the interests of archaeologists (Pokotylo and Guppy 1999; King 1971). McManamon (1991b, 125-126) notes that among the five “publics” that the archaeological message should attempt to reach, two of these are directly important in policy formulation and implementation (“congress and the executive branch”, and “government attorneys, managers, and archaeologists”).³³ To Pokotylo and Guppy, “archaeologists are well aware that legislation and funding beneficial to archaeological conservation are critically dependant on public support, ultimately culminating in elected governments representing the collective interest” (1999, 413). In this last reason public support for regulatory archaeology policy is distinguished from the public interest in

³³ Cleere (1989) has a slightly different series of ‘publics’ including taxpayers, tourists, educators, indigenous people and academic archaeologists.

archaeological resource protection, which suggests that a private archaeological interest may exist.

The archaeological past is presented as a universal heritage, but it does not always follow that the public is interested in the work of archaeologists (Levy 2007; Pokotylo and Guppy 1999; McManamon 1991b). For this reason, archaeologists see public engagement strategies as necessary (Carman 2002; Cleere 1989; Merryman 1989; Walsh 1992). These strategies are less an imperative to transmit newly acquired knowledge about this common heritage, as it an effort to keep the public mobilised in support of one view of how archaeology should be carried out. That is, to draw the public into the ongoing policy contest under conditions favourable to the archaeologists (cf. Schattschneider 1960).

3.2.2.2 *Archaeology as a Private Interest*

In Schattschneider's (1960) definition, private or special interests possess two key characteristics: a private interest may be formed to advocate on behalf of something perceived to be of wide public benefit, and; the success of private or special interests in a policy contest can be enhanced by suggesting that they speak on behalf of a wider public interest. While they mobilise public support in policy contests, they are essentially self-interested, since controlling the scope of a policy contest relies on the presence of the public in representation, rather than participation. The state might advance an alternative view of the public interest in adjudicating the contest, but scope expansion would be unlikely unless it was beneficial to the state's objectives.

Archaeologists act on behalf of the public interest in archaeological resource protection, an interest that is defined in policy. However, the professed ethical obligation of archaeologists to communicate the results of their work through education, publication, or public participation opportunities (cf. Birch 2006; Mayer-Oakes 1989), does not exclude strategic consideration of how, or to whom this presentation is made (Carman 2002; McManamon 1991b). Cleere (1989), in answering the rhetorical question of why archaeological resources should be managed, suggests the usual reasons of the importance of archaeology to human, cultural, and national identity. But, he reinforces that the management of the resource should perpetuate archaeologists' exclusive right to practice in his final justification: "the protection of the database for the academic discipline of archaeology" (Cleere 1989, 9).

In communicating the benefits of archaeology to the public, archaeologists generally avoid drawing attention to the use of standardised formats for the location, treatment, and analysis of archaeological sites, such as those found in regulatory policy (Pokotylo and Guppy 1999;

Carman 2002; 2005). Neither do they discuss the growing liability of archaeological collection management as an increasing number of sites are excavated and stored without any clear understanding of how these will benefit future generations (Stewart 2002; 2003). While the private work of archaeologists engaged in consulting on behalf of land and resource development proponents leads to evaluations of their archaeological or heritage significance, there is little in the archaeologists' public work that suggests that these evaluations are tempered by concerns for the cost to the client, profit to the consultant, or how the minimum regulatory requirements can be met. Earlier writers have also noted that few decisions made about what is significant and worthy of preservation (that is, worth spending money on), are based on contemporary research interests (cf. Leone, et al. 1987; Lucas 2001; Hodder 2003), and possibly also commercial calculation. To the state, however, presentations that exclude these references are acceptable. They do not draw attention to policy based practice, ensuring the stability of policy administration, especially when some policy elements are returning tangible results.³⁴

Ucko (1989) suggests that the role of archaeology policy is to establish mechanisms for determining both "who should decide what is worth legislative protection and what is not, but also what levels of protection are appropriate" (Ucko 1989, xiii). Policy must establish "who should decide" because governments require it; if all sites are significant – to archaeologists, as they are for indigenous observers it would mark an end to development (Ucko 1989). In this, Ucko casts the essential contest in archaeological resource management as being between the interests of archaeologists and those of the state, and he sees the most beneficial outcome for archaeologists in accommodating the state's interest in development within their own view of sound archaeological practice (Ucko 1989). McManamon (1991b) tacitly acknowledges the political dimension of public engagement when he identifies "congress and the executive", and "government attorneys, managers and archaeologists", as two of five distinct audiences for archaeological messages (cf. Carman 2002).

But as a private interests, archaeological practice may not be a special interest in the sense that Schattschneider (1960) uses the term. Special interests restrict membership through exclusion. While the historical development of archaeological policy includes exclusion in determining the scope of contests over the form of policy contests, exclusion is not an outcome of contemporary policy. For example, looters and commercial collectors are denied access to archaeological sites in most archaeological policy, but individual looters, and with a

³⁴ For example, public education programmes in archaeology on federal lands in the US appear to have had a positive effect in reducing unauthorised action such as vandalism and looting (McManamon 1991a; 1991b).

lesser likelihood commercial collectors, can still achieve membership as sanctioned archaeologists by applying for, and being granted, a permit. To qualify for a permit, the individual must only meet eligibility criteria, including an agreement to abide by the conditions of their permit, but these criteria are for all applicants. Academic qualifications may prevent some of these actors from obtaining a specific class of permit, but the opportunity to gain the qualification independently suggests that it is not, of itself an act of exclusion.

The historical exclusion of groups, particularly aboriginal groups, from the formulation of archaeology policy over the past century also bears consideration in weighing the public/private benefit of regulation. In Schattschneider's (1960) definition, a public interest is one that is broadly shared by most members of the community. Aboriginal interest in archaeological resources is understood to be influenced by cultural perceptions of the value of the sites, materials and places. These may place the positions of two different publics at odds in defining the public goods to be achieved through the regulation of archaeology. Deloria (1992), for example, has commented that archaeological means of determining cultural significance on the basis of material remains displaces protection towards mundane occupations and away from more sacred sites, which would contain little domestic refuse. Cultural differences in the way that archaeological sites may be defined and evaluated in the face of multiple, overlapping meanings remains an intriguing avenue for future research, but it is beyond the scope of this thesis to explore it completely here.

3.2.3 Summary of Public Goods and Private Interests in Regulation

Archaeologists represent an interest in archaeological resource investigation and protection, but membership in this group is limited by requirements for specific levels of training and qualification. Yet, it seems reasonable to suggest that archaeological practice, while it operates in a manner distinct from its academic counterpart, is not a special interest as defined. Individual actors are not excluded from membership, and archaeological practice, while conducted by many archaeologists for private profit, still supports some of the underlying public good arguments on which policy is based. Further, the active lobbying of state actors by archaeologists appears to be largely in the interest of the perceived public benefit of archaeological protection, rather than private benefits. That said, lobbying by archaeologists in the wake of more recent US legislation such as Native American Graves Protection and Repatriation Act (NAGPRA: see next section), and other policy aimed at expanding the scope of archaeological policy contests, or curtailing rights of access and use to archaeological sites by archaeologists may be seen as more of a direct advocacy for private

benefits aspects of policy. While archaeological policy itself appears to be based in a practice of exclusion in setting the scope of policy contests, archaeological practice remains a game in which anyone can join, and in this it approaches but does not seem to cross the line distinguishing private from special interest.

3.3 Regulating Archaeology

In discussing archaeology policy, it is necessary to move beyond the consideration of policy in normative terms as signalling the state's interest in archaeology, and of archaeology as a broad public concern. These regulatory policies must be assessed according to the technical direction given in the operational clauses. In this section I discuss how the technical direction offered in the operational clauses of archaeology regulatory policy are more indicative of the outcome of past policy contests among private interests, than of a broad movement to protect archaeological sites in the public interest. Technical clauses, rather than the symbolic narrative, provide a more certain picture of policy objectives.

I begin this section with a brief overview of the historical development of archaeology policy in the United States, beginning with the Antiquities Act of 1906. In this overview I consider the historical contests that have shaped archaeology policy in that country. This policy, I suggest, supported both the development of cultural resource management (CRM) as a professional avenue for archaeologists,³⁵ and was influential in shaping archaeology policy in other jurisdictions, including Canada. My focus in discussing each successive policy contest is to identify the key groups mobilised in the contest, and how their interest are reflected in the policy outcome. I also note where groups that might be seen as having a position on the policy being developed have been excluded. These policy contests are considered in sequential order to trace the way that outcomes from one contests, and any unexamined assumptions on which they are based, support some perspectives or actors, or perpetuating the exclusion of others.

I follow this overview with a consideration of two international charters, and an overview of provincial and territorial archaeology policy in Canada. Many archaeologists see the basis for most modern archaeology policy arising from the 1969 European Convention on the Protection of the Archaeological Heritage (Cleere 1989; Carman 2002; Brattli 2009), which built on a wider public interest in environmental protection (Brattli 2009). My argument here

³⁵ In Ontario, CRM is the primary source of new archaeological information and excavated collections (Ferris 2002). Holding approximately 50% of licenses in Ontario (Ferris 1998a), these archaeologists write over 80% of the site reports produced each year, and the proportion is increasing steadily (Ferris 2007). The role of the professional CRM archaeologist is essentially private: Birch (2006) notes that the rise in consulting archaeology is not matched by an increase in public education or publication.

is that while the authors of the European Convention were successful in exploiting important cleavages in the polity in the late 1960's (cf. Schattschneider 1960), the underlying position taken in this convention had been substantially influenced by earlier policy contests in the US, which in turn had influenced academic debate on the nature of the archaeological resource and means for its protection. This influence arises partly through the compelling narratives developed for these policy contests (cf. Stone 2002), and through the increasingly durable nature of archaeology policy. These durable policy elements allowed the embedded assumptions and patterns of exclusion to remain invisible and unexamined, and allowed ready transport for use in other contests.

3.3.1 United States Policy Contests and Cultural Resource Management

By the late 1960s when key US legislation, international charters, and provincial regulatory policy in Canada was being formulated (Brattli 2009; Mathers, Darvil, and Little 2005), many of the basic elements of archaeological policy, such as the definition of sites, significance, and appropriate practice, were already well established in US policy.³⁶ In this section I review US archaeology policy from a historical perspective as a means of discussing how successive policy contests had cumulative consequences for archaeology policy and the practice that it regulated. The review is sequential, and for each policy I identify the main interest groups, the focus of the contest, how the scope of the policy contest was managed, and how the policy outcome influenced subsequent practice. While each policy contest seems to arise in response to distinct policy issues, new policy builds on earlier outcomes tempered by experience in the implementation of earlier policy and contemporary practice. As policy evolves, unsupported assumptions that may have underwritten earlier policy remains unquestioned in later contests, and become institutionalised both in implementation and in subsequent contests.

I review US policy for two reasons. First, US policy is cumulative from the original 1906 statute: successive statutes were enacted without the repeal of earlier statute, as happens in other jurisdictions. In this accumulation of policy, earlier policy contests clearly remain present in later contests and practice. So for each successive policy contest, the scope of these earlier contests remains visible in terms of the focus, and the topics and interest groups engaged. Second, implementation experience also contributes to subsequent policy development. As policy was refined and practice changed in response, a concomitant theoretical literature in archaeological practice, or cultural resource management (CRM),

³⁶ Mathers, Darvil and Little (2005, Table 1.1) list eight "major US Federal laws concerned with natural and cultural heritage passed in the period 1964-1979" as a means of illustrating this period as one where public awareness of the immanent threat to heritage values increased. The review in this Chapter deals only with the laws with an overtly archaeological focus.

emerged.³⁷ The theoretical contribution of CRM literature to academic archaeological discourse has influenced policy and practice beyond the United States. In this way, archaeological practices that evolved in response to US policy, have formed the basis for international approaches to managing archaeological heritage (Carman 2002). This borrowing is evident, for example, in the concept of salvaging archaeological site data prior to destruction that arose in response to pre-development survey opportunities created under the Historic Sites Act of 1930. The linked concepts of salvage and of archaeological sites as sources of data, continue to mark the primary archaeological response to development-site conflicts in many jurisdictions.

This review is not an exhaustive analysis of US regulatory archaeology policy, but a summary intended to highlight the politics inherent in policy. Peter Ucko noted in 1989 that archaeologists seemed “ill-prepared” for their role in the development of state policy on archaeology (Ucko 1989). On the other hand, it is worth considering that many archaeologists were well aware of the benefits to be gained from regulatory policy, and were buoyed by early success. As the scope of implementation expanded, archaeological interests began to engage this wider range of interests in policy formulation and implementation. The contests that emerged came to be organised around issues and social cleavages that reflected the dominant interests of all participants, not just the archaeologists.

³⁷ Arguably, the whole field of cultural resource management as it is currently practiced has a strong relationship to the way in which archaeology policy developed in the United States over the past century. By the late 19th century, archaeologists or their institutional employers, began to coalesce as an interest, and to define appropriate objectives and acceptable practices for engaging with archaeological sites. In establishing the scope of the policy contest, this necessarily included identifying the unacceptable practices of commercial collectors, as well as other types of land use incompatible with significant archaeological sites. The initial intent of the Antiquities Act of 1906 was to reserve access to significant archaeological sites to professionals employed by museums or academic institutions; however, this professionalisation drove the expansion of archaeological practice to include most archaeological sites, and reinforced the need for additional policy on sites, practice, and the definition of the public interest in archaeology. This literature is found to date largely to the early 1970s through the late 1980s, when US archaeology was engaged in a reflexive review of archaeological practice in the face of broader theoretical debates on how to advance archaeological theory. The most significant transformation of archaeological practice through this period was the transition from research focussed archaeological practice, to the client-driven commercial practice of consulting that predominates in the field today. The US pattern of development in both policy and practice came in advance of developments in Australia, New Zealand, and Canada. It is assumed for this discussion that this development, facilitated by juridical and policy reference to US statute, and professional reference to CRM publications by archaeologists, shaped the policy agenda in these jurisdictions through most of the latter 20th century.

The Antiquities Act of 1906 (16 U.S.C. 431-433)³⁸ is a landmark in the legal regulation of archaeology. The Act defines archaeological sites, potential impacts and necessary protection, establishes a permit system, and a means for preserving significant properties. Site protection is achieved by preserving antiquities in place as national monuments (16 U.S.C. 431)³⁹, and by controlling access to these sites through a permit system. Under the Act archaeological sites, and the material objects they contain are reserved for the public good objectives of protection and study (McManamon 1996; 2000a). This public good is realised through “professionalism and a scientific approach for any excavation, removal and other investigations of archaeological resources on public lands” regulated by the Act (McManamon 2000a, 18). In this way, the archaeological site, or at least those worthy of protection as national monuments, became the central concept around which the archaeological profession grew.

Antiquities Act protection is conditional on the impact of this protection on the interests of other public land users. Reserves declared under the Act must be “confined to the smallest area compatible with [their] proper care and management” (16 USC 431), to avoid unnecessary reductions to the land base available for other commercial uses (Smith 2004; McManamon 1996; 2000a). Also, permits are restricted to employees of public institutions actively engaged in research which will increase scientific knowledge about these sites, and support public education (16 USC 432). The federal government asserted interest in stewardship of antiquities and control of archaeological practice on lands controlled by the federal government (16 U.S.C. 433),⁴⁰ led to uniform rules governing archaeological practice across the three main landowning state departments (16 USC 432).⁴¹

³⁸ In a centenary celebration of the Antiquities Act of 1906, Hirst (2006) writes: “...the Antiquities Act was the result of 25 years of lobbying and negotiation in and outside of Congress and the archaeological community. The [Act] gave the United States president unilateral power to create national monuments from federally owned property, thereby limiting such activities as hunting, grazing, and mining; it provided punishment for persons caught looting or damaging property within these areas; and it defined who could be allowed to excavate and conduct research on the properties ... this deceptively brief act [made] the protection of cultural and natural resources a federal responsibility ... [and] forged a future for the profession of archaeology as a scientific study rather than a focus of art history or tourism.” <http://www.archaeology.org/online/features/act1906/index.html>

³⁹ Although the Act uses terms landmarks, historic or prehistoric ruins and structures, objects of antiquity, objects of historic or scientific interest, and archaeological sites, no definitions are provided.

⁴⁰ Carman (2005) argues that stewardship over archaeological sites on public lands represents a declaration of ownership. As ownership includes the right to dispose of the thing owned, the permit systems may be seen as one form of controlling the disposal of the resource, consumed through archaeological practice. Smith echoes this position: “What is important in this Act is not so much that it preserved ‘archaeological sites’, but that it recognised the rights of access to what was now defined as *archaeological* to those who could guarantee their conduct would be guided by their expertise and professional affiliations” (Smith 2004, 129).

⁴¹ Uniform rules were developed for use by the three main land holding government departments: Interior, Agriculture, and Army (later Defence).

The Antiquities Act represents the outcome of a policy contest, ostensibly between archaeologists and commercial collectors (cf. McManamon 1996; 2000a). The scope of the contest was expanded to engage commercial artefact collectors, museum or other institutional actors with a research and education interest in archaeology, and others, such as other commercial users of public lands. In building their position, archaeologists drew on notions of the public interest in archaeology as a national heritage, its educational value, and the difference between looting and the scientific approach taken by legitimate archaeologists. The government, in adjudicating the contest, upheld this view of archaeological value, but combined it with other state and private interests. Indigenous interests are notably absent from the contest, a point that Smith (2004, 19) suggests reflects the “myth” that indigenous people in the United States were vanishing through assimilation. This myth is not exclusive to archaeology, but underwrites much of the 19th and 20th century policy governing state relations with indigenous people where the objective was assimilation (Smith 2004; cf. McGuire 1989; McGimsey 1972).

The Historic Sites Act of 1935 (HSA: 16 USC 461-467) marked an expansion of the state’s interest in antiquities, to include the protection and preservation of sites, buildings, objects, and antiquities, whether or not they are on land that the state owns or controls (McManamon 2000a). While the Antiquities Act was concerned with national monuments, the Historic Sites Act called for the preservation of sites of “national significance for the inspiration and benefit of the people” (16 USC 461). Implementation led to the creation of a national archaeological survey within the National Parks Service. Among the tasks of the survey is collecting data on known sites (16 USC 462a), to locate and investigate sites to determine significance (16 USC 462b), and to conduct site investigation leading to the acquisition of “true and accurate” facts concerning the property (16 USC 462c).

Site significance was a new concept introduced through the Historic Sites Act (HSA), to define sites holding a “transcendent” national significance (Ickes 1935, cited in McManamon 2000b), or possessing “exceptional value as commemorating or illustrating the history of the United States” (16 USC 462(b)). The concept of significance grants additional authority to archaeologists over the fate of archaeological sites (cf. Carman 2005) as they are the experts who develop and use the required classification schemes for ranking and evaluation. The policy contest again included a number of other interests that were identified by the state. The HSA created an advisory board for the National Park System director (16 USC 463a), the members of which “demonstrated commitment to the mission” of the NPS, and represent a

range of disciplines, including cultural resource management, land use planning and financial management (16 USC 463a).

In implementing the HSA policy on archaeological survey (16 USC 462a-c), NPS archaeologists began advocating survey of areas proposed for development that were archaeologically unknown. This advance survey work was primarily focussed on large public works programs (McManamon 2000b; Wendorf and Thompson 2002),⁴² was formalised in the Reservoir Salvage Act of 1960, and later amended and expanded as the Archaeological and Historic Preservation Act (AHPA) in 1974 (16 U.S.C. 469-469c-2). With the HSA, the policy contest begun with the expansion of the scope of application of the Antiquities Act from monuments to significant archaeological sites, continued in implementation. The Reservoir Salvage Act formalised the scope expansion to include pre-development survey for archaeological sites in archaeologically unknown areas (16 USC 469, 469a), while the AHPA amendment sanctioned advance survey in all federally licensed or funded programs that may result in terrain alteration (16 USC 469).

To the benefit of archaeological practitioners, the AHPA formalised policy direction linking pre-development survey, the evaluation of significance, and salvage excavation of the most significant sites as key components of an archaeological protection programme. In the midst of this scope expansion, there was also one area of scope reduction: the approach to archaeological practice codified in policy included identifying the purpose of salvage excavation as being to “recover and preserve data” (16 USC 469a-2(a)). The view that artefacts, features, and context can be captured as data may have been necessary to ensure that archaeology continued to be considered in development planning. While archaeological sites are not necessarily portable, data are, so casting the objective of archaeology as data recovery, the potential for archaeology to obstruct large scale development projects was removed (Smith 2004; Wendorf and Thompson 2002).

Archaeologists saw this expanding role as evidence of the growing power of the discipline; however, the cost of this power is not entirely clear. On the one hand there is Brew’s (1961, 1) mildly hyperbolic observation that archaeology:

An esoteric humanistic discipline which has never before had prominence expect [sic] in realms of the imagination and as a very minor subject in academic halls, now finds itself of concern to the board rooms of great construction companies, to the world’s

⁴² The surveys have become part of the founding myth of American archaeology, as reflected in the volume of reminiscences by archaeologists who had been active in these surveys, in the *Plains Anthropologist* (Hawley and Wulfkuhl 2006).

most august legislative assemblies, to the cabinets of nations, and even to heads of state (Brew 1961, 1, cited in Smith 2004, 131).

On the other hand, archaeologists were publicly arguing in favour of excavation over preservation. In her examination of the committee records for the proposed AHPA amendments, Smith finds that when confronted with the concern that archaeological recovery work might impede federal development projects, archaeologists “were at pains to emphasize that the preservation of archaeological data was best achieved through salvage” (Smith 2004, 134, citing Committee on Interior Affairs 1973, 108f). Salvage archaeology produces two political effects: On one hand it ensures that archaeology continues to be considered in development planning (Smith 2004; Wendorf and Thompson 2002), but on the other, it promotes a strict material view of archaeology over others (Smith 2004), including Indigenous perspectives. The influence that the archaeological practice that developed during this period has had on the development of archaeological theory, or lack thereof, continues to be debated (Mitchell 2006; 2007; Bleed 2007; Roper 2007).

The relationship between archaeological practice and development is expressed in the funding and reporting arrangements described in the AHPA. Up to 1 per cent of the federal funding contribution to any development project is earmarked to support archaeological salvage (16 USC 469c(a)). The obligation is that the archaeological work be timely, with fieldwork and reporting required to cause “as little disruption or delay as possible in the carrying out” of the development being funded (16 USC 469a-3(a)). Thus, the inventory and data gathering direction of the HSA was mobilised in support of providing archaeological intervention for all threatened archaeological sites, expanding the scope of the Antiquities Act and the Historic Sites Act. But in negotiating this expansion, the conservation focus of the Antiquity Act was displaced in favour of a salvage/data ethic. It is possible to speculate that archaeologists in this contest, as represented by CRAR, sought out a level of formal cooptation with the managers of the large development projects (cf. Selznick 1949), offering support for development, in exchange for secure salvage funding.

Development pressures on heritage resources led to the next policy contest that engaged archaeology. Championed by historical societies, rather than archaeologists, the National Historic Preservation Act of 1966 (NHPA) called for the preservation of an “irreplaceable” national heritage, at risk of being lost “in the face of ever-increasing” development pressures (16 USC 470b). The NHPA expanded the application of the Historic Sites Act to sites of state and local significance as well as those of national significance. Sections 106 (16 U.S.C. 470f) and 110 (16 U.S.C. 470h-2), are the most relevant sections of the Act to archaeological

practice (King 1998; 2000; Smith 2004).⁴³ But archaeologists were slow to recognise the consequences of the preservationist NHPA on archaeological practice. The NHPA focus on architectural heritage preservation rather than archaeological site protection led to calls by archaeologists to amend the Reservoir Salvage Act, not to reflect the preservationist approach of the NHPA, but to match the expanded application of policy (King 1998; 2000), and “institutionalise a number of assumptions about” archaeological resources (Smith 2004, 133). Principle among these is the dominance of the salvage ethic, with its objectives of recovering and preserving data (16 USC 469a-2(a); Wendorf and Thompson 2002) over the preservationist concern with archaeological places (Smith 2004).⁴⁴ In this way, two competing approaches to cultural heritage were becoming apparent. The salvage focus of the AHPA was at odds with the preservationist thrust of the NHPA to the extent that integrating archaeology into the mainstream historic preservation framework required “several years of intense discussion and experimentation” (McManamon 2000c).

Archaeology policy benefitted from its alignment with the dominant social cleavage (cf. Schattschneider 1960), defined by the environmental movement of the late 1960s. The emerging interest in environmental protection created a new avenue for cultural resource management specialisation (McGimsey and Davis 1977; Cleere 1989; Czaplicki 1989). The range of archaeological fieldwork opportunities expanded (McManamon 1996), and archaeology became a technical specialisation within a broader land use planning field (King 1998; 2000; McManamon 2000d). At the same time national issues, such as escalating commercial looting of archaeological sites, and failed prosecutions under the Antiquities Act of 1906,⁴⁵ led to the formulation of the Archaeological Resource Protection Act (ARPA) of 1979 (16 USC 470aa-mm; cf. McManamon 1991a).

⁴³ Section 106 is the trigger for federal agencies to undertake heritage investigations (including archaeological assessment) in advance of final planning for federally funded or licensed projects (16 USC 470f). The historic heritage focus of the NHPA suggested that archaeology was useful for the data it could provide in evaluating the significance of historic properties, and site protection is not an assured outcome of site identification and reporting (Smith 2004; McManamon 2000c). Section 110, which describes administrative responsibilities under the Act, is equally important to archaeology. This section requires the “heads of all Federal agencies ... [to] assume responsibility for the preservation of historic properties ... owned or controlled” by the agency (16 USC 470h-2(a)). This responsibility required agencies to establish preservation programmes, “consistent with ... the mission of the agency” (16 USC 470h-2(a)). The principle focus under Section 110 is determining eligibility for nomination to the National Register of Historic Places. Properties listed on the register, or that are eligible are to be managed “in a way that considers ... [historic] preservation” (16 USC 470h-2(a)).

⁴⁴ Archaeological salvage presents the archaeological site as multiple data sets to be gathered, setting archaeological knowledge above preservation of the site itself; emphasising the information value of the archaeological collections, and deemphasizing the sense of place associated with the site in its local context (Smith 2004). The archaeological practice embodied by the AHPA approach focussed on recording sites and collecting archaeological objects under imposed time limits to meet specific policy-based standards.

⁴⁵ Escalating commercial value of some archaeological materials during the 1970s saw a sharp increase in site looting and in attempted prosecutions under the Antiquities Act of 1906 (McManamon 1996). Prosecutions failed on court rulings that viewed the terms of the 1906 Act “unconstitutionally vague and therefore

ARPA reasserts the national interest in archaeological resources, and precludes commercial exploitation of archaeological sites on federal lands (16 USC 470kk(c)), but the new Act applies only to land owned by the federal government, instead of the Antiquity Act's broader application to lands owned *or controlled* by the state (Hutt 2002). ARPA reiterates the permit requirements of the earlier Act,⁴⁶ but expands the eligibility to include qualified individuals (16 U.S.C. 470cc(a)), rather than just the institutional permits of the 1906 Act. Permits are issued on the basis of an application made for the purpose of "furthering archaeological knowledge in the public interest" (16 USC 470cc(b)). Ownership of sites and collections expands under ARPA to include the archaeological collections made. Since all archaeological resources excavated or removed "remain the property of the United States",⁴⁷ all objects recovered, and associated records and data must be preserved in accordance with federal regulations to that effect (16 USC 470bb(3)).⁴⁸ ARPA does not promote the view that archaeological sites are reducible to their data content, as promoted in the AHPA; however, the new Act notes that the outcome of archaeological activity conducted under permit is the creation of collections, the curation and disposition of which is addressed in Section 5 of the Act, and corresponding regulation (36CFR79). State ownership allows for both criminal and civil penalties for unauthorised fieldwork (16 U.S.C. 470ff; Hutt 1994; 2002; McManamon 1991a). In estimating civil damages, the Act references the value of an authorised archaeological research excavation and analysis project that may have been possible had the offence not occurred.⁴⁹

The scope of the contest over ARPA appears to have been broader than the contest had been over the Antiquities Act of 1906. Smith states that "counter lobbying ... by commercial collectors, amateur collecting enthusiasts, and the metal detector industry" (2004, 135), led to statutory protection of hobby collecting in ARPA. Section 6 clarifies that collecting arrowheads from the ground surface (16 USC 470ee(g)) is not considered to be *archaeology* (16USC470ee), with a 1988 amendment also excluding coins and bullets (16 USC 470kk(b)). Further, the Act confers an assumed right of ownership to individuals over "collections of

unenforceable" (McManamon 1996; see also McManamon 1991a; 2000d; Hutt 2004). The Archaeological Resource Protection Act of 1979 (ARPA) was presented as the policy response (Smith 2004, 134; cf. Knudson 1984; McManamon 1996).

⁴⁶ Permits may be issued under the authority of the Antiquity Act or ARPA. ARPA states that a second permit is not required if an archaeological excavation is undertaken under an Antiquities Act permit.

⁴⁷ Carnett (1991) notes that when charges have been brought under ARPA, additional charges under the *embezzlement and theft* provisions of 18 USC 641 (find title), and the *malicious mischief* provisions of 18 USC 1361 (find title) were often also brought.

⁴⁸ Permit applications require the identification of a specific individual who has responsibility for meeting the terms and conditions of the permit (16 USC 470cc(e)).

⁴⁹ An extensive discussion of the civil prosecution process under ARPA is provided in Hutt (1994; 2002). The calculation of damages for these cases is outlined in McAllister (2007).

archaeological resources and data which were obtained prior to” enactment of the Act (16 USC 470aa). Absolving earlier violations of the Antiquities Act is coupled to a programme of fostering improved communication between these individuals and the Federal government (16 USC 470jj).

Representation by collectors in the contest over ARPA may not reflect a scope expansion from the time the Antiquities Act was being formulated, so much as a higher level of organisation by this interest. That this interest, defeated in the earlier contest, returned to successfully contest parts of the new policy reinforces the idea that stabilised policy renders the underlying contests invisible, but does not make them disappear completely. In this case, the collectors did not disappear either as a social group, or as an interest group, and the new round of policy negotiation allowed them to destabilise the contest to produce benefits for their interest at the expense of archaeologists and their role as representatives of the public interest in the material past.

Another interest that emerged during the policy developments of the 1970s and 1980s was the indigenous interest in cultural sites, archaeological sites included. This interest was initially expressed as a concern by American Indians over the content and care of museum collections of indigenous cultural objects and human remains (Smith 2004, 140). Notwithstanding the postulate that the indigenous interest in cultural heritage pre-existed that of the arrowhead collectors, the indigenous perspective is nowhere to be seen in the contest over the Antiquities Act. It is likely that the introduction of the indigenous interests to the contest over Archaeological Resources Protection Act would have seriously destabilised the contest for archaeologists, museums, and for the state in adjudication. The strategic understanding of this may be at the root of the perceived failure of the required consultation on ARPA and associated regulations (16 USC 470ii)⁵⁰ which have been criticised as failing to account for indigenous concerns over archaeology (Smith 2004; Tsosie 1997).⁵¹ Instead, Indigenous cultural heritage concern, including places where it may overlap archaeology are addressed in specific legislation, such as the American Indian Religious Freedom Act (AIRFA) and the

⁵⁰ Uniform regulations are found in four places in the CFR. Regulations for the Department of the Interior are found at 43 CFR part 7, subparts A and B; for Agriculture, Forest Service, at 36 CFR part 296; for Defense, 32 CFR part 229, and for the TVA 18 CFR part 1312. Note that 43 CFR part 7, subpart B represents specific supplemental regulations issued by the Department of the Interior.

⁵¹ In a very broad sense, expanding the role of Historic Preservation Offices to include the creation of Native Historic Preservation Offices under the NHPA, and direction to specifically consider the provisions of the American Indian Religious Freedom Act (42 USC 1996 and 1996a), and to notify any associated Indigenous group when evaluating permit applications that propose activities potentially harmful to a religious or cultural site (16 USC 470cc(c)), in a later amendment to ARPA, may have been seen as compensating for the lack of involvement of indigenous groups in ARPA consultations.

Native American Graves Protection and Repatriation Act (NAGPRA), reinforcing the policy-based distinction between indigenous heritage and archaeology.

The 1978 American Indian Religious Freedom Act (42 USC 1996 and 1996a), provides for Native American “access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites” (42 USC 1996; Executive Order 13007 (1996)). While AIRFA has relatively little impact on archaeological practice, it does affect public land management by adding complexity to the range of cultural heritage concerns land managers must account for in planning (Yablon 2004). The Native American Graves Protection and Repatriation Act (NAGPRA), concerns the treatment, repatriation, and disposition of Native American human remains, and funerary, sacred and cultural objects, and in this represents the legal basis for an indigenous interest relative to archaeological practice. NAGPRA provides definitions for a number of concepts and terms which overlap with archaeological practice, and defines the relationship between archaeologists and Indigenous people in policy context. While archaeologists had obtained a privileged position through earlier policy, they are displaced, to a degree, in favour of “the unique relationship between the Federal Government” and indigenous people (25 USC 3010).

To facilitate criminal prosecutions under the US criminal code (18 USC 1170),⁵² NAGPRA includes definitions for burial sites, human remains, and cultural objects in terms that serve to distinguish them from archaeological materials (McManamon 2000e). NAGPRA reinforces the requirement for a valid ARPA permit to conduct archaeological investigations of sites, adding that intentional excavation of “Native American cultural items” is only permitted following documented consultation with the appropriate indigenous group.⁵³ The Act adds clarifies responsibilities of individuals when human remains and associated cultural objects are inadvertently discovered in land use or development. Specifically, requires that the activity cease in the area of the discovery, that it is secured from further damage or removal, and that notification is made to the appropriate authority. Citing these requirements

⁵² In the Act, objects are described in terms of ownership; human remains in terms of control. Funerary objects are distinguished by ownership or control. In addition to human remains, four classes of objects are defined (25 USC 3001): “Associated funerary objects” are objects that would have been placed with human remains as part of a funerary rite or ceremony, and which are in the possession of a federal agency or museum. “Unassociated funerary objects” are similarly defined except that they are “not in the possession or control of a federal agency or museum”. For the latter, the Act describes how the association of objects to a burial site is to be demonstrated. Sacred objects are “specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents”. The final class, cultural patrimony captures those objects of cultural significance held corporately by “a Native American group or culture,” and which “cannot be alienated, appropriated, or conveyed by any individual” (25 USC 3001).

⁵³ Ownership and control over materials recovered must be determined for excavated materials, following the terms described in NAGPRA (25 USC 3002(a) and (b)).

McManamon considers NAGPRA as a positive force for archaeological site preservation, “or at least the portions of them that contain burial or other kinds of cultural items” (2000e, 387), and in providing additional research opportunities directed to avoiding development conflicts with burial sites. While NAGPRA extends special protection to cultural items, a broad descriptor, the intent of the Act is specific. Senate testimony on the Act noted “any object could be imbued with sacredness in the eyes of a Native American [but the Act only applies when] the primary purpose of the object [is] in a Native American religious ceremony” (Senate 1990, 7, cited in McManamon 2000e). This leaves open the opportunity for archaeologists and indigenous groups to contest implementation in the definition of archaeological, cultural, and ceremonial objects, a contest which has generated a large literature including court proceedings that have also been extensively reviewed.⁵⁴

3.3.1.1 Summary of Early United States Archaeology Policy

In this section I have reviewed the historical development of archaeology regulatory policy in the United States. Early success by archaeologists in exploiting a wider social concern for the care of national historic monuments led to the legitimisation of institution-based archaeology, and prohibitions against private or commercial collecting. In implementation, permit based archaeology supported an expanded scope of application for archaeological research and protection from monuments (under the Antiquities Act), to sites of national and later, local significance (under Historic Sites, and Archaeological and Historic Preservation Acts). The permit system also benefited archaeological practice by supporting the emergence of pre-development survey which, under AHPA gained secure funding in federal projects. In building support for archaeological practice in development contexts, archaeological sites came to be viewed increasingly as sources of scientific data about the past which promoted salvage archaeology as the preferred approach to archaeological resource protection. Adapting the objectives and practices of archaeology to support development outcomes may represent the formal cooptation (cf. Selznick 1949) of archaeological practice by development interests. Additional challenges to archaeologists’ hegemony over practice appear in the negotiations over ARPA, which allowed for non-commercial collecting, and NAGPRA. In the latter case, requirements to consult with affected indigenous groups regarding archaeological fieldwork affecting indigenous cultural items held the potential to destabilise implementation of previous archaeological policy; however, the introduction of indigenous

⁵⁴ This literature includes the extensive debate surrounding the proposed repatriation of “Kennewick Man”, including a legal challenge raised by noted archaeologist Robson Bonnicksen (See Hamilton 2009, Chapter 5; Smith 2004, Chapter 8).

groups as a new interest in implementation contests appear to have been successfully countered by refining the definition of what is, and what is not, archaeological.

Review of US policy is perhaps more straightforward than in other jurisdictions, as statutes were enacted without the repeal of earlier statutes. Over time, archaeological practice changed to conform to the regulatory requirements as they arose, and this regulated practice underwrote subsequent policy developments. As regulatory policy was refined, practice changed, and a concomitant theoretical literature in archaeological practice, or cultural resource management, emerged. Theoretical literature, based in the US experience became a staple of academic archaeological discourse, and in turn influenced policy and practice beyond the United States. In this way, archaeological practice that evolved in the US in response to specific regulatory policies, was translated by academic writers into a literature of how archaeological practice in general could be conducted, allowing it to be adopted, more or less unaltered, in Canada and other countries. As practice changed, it in turn, influenced emerging regulatory policy in these countries. This link between regulatory policy and practice is, I believe, important. Peter Ucko noted in 1989 that archaeologists seemed “ill-prepared” for their role in the development of state policy on archaeology (Ucko 1989). But it may be just as reasonable to suggest that the evidence of early policy and practical success in the US meant that many archaeologists were well aware of the benefits, including financial benefits, to be gained from regulation. The challenge that seems to have been overlooked is that, over time, archaeologists lost control over the scope and central themes of regulation; practice came to focus increasingly on data collection, as policy came to reflect the concerns of dominant interests involved in land and resource development. Archaeological practice, at least as it is practiced as CRM, is in almost every way subordinate to development plans and time schedules (cf. Smith 2005; Waterton 2005). This leaves any contemporary archaeologists, who cleave to the belief that archaeology is regulated primarily for the purpose of protecting sites, running the risk of becoming “diehard minorities ... [frozen within] obsolete alignments [as] permanently isolated minorities” (Schattschneider 1983, 73).

3.3.2 International Agreements

There are a small number of international charters and conventions that set out the basic components of appropriate archaeology policy. These conventions, particularly the 1969 European Convention on the Protection of the Archaeological Heritage (European Convention), are credited with creating consistency in the archaeology policy of most western states (Cleere 1989; Carman 2002; Brattli 2009). While the authors of the European Convention were successful in exploiting wider debate on the protection of the environment

current in the late 1960's (Brattli 2009), the archaeological perspective embodied by these documents has been influenced by the archaeological literature, which in turn had been strongly influenced by US experiences and debates on the nature of the archaeological resource and means for its protection. This influence arises partly through the compelling narratives developed for these policy contests (cf. Stone 2002), and through the increasingly durable nature of archaeology policy itself.

In this section, I review a small number of charters and conventions concerned with archaeology. These charters and conventions form part of a larger body of policy concerned with broader questions of cultural heritage developed by international organisations, such as the United Nations Educational, Scientific, and Cultural Organisation (UNESCO).

The UNESCO Recommendation on International Principles Applicable to Archaeological Excavation (1956),⁵⁵ establishes international principles governing the protection and excavation of archaeological sites. Several recommendations are made, including:

- making all archaeological exploration and excavation subject to prior authorization by a central agency;
- requiring that security, maintenance and conservation of the site and its associated objects is part of authorisation;
- recommending that policy be established requiring inadvertent archaeological discoveries to be declared to a competent authority;
- establishing a state archaeological administration to document activity and finds;
- to undertake education programs promoting respect for archaeological remains;
- ensure that restoration projects are appropriately supervised; and
- prohibit the removal of monuments without consent (UNESCO 1956).

Elements of this recommendation are evident in most archaeology policy in Canada, indicating that, while not legally binding, it has served as a model for national legislation governing excavation.

The European Convention (1969), promoted by the Council of Europe, calls for the application of scientific methods to archaeological research and an end to illegal excavations as two important principles for safeguarding archaeological heritage. It makes a number of recommendations, including:

- creating archaeological "reserve zones", preserved for excavation at a later time;
- compiling inventories of all publicly and privately held archaeological objects; and
- facilitating exchange of these objects for scientific and educational purposes.

⁵⁵ The text of this and other international charters referenced in this section have been consolidated by the Getty Institute, under the general heading of Cultural Heritage Policy Documents, available at: http://www.getty.edu/conservation/research_resources/charters.html#1904

This convention is credited with much of the impetus in the 1970s for the creation or uniform updating of archaeology policy in most jurisdictions (Cleere 1989), including Ontario (Pearce 1989). However, the terms of this convention are not particularly well represented in many policies. As I will discuss in Chapter 4, for example, the option of site avoidance is presented as a symbolic mitigation strategy, rarely pursued because no mechanisms or incentives exist to promote it among development proponents. This, in turn, supports my ongoing contention that the implementation of archaeology policy is based more in commercial, not academic motives. For this reason, there are few meaningful efforts in Canada of establishing archaeological “reserve zones” as described in this convention, compared to the use of salvage archaeology to acquire data from sites in advance of development.

The Charter for the Protection and Management of the Archaeological Heritage (1990), prepared by the International Council on Monuments and Sites (ICOMOS) International Committee on Archaeological Heritage Management (ICAHM), was created in response to the increasing threats to archaeological sites worldwide, especially from looting and land development. The Charter seeks to establish principles for archaeological heritage management that are globally valid and applied to local or national conditions. The Charter views the development of policy as the most effective avenue to archaeological site protection, with policy development accompanied by archaeological site inventories and general surveys of the resource.

Among the non-archaeological cultural heritage documents produced by international agencies, the ICOMOS New Zealand Charter (ICOMOS 1992), the Australian Burra Charter (ICOMOS 1999),⁵⁶ and the UNESCO charter on intangible cultural heritage (UNESCO 2003) are of interest. The principles expressed in the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value (ICOMOS 1992)⁵⁷ recognise the relationship between the Crown and Maori established by the Treaty of Waitangi, including traditional Maori stewardship responsibilities for Maori cultural treasures (taonga), monuments, and sacred places (wahi tapu), regardless of legal ownership (Matunga 1994). The Australian Burra Charter (1999) for the conservation of places of cultural significance, addresses the management of cultural places, and extends the scope of cultural significance to include intangible values. In the Burra Charter, cultural significance means “aesthetic, historic, scientific, social or spiritual value for past, present or future generations”, and

⁵⁶ The Burra Charter is available from the following web site: <http://australia.icomos.org/burra.html>.

⁵⁷ Charter for the Conservation of Places of Cultural Heritage Value (1992), ICOMOS New Zealand. Web based text available at http://www.icomos.org/docs/nz_92charter.html

specifically includes indigenous interests in conservation. The Burra Charter has been widely referenced in promoting community inclusion in heritage conservation, even though it has been argued that the underlying power imbalances of regulator and community representatives is perpetuated in these consultations (Waterton, et al. 2006).

The ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value reflects a policy trend toward consideration of indigenous interest in cultural heritage values. This charter outlines principles which should be considered by authorities when conserving places of cultural heritage value in New Zealand. The charter calls for conservation approaches that show the greatest respect for, and involve the least possible loss of, material of cultural heritage value. It also outlines conservation processes and provides a list of definitions of conservation terms.

For New Zealand, and as an example for other jurisdictions engaged with indigenous groups with direct or implicit descendent relationships with archaeological sites and artefacts, this Charter represents an important step forward. First, by acknowledging that archaeological heritage is but one aspect of the wider cultural heritage of these groups, the scope of policy contests over archaeological policy is extended, destabilising the traditional archaeological perspective. Second, the acknowledgment that indigenous groups may retain a sense of stewardship for ancestral remains regardless of current ownership status creates an important avenue for negotiation and collaboration at the local level. Thirdly, the use of the term place rather than site in the Charter may be seen as a tacit acknowledgement of the existence of values at these places beyond the material remains that are present, and subject to archaeological study.

International charters provide the potential for further scope expansion in policy contests over archaeology regulation with the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (UNESCO 2003).⁵⁸ This convention builds on an earlier recommendation document concerned with traditional culture and folklore. While thin on specific strategy recommendations, the Charter does describe measures that states should take to protect and preserve such intangible heritage as oral traditions, language, performing arts, social practices, rituals, festive events, traditional craftsmanship, and indigenous knowledge and practices concerning nature and the universe. Specific safeguards include providing for:

- the identification and documentation of traditions;
- research;
- preservation, protection, and promotion;

⁵⁸ See reference at note 28.

- support for the transmission of traditions through non-formal education; and
- revitalization of the various aspects of such heritage.

While the convention does not directly speak on the subject of archaeological sites, the notion that an archaeological site may at once be a location where archaeology is practiced, and a notable spiritual or cultural site beyond the material remains present, does hold salience for policy contests, as seen in the New Zealand example.

Finally, a non-binding agreement among archaeological organisations and archaeologists concerning human remains was developed at the World Archaeological Congress. The Vermillion Accord on Archaeological Ethics and the Treatment of the Dead (WAC 1989) outlines six key standards for the treatment of human remains found in archaeological context. Key among these is the call for treating the remains in accordance with the wishes of the dead, relatives, and the local community, although a concession to the value of scientific investigation is also made.

3.3.2.1 Summary of International Policy

In this section international policy statements made by a variety of organisations were reviewed. While early charters reflect an interest in the scientific value of archaeological sites, and fail to acknowledge descendant community interest in the sites, more recent international agreements are beginning to demonstrate greater balance between archaeological and indigenous interests.

3.3.3 Contemporary Canadian Policy

In Canada, archaeology falls under the broad area of property law, a matter of provincial jurisdiction under the Constitution, and is therefore the domain of the provinces and territories.⁵⁹ Provincial and territorial laws are consistent across the country, and this consistency reflects a common narrative on which is based a “common legislative intent: archaeology is important to Canada, and Canadians should not abuse their archaeological heritage any more than they would tear pages out of their family history.”⁶⁰ Provincial and

⁵⁹ Federal policy regulates archaeology on federal lands, such as national parks, and the federal government also oversees national commitments made under international treaties and agreements concerning world heritage sites.

⁶⁰ Parks Canada “Unearthing the Law” http://www.pc.gc.ca/docs/r/pfa-fap/res-abs_E.asp (accessed 12/05/2009). This narrative is expanded to reinforce the dominant view of the purpose of archaeological practice, with the Parks Canada document noting that “items that ... look insignificant ... actually contain clues which, to a trained archaeologist, are like an open book. [Consequently] the soil of Canada is itself a kind of archive of our collective past”. The narrative implores readers to understand that “it is so important for archaeologists to be notified and involved whenever the land is about to be disturbed by a major project [and for] Canada, and of all the provinces and territories, to take maximum advantage” of research opportunities offered by development or chance finds.

territorial policy integrates archaeology with cultural heritage to varying extent, the latter term being used to denote a much broader concept that includes intangible heritage, and objects of historical or community interest that are not, strictly speaking, archaeological. Throughout, contemporary Canadian archaeology policy reflects the basic points articulated in the 1956 UNESCO convention on archaeological excavation.

In this review my focus is on the common policy definitions of archaeological sites and objects, significance and value, and appropriate practice. I also consider the emerging policy that includes consideration for intangible heritage values, at times combined with consideration of the role of indigenous groups in evaluating the archaeological resource. This review is not meant to be an exhaustive comparative study, merely sufficient to indicate that policy in Ontario, which I review in detail in Chapter 4, is broadly similar to that of other Canadian jurisdictions, reflects international charters and conventions, and arises, broadly speaking, from the similar forces to those which shaped US policy over the past century.

In most Canadian policy the definition of archaeological sites and the objects they contain are inextricable: an archaeological site is defined on the basis of the presence of artefacts, or artefacts are defined by their presence at archaeological sites. Broadly, artefacts include all material evidence of past human occupation that comes out of, or lies on the surface of the ground. While Alberta allows only for objects that are, or were “buried or partially buried in land in Alberta” (Historical Resources Act, Section 1), Ontario and British Columbia include evidence of past occupations that occur above the ground, such as pictographs and culturally modified trees. Archaeological remains are usually defined in broad terms. In Nova Scotia, for example, archaeological remains include any “work of past human activity”, while a site is the land on which these remains are situated (RS (Nova Scotia) c. 438, s. 1). In Manitoba archaeological resources extend to “plant and animal remains that have been modified by or deposited due to human activities” (C.C.S.M. c. H-39, s. 43(1)). Nunavut policy contains the most prosaic definition of an archaeological site: “a site where an archaeological artifact is found” (SOR/2001-220, s. 1). This regulation, made under the Nunavut Act 1993, is required to conform to the terms of the Inuit Land Claim, where a more typical definition applies: “a site or work ... of archaeological, ethnographical or historical importance, interest or significance or a place where an archaeological specimen is found”.⁶¹

⁶¹ Nunavik Inuit Land Claim, Article 20 (Available at http://www.collectionscanada.gc.ca/webarchives/20071124143305/http://www.ainc-inac.gc.ca/pr/agr/nunavik/lca/lca_e.pdf. Accessed June, 2010.

Some policy compensates for broad definitions with clarifications or conditions. The Nunavut policy example given above is clarified in the definitions of artefact, which must be material, “more than 50 years old [and for which] an unbroken chain of possession or regular pattern of usage cannot be demonstrated” (SOR/2001-220, s. 1). In Saskatchewan special places of interest to archaeologists have been identified, including pictographs, burial objects, places, or mounds, and medicine wheels to the scope of archaeology policy (SK 1979-80, c.H-22, s.64), while Prince Edward Island prefers to view these larger features as monuments or heritage places (R.S.P.E.I. c. H-3.1, s. 1). Conditions on the definition of archaeological sites also includes consideration of the age of the remains. In British Columbia, automatic protection is extended to all sites with “physical evidence of human habitation or use” predating 1846 (RSBC 1996 C. 187, s. 13 (2)(d)), although in many cases these dates are locally or regionally specific. These exceptions and terminal dates for determining what is archaeological are simply proxies for measuring the value or significance of a site, and hence its eligibility for legal protection.

The value or significance of archaeological resources is a consideration in their treatment, but these concepts are not capable of exact definition.⁶² The Ontario Heritage Act⁶³ is one example of building a sense of significance into the basic definition of archaeological resources. In Ontario, archaeological sites are properties that contain “an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest” (O.Reg. 170/04), and artefacts are “any object, material or substance that is made, modified, used, deposited or affected by human action and is of cultural heritage value or interest” (O.Reg. 170/04, s. 1). Manitoba also compensates for the use of one vague term through recourse to another, when it defines an archaeological object as being “of value for its historic or archaeological significance” (C.C.S.M. (Manitoba) c. H39.1, s. 43(1)). British Columbia, on the other hand is clear that archaeological value is rooted in utility: heritage value is the

⁶² Significance in archaeology mirrors the concern for determining significance in environmental policy. For example, a central issue in the debate between Walker, et al. 2008; Norton and Roper-Lindsay 2008) is the role of the expert, and whether a connection between an expert and a development client influences the standards and arguments they use in evaluating significance. Underlying this concern is the view that in some cases an exchange value will be established for an intangible or otherwise non-economic thing. In this exchange, the value is treated as fungible, allowing it to be traded either for another comparable location, or a cash equivalent expressed in terms of cost assumed for mitigation. Within the archaeology literature, the question of significance has been widely debated, most recently in Carman’s (2005) clear treatment of cultural heritage value from a property perspective. As well, a series of papers in Mathers, Darvill and Little (2005) attempts to update the earlier literature on archaeological significance, the bulk of which appeared during the late 1970’s. This early literature focused explicitly on the role of significance evaluation in the then emerging field of contract archaeology (Tainter and Bagley 2005). Key references in this discussion include King (1971); Glassow (1977); Rabb and Klinger (1977); Schiffer and Gumerman (1977); Plog, Plog, and Wait (1978); Moratto and Kelly (1978); Sharrock and Grayson (1979); Lynott (1980); Tainter and Lucas (1983); Schaafsma (1989); Briuer and Mathers (1996). See also Samuels (2008).

⁶³ R.S.O. 1990, Ch. O18

“historical, cultural, aesthetic, scientific or educational worth or usefulness of a site or object” (RSBC 1996 C. 187, s. 1 Definitions).

Archaeological significance is based in the interest that archaeologists hold for the site or object. As Carman (2005) has discussed, archaeological value typically refers to a use-value for sites or objects, and this use-value is usually determined by archaeologists, as seen in British Columbia’s phrase “worth or usefulness”. In Nova Scotia archaeological sites are values “primarily [for their] prehistoric, historic, cultural or scientific significance”,⁶⁴ which is in turn defined by their suitability “for scientific research and educational purposes” (R.S. (Nova Scotia), c. 438, s. 2). Consideration of local value or significance is acknowledged as well in some provinces and territories. British Columbia specifically mentions that heritage value may be determined at a provincial, local, aboriginal community, or cultural level (RSBC 1996 C. 187, s. 1 Definitions). The Nunavut Land Claim, which guides new legislation and policy in the territory, notes that the “archaeological record of the Nunavut Settlement Area is of spiritual, cultural, religious and educational importance to Inuit”, and requires both consideration of local interest and meaningful engagement in evaluation.⁶⁵

While expressions of the value of the resource to archaeologists is vague, and the value to Indigenous people vaguer still, monetary value is identified in one relevant policy. In Nova Scotia a heritage object is “does not include such an object to which the Treasure Trove Act applies” (R.S. (Nova Scotia), c. 438, s. 3(aa)).⁶⁶ Under the treasure laws, archaeological materials that are valued more for the materials they are made from, than for their cultural interest are less archaeological than they are a resource (Carman 2005). The Nova Scotia law was formulated to address an ongoing interest in treasure hunting in the province, and attempts to manage potential conflict between treasure hunters and archaeologists are made

⁶⁴ As described in the documentation concerning archaeological resource impact assessments, available at http://gov.ns.ca/tch/heritage_archaeology_impact.asp. Accessed June, 2010.

⁶⁵ (Nunavut Land Claim 20.2.2). See note 61.

⁶⁶ The Treasure Trove Act allows the government to grant “to any person the right to search in any part of the Province specified in the licence for precious stones or metals in a state other than their natural state and to recover and retain the same upon the payment to the Minister of a royalty thereon at such rate as the Governor in Council may prescribe” (R.S. (Nova Scotia), c. 477, s. 3). Treasure hunters are thus licensed by the government in exchange for a share of the “booty” recovered <http://www.gov.ns.ca/legislature/legc/statutes/treasure.htm>. The original intent of the Act was to address a perennial interest in the Oak Island Treasure. Oak Island has been the focus of a series of attempts over 200 years to recover an alleged 18th century pirate treasure hoard. The treasure, variously imagined to have been buried by Captain Kidd, the Knights Templar, or Francis Bacon, is supposed to be in a deep pit of complex construction, protected by a series of ingenious traps. See, for example, <http://www.oakislandtreasure.co.uk>, and http://www.mysteriofcanada.com/Nova_Scotia/oakisland.htm.

through provisions of the Special Places Act which require distinct permit for archaeology (R.S. (Nova Scotia), c. 438, s. 12).⁶⁷

The public interest is implicit in most archaeology policy. Nova Scotia policy notes that archaeological resources are “considered important parts of the natural or human heritage of the Province” (R.S. (Nova Scotia), c. 438, s. 2). To meet this public interest the state requires permits for active fieldwork, and encourage public participation in protection by reporting chance finds. Again, in Nova Scotia, the public are encouraged to “spread the word about the importance of artifacts ... report your finds ... and join the international research effort to discover the secrets of the past”.⁶⁸

All Canadian jurisdictions require a permit to conduct excavations at an archaeological site, often extending this requirements to include any systematic study involving “the recording, removal and analysis of artifacts, features and other material” (RSBC 1996 C. 187, s. 1 Definitions). The basis for granting a permit is relatively consistent across jurisdictions, and the basic qualifications include an advanced university qualification, plus appropriate experience. Permit requirements vary across jurisdictions. In the western provinces a permit is required only if archaeological investigation will result in soil disturbance, while in the remaining jurisdictions all forms of archaeological exploration, including reconnaissance, requires a permit and prior approval from the appropriate authority. Detailed reporting is required as a condition of permitting in all jurisdictions.

An indigenous interest in human remains is acknowledged in some policies, signalling recognition of the interaction between archaeology and human remains. This interest derives from two primary sources: 1) an abiding indigenous interest in human remains that are identified as ancestral, and; 2) the sense that cultural interest in archaeological sites extends to intangible contents also. This is reflected policy where ownership or rights of disposal are noted. In Manitoba, for example, human remains are viewed as potentially holding heritage significance if they are situated outside of a registered cemetery and there is no ready means of identifying the individuals interred or their probable descendants (C.C.S.M. (Manitoba) c. H39.1, s. 43(1)). But Saskatchewan views human skeletal material found outside of a recognised cemetery as property of the Crown. The disposition of these remains is based on probable age, and biological affiliation: those post-dating 1700 A.D. and are demonstrably

⁶⁷ The Treasure Trove Act is administrated by the NS Department of Natural Resources, while archaeology policy is implemented by the Heritage Division, Department of Tourism, Culture and Heritage. This administrative separation also increases the potential for conflict.

⁶⁸ “Protecting archaeological and historical sites and artifacts: Things you should know. <http://museum.gov.ns.ca/arch/arcintro.htm> (accessed 12/05/2009).

indigenous are transferred to the nearest First Nation, while non-indigenous remains are re-interred by the Crown. Remains predating 1700 A.D. are the property of the Crown, who may rebury the remains “following scientific examination or any use for research or educational purposes” (SK 1979-80, c.H-2.2, s.65). In Yukon, human remains considered to be of aboriginal origin found on settlement land in Yukon are the property of the First Nation with title to that land, while non-aboriginal remains ownership is vested in the Crown. When human remains are discovered in Nova Scotia, and these are believed to be of indigenous origin, the chief of the Mi'kmaq Band nearest to the project location, who can advise on appropriate action.⁶⁹ Newfoundland and Labrador policy groups human remains with archaeological objects, based in part on the fact that the Indigenous Beothuk population was extinct by 1829 (RSNL 1990 c. H-4, s. 2(b) Definitions).⁷⁰

Apart from human remains, statutory requirements to consider Indigenous interests in archaeology is limited; however, policy direction concerning engagement or consultation under different conditions is increasing. In Nova Scotia, the Minister responsible for the Special Places Act is supported by an advisory board that includes “persons representing Aboriginal interests” (R.S. (Nova Scotia), c. 438, s. 5). Specific treaty rights for Labrador Inuit regarding human remains and cultural sites is noted in Newfoundland and Labrador policy (RSNL 1990 c. H-4, s. 3.1).

Recognition of intangible values associated with the archaeological resource are noted at times. Saskatchewan acknowledges the intangible values associated with some archaeological sites in permitting requirements, by including “desecration” as one of the activities at archaeological sites that requires a permit.⁷¹ British Columbia policy provides for the development of archaeological protection or conservation agreements between the province and First Nations made in accordance with aboriginal treaty (RSBC 1996 C. 187, s. 4(1)).⁷² But the value of archaeological resources to Indigenous groups is sometimes linked to other rights-based activity. Given that archaeological resources are granted better protection under law than traditional land use or intangible values, Indigenous groups may

⁶⁹ http://gov.ns.ca/tch/heritage_archaeology_impact.asp#DEFINITIONS (accessed 12/05/2009)

⁷⁰ The last known Beothuk, Shanawdithit, died of tuberculosis in 1829 (Pastore 1992).

⁷¹ The policy states that “no person shall destroy, *desecrate*, deface, remove, excavate, or alter any pictograph, petroglyph, human skeletal material, burial object, burial place or mound, boulder effigy or medicine wheel, except under permit (SK 1979-80, c.H-22, s.64)

⁷² These agreements may include lists of heritage sites or objects of “particular spiritual, ceremonial or other cultural value” (RSBC 1996 C. 187, s. 4(4(a)), define circumstances where the Act does not apply (RSBC 1996 C. 187, s. 4(4)(c)), or more particularly where the Act may infringe on existing aboriginal or treaty right (RSBC 1996 C. 187, s. 8).

embrace archaeological research as a means of initiating or substantiating traditional use studies in their traditional territories.

All provinces and territories include some mechanism for linking the protection of archaeological resources to development proposals. The obligation includes a requirement to plan for archaeological protection as an externality to development and to protect such resources as are located either through advance investigation or accidentally during development activities. While significant archaeological sites may be designated, or stop work orders imposed where archaeological resources are found to be under threat, most policy relies on pre-development archaeological assessment triggered by development application being made under other policy. Manitoba policy articulates the process: any proposal to alter land requires an application for a heritage permit (C.C.S.M. (Manitoba) c. H39.1, s. 12(1)), which will result in the requirement for a heritage impact assessment “prepared at the cost of the owner” (C.C.S.M. (Manitoba) c. H39.1, s. 12(2)). The assessment report is reviewed by the Ministry responsible for the Act, and a decision on the heritage permit rendered with or without conditions relating to heritage site protection (C.C.S.M. (Manitoba) c. H39.1, s. 13(1)). While the archaeological assessment triggers are found in other policy areas, the relationship between archaeology policy and other legislation is not articulated in all jurisdictions.

3.3.4 Summary of Canadian Archaeology Policy

My purpose in this section has been to review contemporary archaeology policy in Canada, focussing on common policy definitions of archaeological sites and objects, significance and value, and appropriate practice. I also considered the relationship between archaeology policy, and other policy concerning intangible heritage values, and the role of indigenous groups in evaluating the archaeological resource. In this review I note that policy across the country is broadly similar, reflecting common approaches to defining sites, artefacts and protection, and to the management of the archaeological resource. This body of policy includes several areas where direction is vague and relies on the discretion of the archaeologist, as in the case of archaeological significance. As noted in the Chapter 2, vague policy objectives increase operator discretion (Lipsky 1980), while an increase in the number of actors, that is, an increase in the scope (Schattschneider 1960) of implementation, increases complexity (Barrett 2004). Combined, discretion and complexity lead to “unforeseen consequences” to policy and the outcomes of policy in implementation (Pressman and Wildavsky 1984, 223). The role of the evaluation of significance in Canadian archaeology policy becomes important when archaeological practice is undertaken in the context of

development, an implementation condition where the number of actors, including non-archaeological interests, is increased: it is the significance of an archaeological site that determines the protection response. Under conditions of increased discretion and complex interaction among interests, these vague policy elements create considerable latitude in the negotiation of archaeological resource protection, a point that I return to in Chapter 5.

3.4 Chapter Summary

In this Chapter, I have reviewed the theoretical literature on regulatory policy, and the way in which policy assigns roles and distributes benefits in implementation. I also considered the way in which policy builds on earlier policy experience, reinforcing and obscuring the assumptions on which these earlier policies may have been built, as well as relying on those in roles assigned by policy to validate subsequent policy development. Using Schattschneider's (1960) theory of political conflict as a guide, I reviewed the historic development of archaeology policy of the United States in terms of the policy contests, their participants and outcomes. The notion that archaeology policy is required is rooted in a public good objective of preserving and interpreting the archaeological resource; however, the arguments that have been made in support of regulation have favoured private archaeological interests. Private interests do not exclude public benefits from arising, but the role of the archaeology practitioner in promoting archaeology to the public is one of promoting the archaeologist's own benefit.

I do not assert that all contemporary archaeology policy derives from the US example. I do, however, concur with Carman (2002) in his contention that contend that contemporary policy is broadly similar across most western countries, and further suggest that this orthodoxy is largely due to policy and the theoretical work underpinning archaeological practice having coevolved. That is, the emergence of the practice of cultural resource management (CRM) as the main avenue of archaeological practice today, did not arise simply as a response to ongoing threats to archaeological sites from development pressures. Rather, CRM is the outcome of the archaeology community's response to the opportunity to participate in shaping policy. Early victories in defining legitimate forms of practice through a permit process, and the notion that some locations are more significant, and therefore merit greater protection from adverse effects were achieved in the early 20th century. The opportunity this policy outcome afforded to archaeological practice for funding research, as well as protecting sites marked the onset of an expansion of the scope of implementation of policy; unfortunately, this also marked an expansion of scope for the overall policy contest. As archaeologists began to apply the protection directives of policy to an increasing range of sites, leading

eventually to a widespread acceptance of pre-development survey and salvage excavation, additional interests were being drawn into the contests over implementation and new policy development.

The development of archaeology policy matches the increasing importance of the archaeologist practicing under the terms of a regulatory permit system, to the exclusion of others, and marks a series of victories in policy contests for archaeological interests. International charters and conventions on excavation and the administration of archaeology regulation mark significant policy victories. However, as the policy continues to evolve, two groups of interests are acting to destabilise the contest. The growth of cultural resource management and its concomitant focus on the mitigating adverse impacts to archaeological sites threatened by development has narrowed the focus of archaeologists the positivist staples of material, data and salvage, and at the same time expanded the scope of participation in implementation contests to non-archaeological private interests, including development interests.

At the same time, international conventions and charters, as well as specific policies in a number of western states mark a growing recognition of indigenous interest in cultural heritage, including both archaeological resources and the intangible values associated with cultural heritage places. This concern for *more* than material remains on archaeological sites can be seen contributing to some of the Canadian policy as well. In this, the position theorised by Schattschneider (1960) is evident: archaeological policy contests are less intense than those concerning the traditional and treaty rights of Indigenous groups, and as a consequence the direction of the contest has changed, with archaeology contests subsumed under the new, and much larger contest over indigenous rights and heritage. Archaeological practice, and the contests over policy implementation became less intense through the 20th century as archaeological practice came to be formally co-opted into development approvals processes. By comparison, Indigenous interests, coupled with an emerging policy focus on intangible heritage has left archaeologists negotiating to retain their position as technical experts in handling, although not necessarily interpreting, material remains. Although these contests remain distinct, contests where archaeology policy or practice have been challenged directly (as in the case of the ongoing debates over native burial repatriation in the United States, suggests that the star of the archaeological interest is no longer ascendant.

In the next Chapter, I draw my focus to one jurisdiction, Ontario, Canada, in which the development of archaeological policy has many of the characteristics of western archaeology policy, including a formal mechanism for authorising practice, a focus on material remains

and salvage excavation, policy implementation through a network centred on land and resource development, and finally an increasing pressure to expand the scope of the policy contest to include consideration of indigenous interests.

Chapter 4

Regulating Archaeology in Ontario

4.1 Introduction

Implementation begins with a written or stated policy in which the scope and nature of the problem or social condition being addressed, and solution proposed (Pressman and Wildavsky 1984; O'Toole 2000). If policy formulation is concerned with setting objectives, then implementation is action directed toward achieving these objectives. Implementation continues the contests that have defined the policy, but in implementation, the scope of participation changes to include local participants from both the public and private sector necessary to the implementation and administration of the policy, or affected by its implementation. This change in scope changes the nature of the policy contest making it important to review the conditions present at the outset of implementation in order to identify the effects that implementation may have on policy.

In this Chapter, I explore the operational conditions for implementing archaeology policy in Ontario, Canada. I begin with an overview of the Ontario Heritage Act, specifically Part VI which identifies the provincial interest in archaeological resources and concerns the licensing of archaeological practice. Under the terms of the Act, only archaeological practice is regulated; archaeological sites are protected by the regulatory restriction that sites may only be altered by a licensed archaeologist. In licensing, the province delegates part of the provincial interest in archaeological resource protection to the individual archaeologists. As the principal in this delegation, the province specifies the terms and conditions of licensing and monitors the results by reviewing reports of the fieldwork undertaken.

I then review aspects of the administrative context of implementation, in particular the move to horizontal management and results based planning in the Ontario Public Service. Horizontal management is based on the idea that public service delivery should be organised in a manner that coordinates agency service delivery according to key stakeholder interests (Ontario 2004; Peters 1998). The main implication of horizontal management for archaeology is that since archaeology policy is implemented under processes defined by land and resource development or environmental protection legislation, archaeology is not the focus of the network. Consequently, the Ministry responsible for the OHA has only limited ability to monitor or direct implementation responsibilities that it has been required to delegate. In horizontal management, other delegations are also required: key implementation

decisions are delegated on to local actors by the agencies coordinating these stakeholder-centred networks. To address this distancing, the Ministry responsible for the provincial interest in archaeology has circulated a number of additional policy documents that act as intermediaries directing the actions required by local decision-makers.

Delegation, in licensing, in local decision-making, and in intermediary documents expands the implementation network. While this may enhance democratic responsiveness to local concerns (cf. Rhodes 2006), it also expands the scope of the network, potentially destabilising it (Schattschneider 1960). Horizontal management also displaces the focus of archaeology policy. In drawing on business models, management targets and efficiency are emphasised (Bevir and Rhodes 2003), leading in turn to measuring administrative performance by measuring and reporting on outputs (actions taken) and outcomes (achievements) from operational tasks. In this discussion, I will note whether this management focus has had the effect predicted by Merton (1940) and Wilson (2000), that the focus of implementation will be displaced toward standard operating procedures and measurable outputs, and away from vague, but possibly more socially desirable outcomes (Merton 1940; Wilson 2000).

4.2 The Ontario Heritage Act

In this section I review the regulatory framework for archaeology in Ontario, Canada. This review is in two parts: I first review the legislation and policy to identify the responsibilities of the central agency mandated with implementation. Following this, I discuss the key delegation of authority in implementation: archaeological licensing. Archaeological resource protection in Ontario is achieved through the regulation of practice, and licensed practitioners have been delegated the authority to act on behalf of the state. That is, licensed archaeologists are agents of the central agency responsible for archaeology policy. While agency theory (Stigler 1971; Eisenhardt 1989; Spiller 1990; Waterman and Meier 1998) posits that agents may act against the interests of the principal, this is addressed in the terms and conditions of licensing where the obligations of the archaeologist are specified. By specifying these responsibilities, the principal is attempting to ensure that the benefits of policy implementation accrue to the public interest, or at least to the principal, as well as preventing the use of slack resources for the private benefit of the agent (Levine and Forrence 1990).

In Ontario, archaeological practice and access to archaeological resources are regulated under the terms of the Ontario Heritage Act (OHA), and associated regulations, standards, guidelines, and other policy documents developed by the Ontario Ministry of Culture (MCL). The stated purpose of the OHA is “the conservation, protection and preservation of the

heritage of Ontario” (RSO 1990, c. O.18, s. 2). However, implementation of these broad policy objectives is effectively split between MCL and other regulatory review agencies. Archaeological practice is regulated directly by MCL under the terms of the OHA, through the licensing of archaeological practitioners. Regulatory reviews of development proposals that trigger archaeological assessments and protection measures are defined in policy created under the authority of other statute, notably the Environmental Assessment Act R.S.O. 1990, c. E.18), Planning Act (R.S.O. 1990, c. P.13), and Crown Forest Sustainability Act (S.O. 1994, c.25), among others. These triggers are more important to the protection of archaeological resources than the licensing practice, as they weigh proposed or potential development impacts to archaeological resources, and initiate mitigation measures, such as engaging a licensed archaeologist to investigate the site.

The conservation of resources of archaeological value⁷³ is described in Part VI (Sections 47 to 66) of the Act, and concerns two categories of activity: archaeological practice, and archaeological site alteration where this may cause adverse effect to archaeological remains.⁷⁴ Importantly, the Act views these two categories as linked: to alter an archaeological site, a license is required, alteration without a licence is a violation of the Act. This captures the requirement for pre-development investigation of development properties, since it is a violation to conduct activities, such as earthmoving, in such a way as to disturb an archaeological site. Earthmoving itself, could not qualify as archaeological investigation, as standards and guidelines for archaeological practice prescribe appropriate techniques. Further, the Act specifies that it is not a *known* site that may not be altered, allowing for violations to occur when previously unidentified sites are affected by non-archaeological activities. From this, it follows that the regulatory mechanism for achieving archaeological site conservation is through the regulation of practice.

⁷³ Resources of archaeological value are described in Regulations to the Act. However, Part VI defines “property” as “real property, but does not include buildings or structures other than ruins, burial mounds, petroglyphs and earthworks” (R.S.O. 1990, c. O.18, s. 47.). In this definition two site types which include intangible cultural value, (petroglyphs [a representational form created using an arrangement of stones on the ground] and burial mounds), are identified as archaeological sites.

⁷⁴ The Ontario Heritage Act consists of seven parts, each of which provides direction relating to specific classes of heritage resources or the Crown’s administrative responsibilities. Parts I to III of the Act relate to administrative matters, and the establishment of the Ontario Heritage Trust, and Conservation Review Board. Amendments to the Act in 2004 saw the addition of Part III.1, which entitles the Minister to prepare standards and guidelines for the identification of properties that have “cultural heritage value or interest”. Although the OHA does not bind the Crown, Part III.1 introduces limited responsibility for heritage properties in control of the province, but which are not actually owned by the Ontario Heritage Trust. Parts IV and V of the OHA relate to the “conservation of properties of cultural heritage value or interest”, with a focus on the designation of buildings (Part IV), and the designation of heritage conservation districts (Part V) within municipal planning areas. Apart from reference to designated archaeological sites in Part II, and the inclusion of archaeological conditions in the documents referenced in Part III.1, these sections do not otherwise deal with archaeology.

Archaeological practice is defined as “any activity carried out ... for the purpose of obtaining and documenting data, recovering artifacts and remains or altering an archaeological site and includes monitoring, assessing, exploring, surveying, recovering and excavating” (O.Reg. 170/04, s. 1). Regulatory limits to practice are also set out in terms and conditions of licensing, and guidelines prepared by the Ministry. Under Part VI, Section 48 of the OHA, an individual⁷⁵ must be licensed in order to conduct archaeological fieldwork, or “alter or remove any physical evidence of past human use or activity” from an archaeological site.

Applicants for an archaeological licence must hold appropriate qualifications. Section 48 specifies that each applicant prove “to the satisfaction of the Minister” (R.S.O. 1990, c. O18, s. 48), that:

- they are competent to conduct archaeological fieldwork in a responsible manner, and that their past conduct supports the condition of competence;
- the activities proposed by the applicant are consistent with the conservation, protection and preservation of the heritage of Ontario, and;
- the applicant meets the eligibility criteria as may be prescribed by the regulations (R.S.O. 1990, c. O18, s. 48).

Detailed criteria for licensing eligibility are presented in a Regulation to the Act (O.Reg. 8/06). Applicants must demonstrate their ability to achieve outcomes consistent with the intent of the OHA. Vague criteria for licensing, such as competence and responsibility, and consistency with values of archaeological conservation, protection and preservation, combined with the review of past conduct allows a wide latitude to the Minister in determining eligibility.⁷⁶

Past conduct of applicants links licensing to compliance monitoring. A primary measure of past performance is the archaeological licence report. Preparing and submitting a report is a key condition of licensing. As specified in Section 65 and other guidance provided to license-holders they must report on all activities carried out under licence, and all properties of archaeological or historical significance known to them. While license reports are typically required on an annual or project basis, the Act stipulates that the Minister may require reports to be submitted at any time. In practical terms, this has resulted in archaeological assessment reports, completed as part of a CRM study of a proposed development property being

⁷⁵ Archaeological licence is restricted to individuals (2002, c. 18, Sched. F, s. 2 (29)).

⁷⁶ In addition to licensing, subsequent sections concern the refusal to issue a licence (Section 49), licence renewal (Section 50), and the processes for the revocation, suspension or refusal to renew a licence (Section 51). Under Section 51, the Minister may provisionally refuse renewal, suspend, or revoke a licence “where in the Minister’s opinion it is necessary to do so for the immediate protection and preservation of a property or an artifact ... or where the continuation of archaeological fieldwork under the licence is ... an immediate threat to the public’s interest”. (R.S.O. 1990, c. O18, s. 51).

prepared and submitted throughout the calendar year. As most licensed archaeologists hold consulting licenses that are not tied to a specific site or development project they are required to provide notice to the Ministry before commencing specific projects under licence. The timing of this notice, and acknowledgement by the Ministry sets the reporting deadline. Typically a consultant will be required to submit outstanding reports by the end of December of the year following receipt of a project notification.

The public benefits of licensed archaeological practice are defined in Sections 65 and 66: the production of archaeological site reports, and archaeological collections. Archaeological reports are required as a condition of licensing, and the public benefit of archaeological practice derived from these reports is realised when they are lodged in a provincial register (Section 65.1(1)), which is available for public inspection. The public benefit of practice in the creation of collections is also described, with Section 66 stating that the Minister may direct that any artifact taken under licence be deposited in a public institution “to be held in trust for the people of Ontario”. Also, any artifact taken in contravention of licence conditions or in the absence of a licence may be seized and deposited in a public institution. While the OHA identifies the province as steward of the archaeological record (cf. Carman 2005), it does not comment on the question of artifact ownership. Operationally, licence-holders are required to retain possession of artefacts, together with all documents created during fieldwork (the *archaeological record*),⁷⁷ until deposited in a public institution.

The regulation of practice as a means of protecting the archaeological resource requires that the practice and the resource be defined, and penalties for non-compliance be established. Archaeological sites are not defined directly in the text of the Act; however, in Section 47 a distinction is drawn between types of heritage property. Designated properties are real properties exclusive of “buildings or structures other than ruins, burial mounds, petroglyphs and earthworks” ((R.S.O. 1990, c. O.18, s. 47). As structures and buildings are the concern of Part IV and V of the Act, this suggests that ruins, burial mounds, petroglyphs and earthworks are archaeological. O. Reg. 170/04 further defines archaeological sites as “any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest”. In turn, artifacts are defined as “any object, material or substance that is made, modified, used, deposited or affected by human action and is of cultural heritage value or interest” (O. Reg. 170/04, s. 1).⁷⁸ The inclusion of burial mounds

⁷⁷ See the S&Gs (Ontario 2009b, 67), for example.

⁷⁸ Of interest in this research are the definitions of archaeological site, which specify the presence of “physical evidence” of past human use or activity, which seems to restrict the definition, and the definition of artifact, as “any” object, material or substance that is made...or affected by human action, which seems to broaden the

and petroglyphs as examples of archaeological sites protected under the Act may represent a potential area of conflict between the Act and cultural and sacred/spiritual values held by indigenous groups.

The broader legislative framework for archaeological practice in Ontario includes not only the licensing provisions of the OHA, but also a series of regulatory triggers connected to other regulatory processes. While the OHA makes the Ministry of Culture responsible for the conservation of archaeology in Ontario, much of this mandate is met through the requirements of other Acts. The agencies implementing these policies work with MCL to develop expectations for heritage management in their regulatory areas that reflect the requirements of the OHA. For example, applications for land development made under the Planning Act require municipal authorities to evaluate the potential impact of the proposal on archaeological resources and to require an archaeological assessments of properties where potential impacts are determined. Under the Environmental Assessment Act, proponents of all public sector, and designated private sector projects are required to address potential archaeological resource impacts and propose mitigation strategies in their project terms of reference. Here, MCL seeks to ensure compliance with the OHA through its role as one of several members of the government review team.

Penalties for violations of the Act, described in Section 69, should lead to archaeological resource protection in development contexts. Offences, including contravening the Act or a regulation can lead to fines of up to \$50,000 and up to one year imprisonment for each person and for all directors or officers of a corporation involved.⁷⁹ But as much of the work of overseeing implementation of the Act has been delegated to other agencies or to archaeological licence holders, violations of the Act may be more difficult to identify, and possibly prosecute, than the Act suggests.

4.2.1 Licensing Practice

In this section I review the regulation of archaeological practice through licensing. Individual archaeologists who demonstrate the necessary qualifications and training, and that they share the public interest of the regulator in managing archaeological resources may be licensed under the OHA. In licensing, aspects of the provincial interest in archaeological resource protection are delegated to the archaeologist. But this delegation does not lace the licensed

definition. Also of interest is the term “of cultural heritage value or interest”. This should be analysed in terms of who sets the value or determines the interest, particularly in relation to how this “value and interest” is defined.

⁷⁹ Corporations may be fined up to \$250,000 per offence.

archaeologist wholly under the control of the Ministry; as a consultant, they also act on behalf of their clients, private interests engaged in other regulatory processes. The archaeological assessment and reporting process is therefore subject to competing and potentially conflicting demands to satisfy the provincial interest, the interests of the client, and of the archaeologist.

Regulating practice is the primary mechanism for protecting archaeological resources.⁸⁰

Section 48(1) of the Ontario Heritage Act prohibits archaeological fieldwork, the alteration of sites, or the removal of artefacts unless authorised by the Minister responsible for the Act in the form of a valid licence.⁸¹ The Act allows the Minister to set limits to the authorisation, and to set terms and conditions with which the licence holder must comply (R.S.O. 1990, c. O.18, s. 48(4)). The licensing regulation to the Act (O. Reg. 8/06),⁸² defines three classes of licence; professional, applied research, and avocational. This section is concerned only with the professional class, under which an archaeologist may act as a consultant to private development interests. A professional licence authorises the licence holder to act as a consultant archaeologist, defined as “an archaeologist who enters into an agreement with a client to carry out ... archaeological fieldwork ... produce reports for or on behalf of the client and provide technical advice ...” (O. Reg. 8/06, s. 1 (1)).

Licence requirements are specified in the regulation. The applicant must have a Master’s degree based on a thesis or research project in archaeology (O. Reg. 8/06, s. 7 (1)), membership in an archaeological organisation with a code of ethics, and specific work experience relevant to the archaeological resources and conditions of the province.⁸³ Work experience includes “at least 52 consecutive or non-consecutive weeks of experience in applying archaeology theory to the practical work situation” (O. Reg. 8/06, s. 7 (1)), including artefact analysis and report preparation. Of this experience, at least 26 weeks must have been in a supervisory capacity. To demonstrate this experience, the applicant must provide two reports endorsing the applicant, specifically identifying the nature, quality and duration of their experience, provided by an individual who had direct oversight of the applicant’s work,

⁸⁰ See Johnston (2007) for additional commentary on this approach.

⁸¹ Under the terms of O. Reg. 170/04 (O. Reg. 170/04, s. 1), archaeological fieldwork is defined as “any activity carried out on, above or under land or water for the purpose of obtaining and documenting data, recovering artifacts and remains or altering an archaeological site and includes monitoring, assessing, exploring, surveying, recovering and excavating”. An archaeological site is “any property that contains an artifact or any other physical evidence of past human use or activity that is of cultural heritage value or interest”. An artefact, in turn, is defined as “any object, material or substance that is made, modified, used, deposited or affected by human action and is of cultural heritage value or interest”. Note that while archaeological fieldwork is inclusively defined, archaeological site and artefact definitions include the qualifier “cultural heritage value or interest”. This reduces the specificity of the definition, and allows greater flexibility in application..

⁸² The requirements are set out in Ontario Heritage Act regulation O. Reg. 8/06 – “Licenses under Part VI of the Act — Excluding Marine Archaeological Sites”.

⁸³ The Regulation stipulates that an applicant who held an equivalent licence prior to January 25, 2006 is not subject to these qualifications.

and who also holds a professional category licence⁸⁴ (O. Reg. 8/06, s. 8 (1)). The applicant's experience is also conditional on being gained in Ontario, or in "a jurisdiction within Canada or the United States that, in the opinion of the Minister, has a geography, a geology, a settlement history and archaeological resources similar to those of Ontario" (O. Reg. 8/06, s. 8 (1)).

Under licensing, the individual and their specific skills are displaced, and all licensed archaeologists are considered equivalent. The licence also simplifies the archaeological practitioner. Prior to licensing, good, poor and indifferent archaeologists might be distinguished on the basis of the quality of their work, their academic status, or their reputation among their peers. In applying for a license the documents supporting the individual's qualities are separated from the applicant: they need not be referred to again, and subsequent reporting on licensed practice submitted by the licensed archaeologist is considered confidential until it is approved. As discussed in Chapter 5, these reports, once they are accepted by the Ministry, represent an acknowledgement by the Ministry that the work contained in the report is approved practice. This allows the report to be taken up by non-specialists as an example of what is expected of them, and may be used in support of discretionary actions taken in making local implementation decisions.

In the preceding chapter I discussed how the historic development of archaeology policy saw particular visions of the practice and objectives of archaeology become institutionalised. As funding opportunities increased, the scope of application of policy expanded to include more than large significant "monuments", and concurrently, as the salvage ethic in archaeology gained prominence the sheer quantity of information available led to a reduction in the scope of the archaeological practice to the salvage of the data the archaeological sites were seen to contain. In licensing, a similar reinforcement of dominant paradigms is evident: the licensed archaeologist is authorised to represent the Ministry interest in archaeological practice, and the Ministry can now represent the licensed archaeologist as authorised for administrative purposes. Even where the objectives of the licensed archaeologist are set by the Ministry on the basis of administrative concerns, these requirements can be represented as constituting sound archaeological practice regardless of the connection of these tasks to contemporary archaeological theory. The question of what it is an archaeologist does, can be answered by recourse to the terms and conditions of their license, discussed in the following section.

⁸⁴ Or who is deemed qualified to hold such a licence in Ontario on the basis of education and experience (O. Reg. 8/06, s. 8 (1)).

4.2.2 Compliance in Licensing

The Ministry engages both social and technical means to ensure compliance with the obligations of licensing. Social means include restricting professional licenses to individual archaeologists who are members of a professional association, with suitable education, and a history of employment with another licensed archaeologist who has demonstrated compliance. These social means restrict licensing to people committed to a particular model of appropriate practice. Once licensed, technical approaches to compliance and monitoring are employed. The *Draft Standards and Guidelines for Consulting Archaeologists* (MCL 2009a) is the key document providing specific direction on most aspects of fieldwork, analysis, and reporting. The Standards and Guidelines (S&Gs) provide a detailed outline of consulting practice, and compliance with the direction they contain represents in large part the terms and conditions of licensing. The direction given in the S&Gs is specific, reducing the archaeologist's discretion in practice; however, monitoring compliance is based on the review of reports submitted and in the timing of the report review the archaeologists are able to regain some discretionary slack.

The Standards and Guidelines serve several interrelated functions: directing the work of licensed archaeologists by specifying fieldwork, analysis and reporting tasks; clarifying Ministry interests in licensing and monitoring; and refining the definition of an archaeological site. The direction provided to licensed archaeologists includes specific direction for the conduct of field assessments and the conclusions that may be drawn from the results of this work, direction regarding the collection, analysis and reporting of archaeological materials, and the form in which the required reports must be submitted. Among the interests the Ministry holds for archaeological licensing and reporting is the connection between report review and management performance targets. The broad definition of an archaeological site found in Ontario Regulation 170/04 is refined here, where a more strictly material definition based on artefact frequencies is developed. Relating the definition of an archaeological site to consulting practice, the Standards and Guidelines provide clarity to land and resource development proponents who hold a concern for the financial consequences of their obligation to archaeological resource protection.

Licensed archaeologists operating as consultants are typically engaged in archaeological assessments of development properties to establish both the presence and mitigation requirements of archaeological resources in conflict with proposed development activities. These assessments are triggered by policy-based review of development proposals, and are restricted to the property subject to the development application. In order to monitor the

activities of licensed archaeologists, and allow the Ministry an opportunity to intervene in a development application where the provincial interest in archaeology is not being addressed adequately, archaeological assessments are broken down into four stages. For each stage, advance notice to the Ministry by the archaeologist is required,⁸⁵ and for each stage a report of field activities must be submitted. Monitoring compliance with the S&Gs and the provincial interest is based in the Ministry review of the reports submitted. Within the Ministry process, these reports are required to be submitted by December 31 of the year following the start of the assessment, and are reviewed in the order they are received. The time lag between fieldwork and report review, particularly in contrast to the rate of progress in development projects often means that this review is conducted after decisions have been made regarding the disposition of the archaeological resources on the property. In reality, this leaves little room to archaeological assessments to be revisited prior to development.

Archaeological assessment proceeds in four stages, reflecting the typical deductive approach of most field archaeologists. The objective of assessment is to identify and evaluate all archaeological resources on a development property, and determining the appropriate mitigation response to anticipated development impacts.

Stage One assessment (MCL 2009a, section 1.0) consists of background research on the physical landscape and archaeological conditions of a property that may indicate archaeological resource potential and to inform subsequent archaeological field investigations. Primarily a desktop exercise, Stage 1 assessment is expected to lead to an evaluation of the potential for different types of archaeological resources to be present on the property, their distribution, and the most appropriate field work strategies for finding them is developed. Archaeological potential is determined by comparing the conditions of a property to a checklist of landscape and cultural features believed to be strongly correlated to archaeological resource presence. This list of features includes: the presence of other archaeological or historic sites on or near the property; proximity to water, including former water bodies; local areas of high ground or of well-drained soils, and; source areas for food, medicinal, or technological raw materials. The Standards and Guidelines also allow that archaeological potential may exist when the property includes or is near “distinctive land formations that might have been special or spiritual places”, and that these places may be

⁸⁵ A requirement of licensing is that prior to initiating each stage a project information form (PIF) must be submitted to the ministry. This notification serves a number of administrative functions such as tracking fieldwork activity, and identify due dates for project reports. In turn this allows for some level of work planning for ministry staff. Report submission is expected to follow the order of notification, allowing ministry review to consider both the recommendations arising in each stage prior, as well considering these recommendations in light of the overall assessment effort.

further signified by “physical indicators of their use, such as burials, structures, offerings, rock paintings or carvings” (MCL 2009a, Section 1.3). When no features indicating archaeological potential are present, or where past land use has removed potential, the assessment is considered complete; otherwise assessment continues to Stage 2 (MCL 2009a).

As I will discuss in Chapter 5, a version of this checklist is used by non-specialist planners to determine whether an archaeological assessment will be triggered. The S&Gs express the belief that these planning reviews are more likely to trigger an assessment, as any licensed archaeologist engaged in a re-evaluation of archaeological potential is required to supplement this work with a field inspection of the entire property (Ontario 2009, Section 1.2.1).

Stage 2 is a field based assessment directed to locating, identifying and documenting all archaeological resources on the property. In this stage, the direction from the S&Gs is straightforward: survey the entire property, or those areas of archaeological potential using the prescribed methods.⁸⁶ Discretion in the field is permitted only in specific situations, such as areas where physical landscape features suggest low or no archaeological potential, areas of extensive prior disturbance, or where the development activity is expected to produce little or no impact. For all deviation from the survey requirements, detailed documentation in support of decisions not to investigate areas is required in the license report.

Archaeological resources identified in Stage 2 assessment are evaluated against set criteria to determine whether they have sufficient cultural heritage value or interest for the assessment to proceed to Stage 3. The criteria include artefact frequencies in excess of specific levels, the recovery of artefacts of “special interest”, or the presence of human remains “in the vicinity” (MCL 2009a, Section 2.2). When cultural heritage value or interest is shown, the consultant must recommend Stage 3 assessment of the site. The criteria define a clear separation of archaeological resources of provincial interest, and those that are not; however, the archaeologist is allowed the discretion to engage Aboriginal communities regarding their interest in any “Aboriginal archaeological resources” recovered during the assessment.⁸⁷

⁸⁶ In Stage 2 a pedestrian survey is required for ploughed or formerly ploughed fields which must be freshly cultivated and examined only after the surface has been allowed to weather (i.e. after a moderate to heavy rainfall). Observers must walk transects at a five metre interval, under conditions of good weather and lighting (Section 2.1.1). In areas of dense vegetation test pit survey is required. Here, the archaeologist systematically crosses the property at five or ten metre intervals excavating small pits at regular intervals. While the S&Gs note that this method is “more time consuming and less likely to result in complete and accurate documentation of archaeological resources than pedestrian survey” it is practical where ploughing is not possible or viable (Ontario 2009, Section 2.1.2). When archaeological resources are identified in test pits surveys, additional tests must be excavated to ensure adequate information to determine Stage 3 assessment requirements.

⁸⁷ This engagement is optional, and would be financed by the development proponent.

Otherwise, fieldwork and analysis that does not result in the identification of resources holding cultural heritage or interest, marks the conclusion of the assessment.

In Stage 3, the focus of the assessment shifts to individual sites, with fieldwork directed towards defining site extent and complexity.⁸⁸ A range of strategies, keyed to the nature of the artefact distributions apparent following Stage 2 direct licensed archaeologists in completing Stage 3 (MCL 2009a, section 3.0). Standards for the placement of test excavations across sites are presented graphically (Table 3.1), and correspond to seven site types defined in the Stage 2 analysis direction. Opportunities for the licensed archaeologist to exercise discretion are limited in Stage 3 to determining when fieldwork is sufficient. The archaeologist is directed to “strike a balance between gathering enough artefacts to document the archaeological site and leaving enough in place to relocate the site if required” (MCL 2009a, section 3.2.1). When testing of sites where Stage 4 will clearly be required, Stage 3 may be terminated half-way through, provided basic information requirements have been addressed (Section 3.4).

Analysis of the Stage 3 assessment results should refine the evaluation of cultural heritage value or interest made for the site, and determines whether additional archaeological fieldwork (i.e. Stage 4 mitigation) is required. As with Stage 2 analysis, the cultural heritage value or interest is determined through a list of criteria and indicators that licensed archaeologists must consider in analysis (Table 3.2). Additional background research at this time may also be undertaken to determine if a site may be considered sacred, or reflect historic use by an aboriginal community (Section 3.1). As at the end of Stage 2, sites with no further cultural heritage value of interest concludes the assessment, while for all other sites Stage 4 strategies will required. Sites that have not been completely excavated at the end of Stage 3 may be protected through avoidance or further excavation and removal, although Stage 4 is always required for some specified site types. These sites include those described as rare or unique, sites dating to the earliest occupation of the province or region, sites with high artefact yields, Woodland period sites, post-contact⁸⁹ sites predating 1830, and any late 19th and 20th century sites with documented cultural heritage value or interest.

⁸⁸ Stage 3 is directed towards the outcome of documenting the “presence and extent of buried artefacts, structures, stratigraphy and cultural features, and to collect a representative sample of artefacts across the entire archaeological site” (Section 3.2.2).

⁸⁹ European entry into a region determines the onset of the “contact” period, although for many regions there was a time lag between the introduction of trade goods through intermediary trade, and the actual presence of Europeans in the region. The timing of this contact varies by region. See Historical Atlas of Canada (Harris and Matthews 1987).

Two approaches to mitigating adverse impacts to archaeological resources are advanced in Stage 4. Avoidance, the preferred alternative, requires short and long term protection measures to be implemented (Ontario 2009, Section 4.1). Short term protection actively engages the licensed archaeologist in monitoring development activities near the site in order that no impacts eventuate. Long term protection can include project is redesigned to locate archaeological sites within parkland reserves, or exclude them from the development application. Long term protection includes legal measures to ensure that protection continues in future planning and land use decisions. Key to long term protection is the willingness of local planning authorities to assume any maintenance obligations these measures may create. A second approach to mitigation is excavation, the more common outcome of archaeological assessment (Ferris 2007). The Standards and Guidelines state that the objective of excavation is to recover “as much data as possible” (MCL 2009a, 39), in the conversion of the archaeological sites into data, excavation records, and artefact collections. Excavation, and the documentation of the site it produces, is defined as “necessary to ensure the conservation, protection, and preservation of the heritage of Ontario” (MCL 2009a, 39). Standards for excavation are extensively described, and include general requirements for all excavations, and specific practices for use on defined site types.⁹⁰

In the reporting prepared for the Stage 3 assessment, an archaeologist recommending excavation over avoidance must document that this approach was selected only “after careful consideration had determined that avoidance and protection was not viable” (MCL 2009a, Section 3.5). While the documentation required is not specified, the S&Gs also state that “where Stage 4 is recommended, the consultant archaeologist will need to review the viability of Stage 4 protection options with the client” (MCL 2009a, 32). Neither a standard or a

⁹⁰ One of the great challenges in implementing archaeology policy is determining when the OHA no longer applies to a particular location. Just when an excavated archaeological site ceases to exist is an interesting epistemological question, but it also has practical concern as well. The definition of an archaeological site in O. Reg. 170/04, and in the process specified for a Stage 1 assessment are generous in what they include. But Stage 4 excavation leads toward a point where the archaeological site ceases to exist, so that development may proceed. In the S&Gs, this point arrives when artefact yields or other quantitative criteria are met (Ontario 2009, Section 4.3; Table 4.1). Artefact yield thresholds may be based on the absolute number of recoveries per one metre square excavation unit (less than 10), or recoveries as a percentage of the highest artefact yield units (below 10% of the recoveries from the highest yield units). Other indicators not directly linked to artefact yields include the excavation of buffers where no artefacts are recovered to demonstrate that the site has been completely uncovered and all discrete artefact concentrations have been excavated. Thus, for the purposes of archaeological policy implementation the archaeological site, or its cultural heritage value or interest, is removed along with the bulk of the artefacts. But overlapping concerns for the archaeological site that are not directly linked to the material remains, such as a spiritual valuation may be overshadowed in addressing the archaeological concern. Cultural heritage value or interest in these cases may incorrectly reduce all interests in a particular location with heritage meaning to the archaeological interest in the material remains present. In development context, the implicit presentation that an archaeological assessment will address all cultural heritage concerns may be challenged on the basis of other cultural understanding.

guideline, and therefore not a term or condition of licensing, this review could form part of the “careful consideration” (MCL 2009a, 31) to be documented in the report.⁹¹

A report is required for each stage of archaeological assessment. Section 7.0 of the Standards and Guidelines describes the necessary contents and form of a complete report (MCL 2009a, Section 7.5). As the content of project reports vary by stage of assessment, and extensive table is provided that identifies the fieldwork direction that must be reported. The direction also covers the role of the licensed archaeologists in the implementation networks for land and resource development policy. While “advice on compliance with legislation is not part of the archaeological record” (MCL 2009a Section 7.5.6), there are two standard statements required in reports concerning compliance. Text is supplied for these standard conditions⁹² that notes that the report complies with the terms and conditions of licensing; that any undiscovered sites remaining on the property are protected under the Ontario Heritage Act, and that the Cemeteries Act applies to any human remains that might be discovered. In reports recommending additional fieldwork, the reports are also required to note that unlicensed site alteration or artefact collection is prohibited. Finally, any aboriginal engagement must be documented, and the requirements for reporting this engagement hints towards the preferred process of engaging aboriginal communities, including identifying the individuals engaged and the reasons for engaging them, as well as the strategies used to incorporate input into fieldwork and the process used for reporting results back to the community (MCL 2009a, section 7.6.2).

⁹¹ Decisions to excavate sites in Stage 4 are clearly not based on archaeological concerns alone. Cultural heritage value or interest may exist for a site, and engaged aboriginal communities may provide additional input into the mitigation strategies to be proposed, in reviewing protection options with the client, avoidance may not be possible for other, non-archaeological reasons. Excavation may be preferred by a development proponent when avoidance means foregoing profit in excess of the costs of excavation. However, the Aboriginal interest in an archaeological site may lead to avoidance, but not on the basis of archaeological concerns, but rather because the aboriginal interest in a site may be spiritual, and not the same as the archaeological value. The irreducibility of the valuation systems of money, archaeology and spirit become even more evident. Within the context of the wider implementation network, no normative basis for evaluating rival claims to the value of a site is immediately apparent, and finding this basis appears to be well outside the scope of an archaeologist’s brief, either as a licensed practitioner or as a consultant to development interests.

⁹² The standard conditions are normally included verbatim in assessment reports. The conditions text reads: “This report is submitted to the Minister of Culture as a condition of licensing in accordance with Part VI of the Ontario Heritage Act, R.S.O. 1990, c 0.18. The report is reviewed to ensure that the licensed consultant archaeologist has met the terms and conditions of their archaeological licence, and that the archaeological fieldwork and report recommendations ensure the conservation, protection and preservation of the cultural heritage of Ontario. Should previously undocumented archaeological resources be discovered, they may be a new archaeological site and therefore subject to Section 48 (1) of the Ontario Heritage Act. The proponent or person discovering the archaeological resources must cease alteration of the site immediately and engage a licensed consultant archaeologist to carry out archaeological fieldwork, in compliance with sec. 48 (1) of the Ontario Heritage Act. The Cemeteries Act requires that any person discovering human remains must notify the police or coroner and the Registrar of cemeteries, Ministry of Small Business and Consumer Services.

In the overview of reporting requirements, Section 7.13 also draws the connection between the report review process and the administrative procedures and organisational goals of the Ministry. Section 7.13, with its focus on measurable outputs, heralds the displacement of goals for targets, and outputs for outcomes in the pursuit of standard operating procedures, as anticipated by bureaucracy theorists (Wilson 2000; Merton 1940). Originating in the results-based management focus of the Ministry under the horizontal management directive, I discuss this further in the next section.

4.2.3 Summary of Licensing

In this section, I have discussed the Ontario Heritage Act, which outlines the provincial interest in the conservation, protection and preservation of archaeological sites of cultural heritage value or interest. In this discussion my focus has been on the nature of the relationship between the agency responsible for the Act, the archaeological record they are mandated to protect, and the licensed archaeologists that act as their agents in meeting this mandate. While the Act defines archaeological sites, archaeological licensing, and the obligations of licensed archaeologists to the archaeological record this discussion has considered the principal-agent relationship between the Ministry and the licensed archaeologist, and the methods that the Ministry has used to ensure compliance with the terms of licensing. In this discussion I have also identified connections between the terms and conditions of licensing and the wider implementation networks into which archaeological practice is embedded.

Archaeological practice is licensed under the terms of the Ontario Heritage Act. This licensing represents a delegation of authority from the province to the individual archaeologists to address the provincial interest in archaeological resources. To ensure that the provincial interests are addressed the province, as principal, has set out specific direction to archaeologists, as agents, regarding practice. Archaeological consulting in land and resource development projects represents the bulk of archaeological work in Ontario, consequently, most of the specific direction provided to licensed archaeologists concerns consultant practice. The key document outlining the duties of licensed archaeologists is the *Draft Standards and Guidelines for Consulting Archaeologists* (MCL 2009a). The Standards and Guidelines specify how archaeological practice must proceed to address the provincial interest in archaeological resource protection; but it also recognises the roles that other participants in the implementation network play.

Terms and conditions of archaeological licensing including the fieldwork, reporting and analysis direction of the Standards and Guidelines set out the expectations that the Ministry, as principal has of licensed archaeologists. This specification is directed to reducing the opportunity for archaeologists to benefit private interests, such as their clients while operating under license. Yet, a number of administrative and professional conditions provide archaeologists with ample opportunities to exercise discretion and consume slack resources in exactly this way. First, the difference between the timing of fieldwork and Ministry review of the resulting report, which can be as much as two years, means that the Ministry has often very little opportunity to investigate compliance concerns that may arise. Compliance is through self-reporting: an archaeologist that provides a report stating that the standards and guidelines for fieldwork were followed may only be challenged if there is a reasonable hope that contrary evidence in the field can be recovered. This is patently impossible in the case of ploughed field investigations, perhaps more so in relocating test pits. Second, professional judgement in evaluating the presence and significance of archaeological resources on a given property allows for discretion, and also for shirking (Wilson 2000, 159). The standard conditions to be appended to all reports includes one that suggests that there is always a chance that archaeological resources may be present on a property, but missed during assessment due to the assessment methodology used. At one extreme, the licensed archaeologist may use this discretion to shirk, by defining artefacts or sites as not worth identifying in the field or investigating through additional assessment⁹³ in a manner that benefits the archaeologist or their client. Third, discretion is perhaps most evidence in the advice to discuss mitigation alternatives with clients prior to making their final recommendations on mitigation alternatives (MCL 2009, Section 3.5), leading to a perceived equivalency between client interests and archaeological considerations.

The S&Gs also provide the Ministry with the opportunity to identify, and in some cases displace responsibility for several conditions that arise in the wider implementation network. I return to these conditions in later chapters of this thesis, but will review them briefly here. In the discussion of Stage 2 archaeological assessment, the Ministry requires that archaeologists engaged to evaluate development properties that have already been identified as holding archaeological potential by a non-specialist using a checklist provided by the Ministry, the archaeologist must support any change to this initial evaluation through a field visit. In this, the Ministry presents local non-specialists as actors that will implement

⁹³ One potential outcome is that when multiple sites are located, one or more are identified as the “best” sites on a property, and deserving of additional investigation. This leaves the other sites – which might also be of cultural heritage value or interest – without a recommendation for protection (L5).

archaeology policy in a more conservative manner than archaeologists. As I will discuss in Chapter 5, these actors are shielded from direct observation, and may provide local private benefits by negotiating their obligations in implementation and not requiring an assessment.

Direction concerning mitigation options recognises that development proponents are significant actors in the wider implementation network for archaeology policy. Avoidance of archaeological sites is presented as the preferred alternative in mitigation, and the S&Gs require that any archaeologist recommending excavation over avoidance in Stage 4 demonstrate “careful consideration” of the viability of avoidance (MCL 2009a, Section 3.5). However, this review of the viability of site avoidance includes the client (MCL 2009a, Section 3.5 (32)), and in this sense, displaces the responsibility for making difficult decisions that may have political repercussions to the broader implementation network. This displacement of responsibility into the broader network is also seen with aboriginal engagement. In Stage 2 and Stage 3 assessment direction, aboriginal engagement is advised in a guideline, and is therefore optional. The Standards and Guidelines suggest (cf. Section 1.4.1) that aboriginal engagement through the services of the licensed archaeologist may provide benefit to the proponent by addressing aboriginal cultural heritage interests through the archaeological assessment process. However, the proponent would be responsible for financing this engagement, and it may, according to recent court decisions, be the responsibility of the agencies coordinating implementation of planning or environmental assessment policy. This can be seen as a means of developing a more prominent position for archaeology policy and the central agency by presenting archaeological assessment as a valid proxy for addressing aboriginal concerns. In this, the Ministry is offering direction over practices that it clearly cannot control, and may wish to avoid, such as recommending that developers spend more money for less certainty, or extending the scope of the implementation contest to include aboriginal groups, an engagement that may yield wider political challenges.

4.3 Horizontal management and the creation of implementation networks

In this section I explore the administrative form of the Ontario public service (OPS) as the context for archaeology policy implementation. Specifically, I consider the effect of new public management concepts, including horizontal management and results-based planning on implementation. These effects are of two kinds: 1) external effects include locating archaeology policy implementation in a network formed around non-archaeological stakeholder interests; and 2) internally, results based management initiates a shift toward a

focus on short term, measurable targets as anticipated by bureaucracy theorists (Wilson 2000; Merton 1940).

Under horizontal management, implementation networks are organised according to stakeholder interests, with the coordinating role for the networks assigned to the agency with a legislated responsibility relative to these interests. In the context of development planning, the agency central to archaeology policy is required to delegate authority for implementation to the coordinating agency, who in turn delegate this role to local authorities. For archaeology policy implementation horizontal organisation becomes a network of principals, agents, and sub-agents (Waterman and Meier 1998). While this horizontal arrangement creates a form of responsiveness in government service delivery, it also engages agency actors in new network formations that affect the focus and outcomes of implementation. Under conditions of expanded scope resulting from the addition of new actors (Schattschneider 1960), and lack of central authority on questions of archaeology policy (cf. Rhodes 2006), implementation through these horizontal networks holds consequences for archaeological practice and for the opportunity to achieve the public good outcomes described in policy.

As I discussed in Section 4.2, the delegated responsibilities of the licensed archaeologist are closely specified in the terms and conditions of licensing. Within these specification, the *Draft Standards and Guidelines for Consulting Archaeologists* also identify how the reports produced by licensed archaeologists support Ministry performance objectives (MCL 2009a, Section 7.13). Under the results-based planning process, specific and measurable agency targets are identified each year, and it is on the basis of these targets that agency performance is largely assessed. As I discuss in this section, the vague objectives of archaeology policy, such as “the conservation, protection and preservation of the heritage of Ontario” (R.S.O. 1990, c. O.18, s. 2), are unsuited to developing targets, and more quantitative values are substituted. Results-based management leads the agency central to archaeology policy to identify standard operating procedures for meeting performance targets, in outputs (actions taken) and outcomes (achievements). I review the practices of the central agency in relation to Wilson’s (2000; cf. Merton 1940) prediction that the goals of agencies with vague mandates and pursuing difficult to measure outcomes will be displaced by standard operating procedures in pursuit of measurable outputs.

4.3.1 Horizontal governance

Modernisation of the Ontario Public Service (OPS) is founded on the concept of a joined-up (Perri 6 2003), or horizontal governance approach (Pierre 1998) that has its roots in the New

Public Management of the 1980s (Box 1999; Moynihan 2006). The objective of NPM and horizontal government is to remake government to conform more closely with business models, emphasising management targets and efficiency (Bevir and Rhodes 2003; Bevir et al. 2003; Moe 1984). Advocates of this approach are usually convinced of the case made by the social choice framework and a belief in free markets (Olsen 2005). NPM represents a normative argument about how government should be run (Moynihan 2006), often supported by metaphors, such as the image of the reasonable, rational decision-makers operating under conditions of having all of the necessary information available to them (Stone 2002). Those opposing the approach argue that the private sector business values are at odds with the democratic objectives of government (Terry 1993; 1998), and the difficulty in defining customers (Box 1999).

The objectives in moving from traditional bureaucracy to horizontal governance include replacing strongly hierarchical departments with an integrated administrative structure (Pierre 1998). The organising principal for horizontal governance in the OPS was service to external stakeholders, making the government more responsive to stakeholder needs, and reducing the frustration by ensuring that there is no “wrong door” to government for the public (Ontario 2004, 2).⁹⁴ Although the OPS is working towards improving horizontal integration, and the public face of government may appear flat to stakeholders, hierarchical relationships remain within individual agencies. Building a horizontal organisation that includes existing hierarchies that include political leadership, policy development, and operations actors, as well as representatives of external stakeholder groups cannot realistically be viewed as flat. When the conditions attendant on the delegations of authority required are also considered, this horizontal organisation is clearly, a complex, multi-actor network.

The Ministry of Culture⁹⁵ itself has an established network formation based on internal task specialisation and the external stakeholder relations that result. Based on the most recent Ministry of Culture results-based plan briefing book for 2009-10 (MCL 2009b) this network formation can be described in relation to task specialisation. Within the Policy Branch, the Strategic Policy and Planning Unit prepares and circulates policy and policy advice to other Ministry units, government agencies, and delegated agencies. This unit is the contact for senior management and political actors. Within Programs and Services Branch, the Culture Services Unit provides training and advice to local operators, including evaluating

⁹⁴ The quote is taken from an interview published as “A conversation with Tony Dean, Secretary of the Cabinet.” “Q: What difference will it make if the OPS is more horizontal?

Dean: It will mean there is seldom, if ever, a wrong door into government at any level.” (Ontario 2004, 2).

⁹⁵ Although the Ministry was reorganised in January, 2010, with Culture folded into the Ministry of Tourism this is not anticipated to change this basic distribution of tasks in the short term.

archaeological potential, and the review of planning documents such as municipal Official Plans and Environmental Assessment reports. The Culture Services Unit is the front-line contact for most municipal planning authorities and environmental assessment proponents. Also within the Programs and Services Branch, the Culture Programs Unit has responsibility for licensing and report review, including archaeological assessment reports resulting from policy or planning advice provided by the other units. For licensed archaeologists, the staff of the Culture Programs Unit are the front-line contact, except when they are engaged in preparing an archaeological master plan on behalf of a municipality or agency, when they interact primarily with Culture Services. Members of the public or aboriginal communities with an interest in archaeological resource protection may contact program staff for information or advice, although there is no formal point of contact or process for addressing concerns raised. More commonly, concerns about archaeological resource protection are referred to the approval authority, such as the Ministry of Environment, the municipal planning authority, or the development proponent.

Horizontal management sees the provincial interest in archaeological resource protection delegated to a number of other stakeholder centred networks. For example, for municipal development planning implementation of archaeology policy is coordinated by the Ministry of Municipal Affairs and Housing, the agency responsible for implementation of the Planning Act. As with Culture, Municipal Affairs has a pre-existing network of policy and operations contacts arising from their statutory responsibility for Planning Act implementation. Under a horizontal arrangement they are further delegated the responsibility for ensuring that the provincial interest in archaeological resources is addressed in all Planning Act decisions that they make. Adding complexity to this network is Municipal Affairs' capacity to delegate some provincial responsibilities on to local actors, in the name of increased local control. This requires that these local agents, themselves embedded in a network of clients and stakeholders, must also address provincial interests in any Planning Act decisions they make. The focus of archaeology policy implementation is not the Ontario Heritage Act, but rather the expression of provincial interest found in the Provincial Policy Statement (MAH 2005).

The delegation of authority that serves as the basis for the horizontal management of the Ontario Public Service is directed by senior management. Within the bureaucratic hierarchy that structures the relationships among public service workers, this reorganisation is mandatory. Unlike other delegations that initiate a principal-agent relationship between actors, no other option is available to Ministry staff, and negotiating the form of the

Provincial Policy Staff statements on archaeological resources is one of the few opportunities available for establishing roles and rules among the new implementation network participants.

4.3.2 Setting targets and standardising operating procedures.

The business management focus on stakeholders, performance and efficiency that drives horizontal governance in the modernised Ontario Public Service, also supports results-based management (Ontario 2004). Here, administrative performance is focussed on efficiency and results, reflecting a popular theme in the NPM literature that a government run according to business principles will overcome the inefficiency inherent in bureaucracy (cf. Olsen 2005; Box 1999; Moynihan 2006). For MCL, results-based management means identifying performance targets, and measuring and reporting on outputs (actions taken) and outcomes (objectives achieved) from operational tasks. In this section I review the program of developing a results-based management focus and the implications for policy and implementation.

For Jennings (1991) bureaucratic administration and the market approach differ in terms of how they view the fundamental equality of citizens: while the market approach promotes efficiency in governance, bureaucracy is concerned with both efficiency and the equal treatment of citizens. Bureaucracy⁹⁶ is less responsive to the private interests of both stakeholders and the short term political interests of the state, because of institutional settings which “discourages arbitrary change” (Olsen 2005, 8). Paradoxically, reducing bureaucracy in the name of increasing the economic responsiveness of state administration may also make it an initiative to transform government into one that serves the interests of the powerful, since complex government processes may actually expand the scope of political conflict and destabilise the dominance of powerful interests (Schattschneider 1957, 941). As Barber (1998) puts it, “big government has always been the ally of the little guy, and downsizing it has generally been a recipe for upgrading the power of private-sector monopolies” (Barber 1998, 5), and creating an effective distance between the citizen and the state (Box 1999). Under these conditions value for money in policy relates to the financial effectiveness of programs, and the relationship between performance and targets that are often divorced from the realities of implementation. In this business atmosphere, the broad understanding of

⁹⁶ Bureaucracy is a “distinct organizational setting” with clear lines of authority, functional divisions, and demarcation of jurisdiction (Olsen 2005, 2). Functions are carried out with a strict adherence to a procedural rationality where “precision, speed, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and material and personal costs – ... are raised to the optimum” Olsen (2005, 8). Although often criticised for many of these core traits, bureaucracy remains the primary mechanism for delivering state services, despite concerted efforts to diminish or eliminate from many areas of government through the latter 20th Century (Bevir and Rhodes 2003, 42).

political accountability is lost (Peters and Pierre 1998), but presumed to be in the care of management.

Under the market approach, management seeks clarity, and clarity comes from the reduction of uncertain or vague directives to measurable tasks. Objectives become targets, and outcomes, where they are difficult to define, or not measurable within the fiscal cycle, are replaced by outputs or a series of specific tasks that should, the argument goes, lead towards the desired outcomes and policy objectives. For the Ministry of Culture, outputs consist mostly of the review of archaeological licence reports, municipal official plans, or environmental assessment proposals, while in terms of the stated objectives of the Ontario Heritage Act, the primary outcome should be the preservation of the archaeological resource. In his study of bureaucracy, Wilson (2000) notes that different government organisations have variable capacity to translate their work into discrete and specific tasks, and to link action to desirable policy outcomes. This capacity is most influenced by the agency's "internal environment" (Wilson 2000), the combination of the technical system deployed by the agency, plus the values and competencies held by the agency as a whole (Wilson 2000, 93).

Wilson defines four agency types⁹⁷ based on the interaction of outputs, the work done by agency staff, and the outcomes resulting from policy implementation. The administration of archaeology within the Ministry of Culture corresponds most closely to Wilson's procedural agency. Staff outputs can be observed, but while outcomes are not observable or difficult to measure. Staff are evaluated at a professional standard, and managers will compensate for the absence of clear outcomes by focussing on standard operating procedures (Wilson 2000, 164). The risk to these agencies is to define operational improvement as new innovations in standardised procedures, drawing their focus increasingly onto task management and neglecting broader objectives and less observable outcomes. Changes to the archaeology section from the time of its inception in the early 1970s to the present day have seen an

⁹⁷ Production agencies produce observable outputs and outcomes, and so are capable of designing compliance systems that lead directly to improving the efficiency of outcomes. The challenge is for the agency to avoid focussing on the most easily measured outcomes (Wilson 2000, 159). In procedural agencies outputs are observable, but outcomes are not observable or difficult to measure. While staff in procedural agencies are evaluated at a professional standard, managers will compensate for the absence of clear outcomes by focussing on standard operating procedures (Wilson 2000, 164). Over time these agencies run the risk of defining operational improvement as new innovations in standardised procedures, drawing them away from the less observable outcomes. Craft agencies are the opposite: observable outcomes follow from work that is not readily measured. In these agencies staff are allowed greater latitude of action, as managers are reassured that agency objectives are being achieved through outcome measurement (Wilson 2000, 165). But for coping agencies, neither outputs nor outcomes of staff action can be observed. Managers 'cope' by hiring the best people, and handling complaints as they arise (Wilson 2000, 169). Managers of coping agencies, in seeking some measurement of agency utility, will have a strong incentive to focus on the most easily measured staff activities. The focus on numbers can transform overall agency purpose as staff act conform to this management focus (Wilson 2000, 171).

increasing shift in Ministry focus away from research archaeology onto the regulatory role related to archaeological licensing. The standard operating procedures, such as those detailed in the Standards and Guidelines also has the effect of drawing the accountability of the Ministry away from the general public and interest groups toward senior management's concern for results. Diminished accountability to stakeholders, the public, and to other interest groups that might emerge over time can perpetuate an incremental erosion of agency commitment to meeting broader policy objectives. In the extreme, agency action contrary to initial policy intent can result (Davidson and Frickel 2004). As well, when agency accountability is referenced in terms of operational processes and the documents which guide them, the public and other interests are distanced (Box 1999). This has the effect of restricting debate over Ministry practice to operational issues, rather than broader policy objectives. In practical terms this supports a restricted scope for the implementation contest over archaeology policy, which favours the private interest of MCL in meeting annual operational goals.

By the mid-1990s, it was suggested that the archaeology section of the Ministry was directionless, and that the work of staff did not contribute to meaningful policy outcomes.⁹⁸ At least, this was the form of many complaints made against the Ministry staff and their approach to report review were taking at this time (Ferris 2007). These complaints came mostly from consulting archaeologists who felt that vague policy direction and favouritism among staff were infringing on their ability to operate their businesses competitively or profitably. In response, senior management initiated an "archaeology customer service project" (ACSP) in keeping with the new business approach to government (Ontario 2004). The stated objectives of the ACSP were:

- defining provincial responsibility in heritage protection;
- ensuring "transparent and fair business practices and high customer service standards";
- reducing regulatory barriers to the prosperity of "the consultant archaeologist and development industries", and;
- defining "an appropriate degree of autonomy" for licensed archaeologists (MCL 2002).⁹⁹

The two main products of this review were a new regulation defining categories of archaeological licence, and which identifies consulting as a distinct class of undertaking (O.

⁹⁸ "Putting out fires" was a common approach to management. (L5)

⁹⁹ This document is also available:

http://www.ontarioremembers.ca/english/heritage/archaeology/reporting_framework.pdf. (accessed June, 2010).

Reg. 8/06), and the Standards and Guidelines.¹⁰⁰ In the Standards and Guidelines specific requirements for archaeological consulting practice are defined and linked to the terms and conditions of licensing, and to the report review practices of the Ministry. The ACSP also develops clear, measurable tasks, and provides the basis for standardised operating procedures for Ministry operations staff. These tasks and operating procedures dovetail nicely with the goals setting and monitoring requirements of result-based management.

The ACSP signalled the Ministry's intent to draw the focus of archaeology policy implementation more tightly onto specific, measurable and above all justifiable tasks. But it is also worth considering how the language of these objectives frame policy and archaeology practice. The provincial responsibility as set out in the OHA calls only for the Ministry to oversee licensing, supporting the horizontal arrangement that places responsibility for archaeological protection planning in the hands of local authorities. Transparent business practices are the timelines and checklists to be used to measure staff performance, with high customer service standards marking a renewed focus on meeting or exceeding proposed timelines for report review. Regulatory barriers for development proponents relate partly to the response time for report review. To archaeologists, a regulatory barrier may be the introduction of specific direction in the S&G document that replaces professional discretion over fieldwork decisions.

In the most recent draft of the Standards and Guidelines (MCL 2009a), Section 7.13.1 directly links report review to meeting the operational goals of the Ministry. Among the goals identified are:

- setting clear timelines for staff review of archaeological reports;
- ensuring a consistent approach to reviews by developing standardised (checklist) processes, and;
- framing report review “within the context of the Ontario Heritage Act (i.e., monitoring the licensee’s compliance with licence conditions and standards and guidelines” (MCL 2009, 97).

In working to meet these goals, the Ministry suggests that by framing report review within the context of the Act, consistency, transparency and timeliness in report review will result. This reframing marks a commitment to the stakeholder focus promised by the customer service project by reducing the scope of report review to licensing concerns and administrative

¹⁰⁰ The S&Gs replace and considerably expand earlier direction to consultant archaeologists. The draft Archaeological Assessment Technical Guidelines (MCL 1993a) were circulated with all new licenses and licence renewals beginning in 1993 until the first draft of the S&Gs were ready for circulation in 2006 (MCL 2006a). An earlier version of the technical guidelines was published in 1988 by Bill Fox, regional archaeologist for the ministry in southwestern Ontario (Fox 1988) giving greater visibility to the fact that local rules were being set in different regions of Ontario by ministry staff.

matters. A commitment to standardisation in review matches the administrative requirements of results-based planning, while reducing archaeological report review to a concern for compliance with licensing conditions removes the opportunity to comment on a report's archaeological content, itself a vague and uncertain business.

Timelines and checklists are readily quantified, and these measurable outputs will come to be an administrative focus under results based planning. Framing report review as a means of ensuring compliance with policy direction establishes the policy basis for this revised focus. Broader policy objectives, such as “the conservation, protection and preservation of the heritage of Ontario” (R.S.O. 1990, c. O.18, s. 2) are too vague to be reduced to specific, measurable tasks, hence their absence from the list of results-based planning targets, but they are presented as somehow being addressed by the completion of the various tasks that comprise Ministry standard operating procedures. In any organisation Wilson (2000) anticipates, vague goals will be supplanted by specific operational targets and standard procedures that favour planning and performance measurement. It is not unreasonable to expect that over time the goals defined in the S&Gs will become targets (Merton 1940, cited in Wilson 2000).¹⁰¹ Ministry operators will work to achieve these targets, oblivious to the broad objectives that lie beyond them. The vision of the results-managed organisation is reduced in scope, and its hope for achieving any vaguely-worded but meaningful public good policy objectives becomes increasingly remote.

4.4 Chapter Summary

In this Chapter, I reviewed the policy and administrative context of archaeology regulation Ontario, Canada. The Ontario Heritage Act which regulates archaeological practice, and through the regulation of practice seeks to protect the archaeological resource from adverse effects of illicit collection and development impacts. In licensing the provincial interest in archaeological resource protection is delegated to individual archaeologists. The province, acting as principal, specifies the limits to the delegated authority and the obligations of licensing in the terms and conditions. These terms and conditions detail requirements for field work, analysis and reporting of archaeological activities undertaken by the licensed archaeologist, especially those engaged in consulting on behalf of development clients. Specification in the terms and conditions reduces the licensed archaeologist's discretion in a range of matters, such as the distribution of sampling locations across a property being evaluated, but preserves discretion in other key areas, such as the evaluation of cultural

¹⁰¹ Merton (1940) described this process of goal displacement where instrumental values become terminal values (cited in Wilson 2000).

heritage value or interest of a site, and the recommendations for further client-funded field investigation.

In moving to horizontal integration of policy and services, the Ministry of Culture archaeology program engaged in an internal review of operations to ensure that the Ministry was focussed on core mandates, and that operations that supported the core functions of other agencies were delegated.¹⁰² As a core mandate, archaeological licensing remained with the Ministry, along with the review of reports submitted by licence holders. But many technical or operational functions, such as evaluating archaeological potential and initiating archaeological assessment for development properties were delegated to the agencies responsible for coordinating the relevant legislation and policy. In delegation, these coordinating agencies become the primary point of contact for stakeholders, reducing the Ministry's role to providing data, technical support and policy advice as required.

Delegation within these networks required non-specialists, many operating autonomously, to assume decision making roles. To ensure that archaeological resource protection objectives are addressed appropriately by these non-specialists, staff from two branches of the Ministry contribute training, technical support and instruments that describe how the delegated authority should be exercised. A third unit oversees the licensing and report review functions. Technical instruments, such as checklists and policy interpretations represent Ministry interests to non-specialist decision makers in both broad and specific terms. For example, the Provincial Policy Statement, used in municipal planning contexts, defines the provincial interest in archaeological resources broadly using terms such as significance, value, and interest. The archaeological potential checklist provided to municipal planning authorities for evaluating archaeological potential as a series of quantitative values that give the impression of certainty. What is obscured in these technical instruments is the social content, that these instruments seek to render typical responses to commonly arising situations that might be made by an archaeologist durable in the form of a document. Presented in clear and understandable language, the instruments are seen as encapsulating responses or guidance

¹⁰² MCL websites identify ministry flexibility in implementation of archaeology policy, and horizontal integration of policy and service delivery. Flexibility in implementation is reflected in one web site, the text reads: "Recognizing the importance of heritage, the Ontario government, through the Ministry of Culture, has promoted heritage conservation for many years, adjusting its role to meet changing needs and circumstances." (<http://www.culture.gov.on.ca/english/heritage/index.html> last accessed December, 2009). Horizontal integration is noted in reference to Bill 60, amending the Planning Act, where the text under the heading "Special Initiatives, Policies and Training" reads: "Times of radical change provide unexpected opportunities for bringing forward the heritage conservation message. One of the initiatives of the Archaeology and Heritage Planning Unit has been incorporating stronger cultural heritage policies in the new *Planning Act*. By means of this initiative, the Ministry of Municipal Affairs and Housing has joined with us in promoting heritage conservation as an important provincial interest." (<http://www.culture.gov.on.ca/english/heritage/archaeology/arch.htm> last accessed December, 2009).

equivalent to that of an informed expert apprised of the local conditions, and drawing on their experience, training, theoretical orientation, interests, and intuition.

To MCL, these instruments anticipate and respond to a wide range of questions and situations, and supporting local decisions to initiating archaeological assessments for most development applications. In these cases, the vague direction of the technical instruments is compensated when a licensed archaeologist completes a property specific investigation. But it is equally likely that non-specialists can come to view these technical instruments as top-line constraints (Wilson 2000, 115) to the planning functions they are obliged to consider. Under these conditions, compliance is designed to emphasise clearly identified tasks, while avoiding making decisions in areas of vague or conflicting policy direction. This combination of vague and specific direction allows the non-specialist local actors to essentially negotiate their obligation with the technical instruments. In this way the technical instruments become an active intermediary increasing the separation of the Ministry from delegated decision makers. While these technical instruments render the social content of the policy direction durable, they are also themselves durable, and once they are deployed it is difficult to override the effect that they have on local decision making processes. When authority is passed on from provincial to local administrative bodies, the policy direction remains the same for whomever uses the document. But when policy direction changes, the earlier documents may continue to play this role in negotiations over implementation within the network. These documents contribute to the standardisation of practice that is required to manage the delegations and to steer the network towards the objectives defined by the central actors. Within the administrative organisations hierarchical control of operational workers by management allows control over tasks and outputs; beyond these organisations the lack of a clear central authority results in local control over decision making. Standardisation within the network is intended to provide some assurance that agents conform to principal's expectations.

Implementation networks built on delegation create a series of principal and agent relationships among actors. Agency theory informs that this may become a problem where the delegating principal may not be able to fully monitor agent behaviour to ensure compliance with the principal's interests. When agents are shielded from direct observation, principals may compensate by specifying expectations, rules of conduct, or monitoring provisions. The principal must balance the increased cost of monitoring against the consequence of adverse behaviour by the agent, and both parties will recognise that specification cannot address all of the situations in which agents must exercise discretion without becoming unworkably prescriptive. Simple principal-agent delegation may be

effectively mediated through intermediary documents setting out specifications. But multiple delegations, which give rise to complex networks may also be made even more complex as the number of agreement-specific intermediary documents increases. Monitoring provisions of one agreement may not map effectively onto other agreements or commonly arising situations, and rules for the conduct of professionals may not be satisfactory as guidance to non-specialists.

Reduction of implementation expectations to specified outputs also supports the results-based planning approach to management that is seen as part and parcel of the business approach. The imposition of a business management focus on stakeholders, performance and efficiency that drives horizontal governance also supports results-based management. Administrative performance, measured against standards such as financial efficiency and meeting pre-determined targets, is seen as one path to overcoming a perceived inefficiency inherent in bureaucracy. However, results-based management requires quantitative targets, leading to an administrative focus on measurable outputs. Bureaucratic theory informs that in this context, vaguely worded goals will be displaced by specific operational targets that favour planning and performance measurement. Over time, these targets can become the goals of the agency with the consequence that the vision of the agency is reduced in scope, limiting its capacity for achieving any qualitative public good policy objectives.

In the discussion of the cases that follow, I include the consideration of intermediary documents as actors in the networks that arise in delegation and in policy implementation, and the local negotiations over implementation that result. These documents, many of which represent Ministry interests or expectations result in additional distancing between them and the local actors charged with implementation. I provide an overview of some of the common intermediary documents, and discuss how they constrain agent action in delegation, and how they also provide for additional or new avenues for the exercise of discretion. Of particular interest are documents, such as the terms and conditions of archaeological licensing and some of the other planning and decision-making tools circulated to non-specialists. Since these documents are available to all of the actors in the implementation network, it is possible for agents to negotiate their responsibilities in the network based on contradictory direction, or, more commonly, to use the absence of specific direction as a source of slack resources, allowing agents to exercise discretion in favour of private or local interests.

Chapter 5

Archaeology Policy and Implementation Networks

5.1 Introduction

This Chapter considers archaeology policy implementation within a network of participating actors: human, institutional, and textual. The network is founded in the methods, rules, and practices (Law 2004) of policy and its implementation, and in the bargaining that takes place among actors within “complex chains of reciprocal interaction” (Pressman and Wildavsky 1984, xxvi). This bargaining begins when policy makers need to engage implementing actors (cf. Edelman 1964; Miliband 1969), and in this bargaining, it seems reasonable to suggest that individual actors would seek an advantage for their own objectives as the local rules of implementation are determined. As implementation networks are built through negotiation and agreement, the addition of actors to the network should destabilise it (cf. Schattschneider 1960), as negotiations among diverse actors influence implementation, and through this, outcomes. If implementation is, as Rhodes describes it, a process of “muddling through based on provisional knowledge and diverse, local policy responses to contested definitions of problems” (Rhodes 2000, 361), then it is unlikely that implementation through a network will represent a direct route between the policy intent and the final results achieved, and hardly one that a central administrator can effectively control.

In this Chapter, I discuss three provincial policy areas that engage archaeology policy as examples of how the participants and external influences affect that archaeology policy. The theoretical focus of this chapter is Schattschneider’s (1960) conflict theory of politics, specifically: 1) the effect that the scope of a conflict has on its stability; and 2) the way dominant social cleavages can displace lesser conflicts and reapportion the participants engaged in these conflicts. Within the cases discussed, I draw on two additional theoretical concepts that provide insight into how implementation contests shape outcomes: agency theory (Stigler 1971; Eisenhardt 1989; Spiller 1990; Waterman and Meier 1998), and the role of sub-agents (Brower, Meguire, and Monks 2010; Braun 1993); and actor-network theory, particularly in its symmetrical treatment of non-human actors in social exchanges, and concept that social practice may be rendered durable in technological objects (Callon 1991; Latour 1991).

In Chapter 4, I discussed two delegations that underpin archaeology policy implementation in Ontario: 1) the delegation of the provincial interest in archaeological resource protection

represented in licensing; and 2) in the horizontal organisation of the provincial public service. The central agency responsible for the Ontario Heritage Act, is the Ministry of Culture and in delegation they develop relationships between the Ministry as principal, and multiple agents represented by the licensed archaeologists and coordinating agency staff respectively. The potential that slack (Levine and Forrence 1990), and consequently non-compliance may arise in archaeological licensing is controlled through monitoring and specification. But in the horizontal management structure of the Ontario Public Service, delegated roles have in some instances been delegated on to local agents, creating a chain of agents and subagents. As a principal seeking desirable outcomes but unable to monitor these subagents directly, the Ministry has circulated a number of intermediary documents specifying necessary action; however, these documents themselves add complexity to the network, especially when the direction they contain is inconsistent, vague, or otherwise contested.

The addition of intermediary documents leads to a second theoretical concept, the view, derived from actor-network theory, that these documents may not only convey the principal's meaning to agents and subagents, but may themselves participate in the resulting social exchanges. Actor-network theory suggests that non-humans, in this case policy documents, have the capacity to act, by postulating that an actor is any entity is able to predicate relationships and define required actions of other actors within a network (Callon 1991). In archaeology, policy documents like the archaeological potential checklist 'act' by requiring other participants in the implementation network to draw together maps, technical data, and expertise to arrive at an evaluation of potential which may or may not trigger an archaeological assessment. Acting, in this context is limited to directing the actions of other actors (human or non-human) within the bounds set by the content of each intermediary document; however, the action that results may be negotiated between the implementing actors (human) and policy documents by drawing other documents, such as archaeological assessment reports, into these negotiations, changing the nature of the relationship and the resulting implementation responsibilities.

With implementation networks comprised of diverse actors, including documents, the discussion returns to the central organising concept: that the scope of participation in a political contest influences outcomes (Schattschneider 1960). Political contests remain stable only as long as there is no change to the diversity of interests engaged, or a much larger issue emerges that subsumes the original contest and redistributes individuals on either side of a new political divide. Stability in a contest, and this includes implementation networks, is a function of the scope of participation; when participation is limited, outcomes serve the

dominant interests engaged in the contest, but groups that might want to redistribute benefits must work to expand the scope of participation in the conflict by engaging additional support for their view of the contest. The political contest is socialised (Schattschneider 1960) when new groups attempt to draw additional actors into the contest and upset the *status quo*.

Building on the theoretical insights of actor-network theory, the participation of texts, such as policy documents in implementation contests would be expected to expand the scope of the contest, although they may also suppress participation by representing and displacing other actors in an implementation contest.

Schattschneider's theory also allows that not all contests are equal, and that in politics "more intense conflicts are likely to displace the less intense ... [where] every great conflict overwhelms a multitude of lesser ones" (Schattschneider 1957, 939). In this way, a political contest that is perceived by the public, or the active participants in an implementation contest, as representing an important social cleavage will become the issue that interests organise relative to. These contests may also cancel each other out, since every contest that divides the public also unites them on either side of an issue. This, while the threat to any political alignment is that it may be overcome by "bigger collateral, inconsistent and irrelevant competitors for the attention and loyalty of the public" (Schattschneider 1957, 939), it is not a foregone conclusion that these bigger cleavages will replace any particular contest: it "all depends on what we want most" (Schattschneider 1957, 940). Local negotiations within an implementation network may result in distinct approaches to engaging these cleavages, depending on how the dominant social cleavage is seen to affect local interests.

In exploring the three cases in this Chapter, I consider how key concepts in Schattschneider's (1960) theory might influence the implementation of archaeology policy and affect the outcomes achieved. In each case the scope of involvement in the network by human and non-human documentary actors differs, and I discuss how scope in these cases affects outcomes. I also identify where and how the central agency is displaced from negotiation over implementation by intermediary documents, and at times where the intermediaries are enrolled to interpret or contradict Ministry direction to local actors. The addition of text as actors in these networks expands the scope of participation in the implementation contest, destabilising it and making it more difficult for the Ministry to achieve archaeology policy objectives that do not suit local interests. The influence of dominant social cleavages on implementation varies between the cases, and these are seen as influencing how the objectives of implementation are defined. Participants who are mobilised in response to these broader social concerns causing implementation to reflect these cleavages, with the result that the

basic objectives of implementation change, and the outcomes that the network will produce will differ from those anticipated at the outset.

In this chapter, I present the individual cases, each followed by a short summary of the main points in relation to theory. I conclude the chapter with a discussion of the cases, focussing on the overall relationship between the cases and theory.

5.2 Building Networks through Delegation of Authority

In the first case, I consider the effect of the horizontal delegation on archaeology policy implementation, and the consequences of circulating intermediary documents as a means of maintaining control over implementation outcomes.

The Ontario Heritage Act, (R.S.O. 1990, c. O.18, s.2), makes the Ministry of Culture responsible for addressing the provincial interest in archaeology, but this mandate is largely met through policies governing land and resource development. Horizontal management of the public service identifies the Ministry of Municipal Affairs and Housing as the coordinating agency for land use planning decisions made under the authority of the Planning Act (R.S.O. 1990, c. P.13). Authority is further delegated to local municipal authorities that are granted approval authority for local land use planning applications under the Planning Act. This delegation includes responsibility for ensuring that development applications comply with municipal planning requirements and addressing provincial interests such as archaeological resource protection. The preferred approach to addressing the provincial interest in archaeology is for the local approval authority to evaluate the archaeological potential of all development properties and to attach a condition to the approval requiring an archaeological assessment before the application is considered complete. The process for completing this review is expected to be set out in the municipal Official Plan, also required by the Planning Act.

The main actors involved in the implementation of archaeology policy in municipal planning context are: the Ministry of Municipal Affairs and Housing (Municipal Affairs), the coordinating agency; the Ministry of Culture (Culture) representing the provincial interest; municipal planning authorities; developers; and licensed archaeologists (Figure 5.1). The key delegations in implementation are: 1) the review of development applications to determine if an archaeological assessment is required; and 2) the archaeological license. The responsibility to review development applications is first delegated to Municipal Affairs as the coordinating agency, who then delegate this responsibility on to the municipal authorities. The key intermediary documents circulating among these actors are: the Provincial Policy

Statement (MAH 2005); the archaeological potential checklist circulated by Culture; and Planning Act Regulation O.Reg. 544/06. Other intermediary documents that become involved in implementation include: the Standards and Guidelines for Consulting Archaeologists; the municipal Official Plan; archaeological assessment reports prepared by licensed archaeologists; and the review and review letters prepared by the Ministry of Culture for archaeological assessment reports. In the first case, my primary interest is to explore how the scope of the implementation network, including the organisational and textual actors noted above, have influenced implementation outcomes, particularly the local decisions made in regard to archaeological resource protection.

In this network, local actors with implementation responsibilities cannot be directly observed by the Ministry of Culture, raising the possibility that they may not fully comply with archaeology policy. They have discretion to negotiate their obligation and to draw the focus of archaeology policy toward tangible and where possible quantitative measures of successful outcomes in a manner predicted by Wilson (2000). Within the wider implementation network, local networks are dominated by local interests, and implementation decisions may come to focus on the concerns of dominant actors, such as developing land profitably. A strategy, suggested by Schattschneider's (1960) theory, is that these local actors may seek to draw in additional actors in implementation in order to destabilise the network to the degree necessary to alter the local objectives of implementation in their favour.

The intermediary documents in circulation within this implementation network set out local implementation requirements to varying degrees of specificity. These documents are accepted by local actors as representing the expectations of the Ministry of Culture for implementation. Wording in the documents is at times vague or non-specific, which affords local actors discretion over decisions which, coupled with the Ministry's inability to directly monitor implementation decisions, provides local actors with slack (Levine and Forrence 1990). The theoretical literature suggests that agents invested with slack may use it to pursue private objectives, such as reducing the obligation of development proponents to complete archaeological assessments, reducing municipal workloads, or avoiding conflict. While the exercise of discretion may conform to policy objectives, it may also provide space for shirking. One respondent (L3), when asked about shirking in relation to implementing archaeology policy in municipal land use planning, stated simply that "it's not our job. It was downloaded to us, but it's still your [Ministry of Culture's] job". The use of documents to negotiate obligations in local implementation contests reinforces the distancing of the central agency from local decisions. The Ministry is reduced to monitoring implementation on the

basis of outcomes in the form of archaeological reports provided by licensed archaeologists, and then only when an assessment has been required by the municipal planning authorities.

5.2.1 Delegation

Delegation of planning authority to municipal governments coincided with revisions to the Planning Act in 1996 (Penfold 1999). The Municipal Plan Review (MPR) process was introduced in the mid 1990s with the aim of reducing duplication and inefficiency in planning, granting greater autonomy to municipalities in planning and refocusing provincial energies from local decisions to policy. Penfold (1999) suggests that during consultation, delegation of provincial interests was not desired by municipal governments although they reluctantly accepted this role in exchange for the increased local control over planning decisions.

Under MPR, the local planning authority is the single point of contact for planning matters, with responsibility for coordinating responses from provincial reviewers, and approving planning applications that meet the provincial requirements (MAH 1999). However, under the terms of horizontal organisation in the public service, Culture relies on Municipal Affairs to convey the provincial interest in archaeological resources to municipalities. Culture advises on policy and municipal training to Municipal Affairs, and participate in the Municipal Affairs review of municipal Official Plans. Culture also provides technical advice and archaeological sites data directly to local planning authorities, but Municipal Affairs remains the primary point of contact for local authorities when planning approval questions arise. The response to the problems inherent in this chain of delegation included training and, to a limited extent, funding. While one respondent from MAH (L1) stated that the local authorities were provided with technical and training support to deliver on heritage and other devolved responsibilities, a municipal planner interviewed (L3) focussed his comments on the lack of funding accompanying the new responsibilities, including funding for training and archaeological sites data management.¹⁰³

5.2.2 Land Use Planning and Archaeological Assessment

In this section, I describe the implementation network for archaeology policy in land use planning. Land use planning related archaeological assessments is the dominant form of

¹⁰³ Municipal planner comments in 2008 suggest that this reluctance continues; perhaps to maintain desired levels of slack. L3 informed me that the local planning department did not require archaeological assessments in planning applications unless a known archaeological site was present, based on mapping provided in the 1990's. Two reasons were given: the downloaded responsibility did not come with corresponding funding, training and data, and that, "really, we all have a pretty good sense of where the archaeological sites are" (L3).

archaeological practice in Ontario, accounting for up to 90% of the archaeological sites recorded annually (Ferris 2007). As noted in the preceding section, local planning authorities are responsible for ensuring that the provincial interest in archaeological resource protection is addressed in planning; however, the discretion available to local authorities creates slack (McCubbins, et al. 1990; Levine and Forrence 1990), which can be used to set limits to the archaeological assessment requirements overall, or for specific applications. Within the implementation network, separation from the local authorities by both human agents and documentary intermediaries leaves MCL is poorly positioned to monitor local decisions.

Horizontal management of Planning Act land development becomes a network through delegation. The initial building block of this network is delegation of the provincial interest in archaeological resource protection from MCL to the planning network coordinated by MAH. In turn, MAH has delegated planning approval authority to approximately 350 municipalities.¹⁰⁴ External actors enter into contact with this network when developers prepare development applications in conformance with local rules and the local planning authority considers this application. Figure 5.1 represents this network in simplified form, with human actors arranged in a single line. This linear form also signifies the distancing the network creates between actors, such as the distancing of MCL from local decision-makers, and the role of the licensed archaeologist as intermediary between developers and MCL. Non-human intermediaries are represented in Figure 5.1 in a separate column, but as actors in the network they also play a role in defining the interaction between other actors. MCL attempts to guide local authority decisions by specifying tasks in documents such as the potential checklist, while licensed archaeologists engage the network through contractual relationships to development proponents and the terms and conditions of licensing. Archaeological assessment reports completed by licensed archaeologists on behalf of developers are circulated to MCL for licensing compliance review, and a letter confirming compliance is forwarded to the archaeologist, who then makes it available to their client for inclusion in the development application. But it is important to note that once these documents enter the network they are available to other actors. Local authorities may enrol these reports in negotiations with the potential checklist when considering future applications, and development proponents can use the results of one report to negotiate a lower price for a subsequent consulting contract.

¹⁰⁴ For a list of approval authorities see O. Reg. 353/02 (Approval Authority — Plans of Subdivision). A current list is provided at <http://www.mah.gov.on.ca/Page1298.aspx>. (Accessed June, 2010).

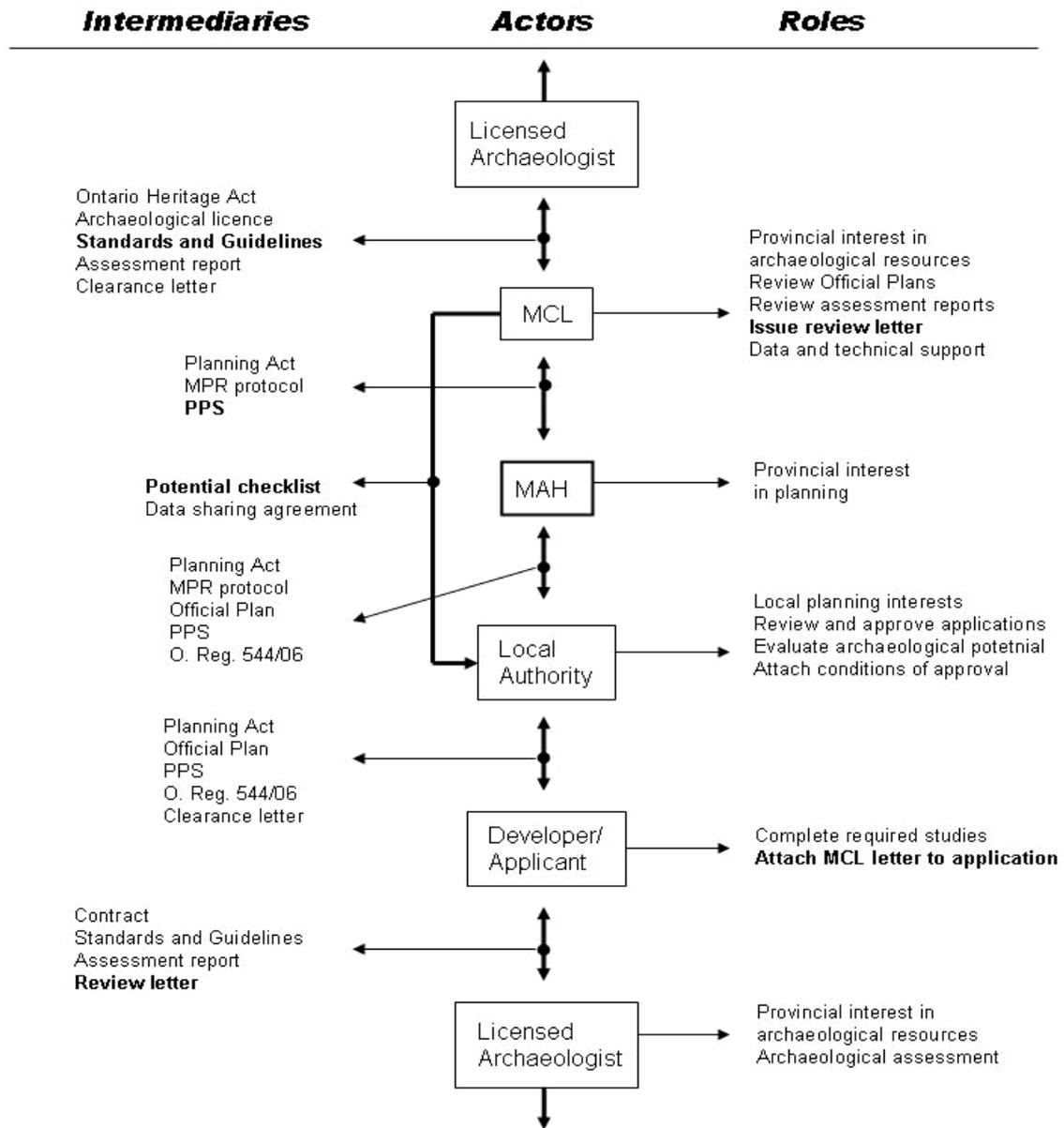


Figure 5.1 Municipal Planning Network.

Within this network, human or organisational actors may be simultaneously engaged in a range of other political or financial concerns, and archaeological resource policy compliance may be of relatively low priority. Any actor identified in Figure 5.1 could be decomposed as actor-networks into the range actors and interests that they engage. As noted in the preceding section, results-based management is a private interest of MCL that accompanies the pursuit of the public interest in archaeological resource protection. Organisational arrangements within MCL also fragment the Ministry interest in archaeology; one unit reviews and comments on Official Plans, and another reviews archaeological assessment reports as a result

of implementation of Official Plan policies¹⁰⁵ (Figure 5.1). Licensed archaeologists engaged in the network are concerned for the archaeological resource, meeting the terms and conditions of their license, and for their commercial success.¹⁰⁶ Balancing client interests with licensing obligations and an ethic of archaeological resource protection requires compromise on the part of the archaeologist; pressing for site protection may give the client the sense that their interests are being neglected, while pro-client advocacy may create a perception of short-changing the archaeological record. The competing interests attendant in planning and profitability being managed by the non-archaeological actors can draw the overall network even further from an archaeological focus.

Under conditions of delegation, especially where the delegated agent has discretion in their course of action there is the potential for the principal agent problem to arise (Levine and Forrence 1990). The inability of MCL to directly oversee local planning authorities, combined with the competing interests that exist between and within actors complicates compliance and reduces the certainty that agents will act in the principal's best interests (Kalt and Zupan 1984; Levine and Forrence 1990). While the principal-agent relationship is often described as a form of contract, in which the principal and agents agree to pursue stated objectives (Jensen & Meckling, 1976; Eisenhardt 1989), this contract was not negotiated at the outset (cf. Penfold 1999). Instead, MCL has introduced a number of intermediary documents to clarify Ministry expectations regarding the provincial interest in archaeological resource protection. These documents specify the actions and outcomes expected of the agent, but do not indicate how compliance will be monitored. Monitoring is the responsibility of MAH as coordinating agency in the network, leaving MCL with little opportunity to monitor compliance beyond the review of archaeological licence reports prepared on behalf of development proponents for properties determined to hold archaeological potential.

5.2.3 Defining the Provincial Interest

The Ministry of Culture uses several means to identify the provincial interest in archaeological resource protection in land use planning. The Ministry works with the coordinating agency, providing input to planning policy, and in the development and delivery of training and support materials such as the Ontario Heritage Tool Kit (MCL 2006b). Ongoing technical support includes review of municipal Official Plans, to ensure that the long term strategic direction of the community includes consideration of heritage resources. The

¹⁰⁵ Cultural Programs Unit and Cultural Services Unit respectively. Policy is also directed from a separate unit. See the organisational chart, page 10, in MCL (2009b).

¹⁰⁶ The rise of Section 106 archaeology in the post-ARPA United States marked the beginning of the commercialisation of archaeological field work. Note MacDonald (1976), and Fagette (1996).

Ministry also makes available archaeological site data and an archaeological potential checklist to assist local planning authorities plan for archaeological resource the protection in development application review. The data and checklist are critical to protection as they are the basis for placing an archaeological condition on a development application, triggering an archaeological assessment of the property. The archaeological sites data, available through data sharing agreements with the Ministry, represents a key component of this triggering mechanism. In the interest of increasing discretion and reducing workload, some planners view the provision of data a necessary for the municipal planners to even begin considering archaeological evaluation. Respondent L3 noted that their municipality did not have a data sharing agreement, although “we tried to get one in place some years back”. This has had repercussions for archaeology, as the first item on the potential checklist asks whether a site lies within 300 metres of the subject property: “if there isn’t a site on the property we aren’t going to ask for an assessment because there will be no impact” (L3).

At the policy level, Culture works with Municipal Affairs to ensure that archaeological resource protection is addressed in planning. The Planning Act provides for planning that “integrate[s] matters of provincial interest”, by coordinating the various interests in planning decisions (R.S.O. 1990, c P.13, s. 1.1). Approval authorities must “have regard to...matters of provincial interest such as... the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest” (R.S.O. 1990, c P.13, s. 2). MCL participated in the development and revision of the Provincial Policy Statement, which identifies provincial interests. The original Provincial Policy Statement required all planning authorities to “have regard to” provincial policies,¹⁰⁷ later changed to the stronger “shall be consistent with” standard in a later, revised version (MAH 2005).¹⁰⁸ More recently, a regulation to the Planning Act identifies the evaluation of archaeological potential and, if required, assessment of development properties as part of a complete development application.¹⁰⁹

¹⁰⁷ Penfold (1998) notes that the original wording of the first PPS document included the “shall be consistent with” standard, but that this was rolled back by the then newly elected conservative government prior to releasing it.

¹⁰⁸ The “shall be consistent with” standard is found in the Planning Act, Section 3(5), as amended in 2006.

¹⁰⁹ Article 23, of O. Reg. 544/06, Schedule 1, to the Planning Act states: “Whether the subject land contains any areas of archaeological potential”. Article 24 of the same regulation states: “If the plan would permit development on land that contains known archaeological resources or areas of archaeological potential, (a) an archaeological assessment prepared by a person who holds a licence that is effective with respect to the subject land, issued under Part VI (Conservation of Resources of Archaeological Value) of the *Ontario Heritage Act*; and (b) a conservation plan for any archaeological resources identified in the assessment”

5.2.4 Intermediary Documents

Actor-network theory suggests that intermediary documents, as technical instruments serve as a form of portable expertise (Latour 1991). They encapsulate typical or preferred responses to common situations in language that is clear and understandable to non-specialists. But reducing technical information simplifies it, and in simplification the information comes to appear more absolute or definite than it perhaps is (Callon 1991). Simplification also displaces expertise, with the instrument representing, or speaking on behalf of experts (Callon 1986; 1991), and in doing so eliminates the contribution that the training and experience of a specialist might make in reaching a conclusion. But these documents also act, drawing network actors together by defining the roles, rights and obligations that arise from the delegations of authority that make up the network (Callon 1991). For example, the Ministry of Culture has delegated the role of evaluating archaeological potential to municipal planning authorities through the Municipal Plan Review process (MAH 1999), supporting this delegation by providing the archaeological potential checklist. Licensed archaeologists have also been delegated the authority to complete these evaluations through a distinct process, described in the Standards and Guidelines. Monitoring of these two evaluation processes are at variance, with the decisions of local authorities obscured within the wider network of planning approvals, and the licensed archaeologist decisions reported directly to the Ministry through an archaeological assessment report.

A key intermediary documents is the Provincial Policy Statement (PPS). The PPS identifies the provincial interest in archaeological resources in Section 2.6.2, which states:

Development and site alteration shall only be permitted on lands containing archaeological resources or areas of archaeological potential if the significant archaeological resources have been conserved by removal and documentation, or by preservation on site. Where significant archaeological resources must be preserved on site, only development and site alteration which maintain the heritage integrity of the site may be permitted (MAH 2005).

But this statement is neither clear nor specific. As an intermediary in the chain of delegated responsibility, the PPS introduces uncertainty with the concepts “potential” and “significant” and mandates that local implementation network participants negotiate a definition.

There are three terms that may be described as contested in this short paragraph. “Lands containing archaeological resources” can only be known to the local planning authority where this data has been transferred from the Ministry of Culture, or where an archaeological assessment has been completed, and resources identified. “Areas of archaeological potential” require the application of the archaeological potential checklist, or the development of a

stand-alone archaeological management plan for the municipal area. The evaluation of “significant” archaeological resources represents the outcome of an evaluation of a property and any archaeological sites found by a licensed archaeologist, or is an attribute of the archaeological resource data provided. As the purpose of municipal planning review is to have local authorities complete the evaluation of archaeological potential and attach an archaeological condition to a development application, it is common for non-specialists to evaluate potential and significance unobserved, often relying on the contradictory information available in other documents.

Significant Resources

The PPS directs local planning authorities to act to conserve significant archaeological resources, permitting development on lands containing archaeological resources or areas of archaeological potential if “significant archaeological resources have been conserved” (MAH 2005); however, the PPS and other documents available to local planning authorities do not provide clear direction on how significance is to be determined. Archaeological significance can be determined in relation to a range of factors, including the site, its context, the materials present, regional histories, and broader questions current in archaeological research.

Significance determines the utility or existence value of the resource (Carman 2005),¹¹⁰ with the more valuable resources protected through the expense of a salvage excavation or by setting aside from development otherwise commercially valuable property. The factors that contribute to the archaeological evaluation of significance are beyond the purview of the local approval authority, for whom significance may be viewed in relation to how “interesting” the archaeological resources appear to be, also in relation to the more obvious financial cost of protection to the development proponent.¹¹¹ Pursuing due diligence in addressing the provincial interest leads local authorities to consider the definitions provided in other Ministry of Culture documents in order to find the balance between archaeological resource protection and development.

2004 amendments to the Ontario Heritage Act recast significance as “cultural heritage value or interest”, primarily in reference to heritage resources protected under Part IV of the Act.¹¹²

¹¹⁰ The role of significance in the context of consulting archaeology has been a focus of considerable date over the past 40 years. Significance as a means of determining outcomes for sites identified in the context of consulting requires that the site and cost to development proponents are rendered equivalent. This was treated recently by Carman (2005), and in Mathers, Darvill & Little (2005).

¹¹¹ The shorelines of medium to larger sized lakes are uniformly considered to hold potential; however, one municipality had not required an assessment on several shoreline developments, because “the old planner thought that this would be too expensive for the developer, and the projects would have stalled” (L4).

¹¹² The OHA does not bind the Crown; however, Part III.1 is part of an amendment to the Act that requires the conservation provisions of the Act to apply to Crown properties. Two regulations set out criteria for determining

This phrase is extended to archaeological resources in the regulation O.Reg. 170/04, which states that archaeological resources must have cultural heritage value or interest in order to meet the definitions of artefact or archaeological site under the Act. This use is applied in the Standards and Guidelines for consulting archaeologists as well, where cultural heritage value or interest is one of the analytic outcomes required following archaeological assessment. Cultural heritage value or interest defines the threshold between archaeological resources requiring mitigation and those that do not. Criteria¹¹³ are provided for determining whether archaeological resources meet these definitions, and therefore require mitigation from development impacts. It is important to note the statement that “archaeological resources that do not meet these criteria ... do not have cultural heritage value or interest” (MCL 2009a, 18).

Applying the Provincial Policy Statement to municipal planning is also explained in the Ontario Heritage Toolkit, a training tool for local approval authorities produced by the Ministry (MCL 2006b). The Toolkit highlights the PPS definition of significance as resources that are “valued for the important contribution they make to our understanding of the history of a place, an event, or a people” and reiterating that the significance of an archaeological resource, determines the mitigation requirements (MCL 2006b, 3). The direction provided by the Toolkit is important as well, since this covers all heritage resources protected under the Heritage Act. Municipalities are required to address the provincial interest in built heritage as well as archaeological resources, but using separate processes. For example, many municipalities have Heritage Advisory Committees (HAC), organised to address OHA Part IV concerns. These committees have no mandate to address OHA Part VI archaeology issues. But again, these committees allow for increase discretion: “we always check with the HAC, and they never say anything about archaeology” (L4).

Two OHA regulations form a readily available source for clarifying how significance is to be determined. In neither regulation is professional judgement identified as necessary (O. Reg. 9/06, and O. Reg. 10/06), which seems to equate evaluations made by local planners using the checklist with more detailed reviews conducted by licensed archaeologists. Although the

cultural heritage value or interest. Again, O.Reg. 9/06 concerns designation of a property by a municipal authority, while O.Reg. 10/06 concerns Ministerial designation. Both concern the conservation of properties containing built heritage resources (Part IV of the Act), while archaeological resources are defined as distinct in Part VI, section 47. See also Part VII, section 68.

¹¹³ What makes an archaeological site one of cultural heritage value or interest? According to the S&Gs (Ontario 2009), any area where Stage 2 investigations have recovered one or more diagnostic artefacts and at least two non-diagnostic artefacts, or in some parts of the province more than five non-diagnostic artefacts in a 10 by 10 metre area. Cultural heritage value or interest also applies to individual instances of aboriginal ceramics, specific types of (worked) lithic raw material, or any isolated, diagnostic artefact from the earliest periods of human occupation in the province. Criteria also favour sites where more than 20 artefacts pre-dating 1900, 20th century sites where the archaeologist can provide evidence of possible cultural heritage value or interest, or sites where human remains have been identified nearby.

significance or cultural heritage value and interest of an archaeological site need not be considered in evaluating potential, a planner interviewed for this research suggested that archaeological significance was important in making the final call on whether an assessment was required. The planner spoke of a former planner who had given them their initial orientation. This former planner, who was also an avid, unlicensed artefact collector, had argued against an evaluation of archaeological potential as it had been “picked over” by him and others (L4). This also applies when archaeological resources are known to exist on a property, but are not evidently significant: respondent L3 dismissed concern that a significant site was denied planning protection in rezoning because an assessment report had already been prepared for another part of this spatially extensive site, stating, “we thought you had everything you wanted from that site” (L3). Both conditions afford the local planning actor slack in meeting the regulatory requirement.

Archaeological Potential

Planning Act regulation O. Reg. 544/06 describes a complete subdivision application, and forms a checklist which The Ministry of Municipal Affairs and Housing can use in monitoring compliance with the Provincial Policy Statement. A complete application includes an evaluation of archaeological potential (Section 23), and an archaeological conservation plan for properties where archaeological resources or archaeological potential have been identified (Section 24). The regulation does not identify the form that the report of archaeological potential must take.¹¹⁴ The Standards and Guidelines for Consultant Archaeologists, clarify that archaeological potential may be evaluated in one of three ways: 1) by the local approval authority using the archaeological assessment potential checklist provided by MCL; 2) from an approved archaeological master plan completed by a licensed archaeologist for the local approval authority; or 3) by a Stage 1 archaeological assessment (MCL 2009a, iii). In reviewing local decisions for compliance, Municipal Affairs does not distinguish between the specialist and non-specialist approaches, and does not generally communicate with MCL regarding sufficiency. This division of labour is reflected in a comment from one respondent who said, “we check the planning applications, you guys (MCL) deal with the archaeology. You’re the experts” (L1).

¹¹⁴ On the other hand, Section 22, concerned with septic field suitability, requires a hydrogeological report. Section 23 is not specific, asking only “whether the subject land contains any areas of archaeological potential”, and does not specify the form in which this information is to be provided. It is worth noting that one respondent identified the evaluation of potential as a burden on the local planning department, asserting flatly that it was “not our job” (L3). When this position was mentioned to a MCL policy staff member, they replied “we made it their job with [Planning Act regulation] 566/04” (L5). Nevertheless, no compliance mechanism seems to be in place to make local authorities do this work (see note 16).

The provincial criteria for determining archaeological potential¹¹⁵ are summarised in a checklist (MCL 1993b; Ontario 2006b), and it is this checklist that many local approval authorities use in evaluating planning applications. The checklist is presented as a series of conditional statements which, if confirmed determine of contribute to the determination of potential. Thus, if a known archaeological site,¹¹⁶ a primary or secondary water source, or a relict or post glacial water source, are within 200 to 300 metres from the property, then archaeological potential is considered confirmed. Using this checklist archaeological potential can also be confirmed by the presence of any of combination of elevated topography, pockets of sandy soil in otherwise clay or rocky soil, unusual land formations (caves, waterfalls), resource procurement areas, non-aboriginal settlements, historic transport routes, a designated site, or local knowledge. In areas of extensive and intensive recent disturbance there is no archaeological potential (MCL 1993b; 2009a).

These criteria intersect with local planners' own perceptions of archaeological potential, often derived from their experience reviewing consultant archaeologist reports. One planner (L2) centred their remarks on potential as characterising "a good campsite", while another (L3) suggested that a shoreline property had no potential since there was no place to land a canoe", neither of which are indicated in the potential checklist. The effect of soil disturbance in destroying archaeological sites and removing archaeological potential is intended to mean activities such as excavation; however, some interview respondents (L7) felt that activities such as clearing forest cover was a disturbance that would remove potential. While these views are incorrect, they provide an opportunity for the local planners to provide a benefit to themselves and to development proponents.

The role of the Standards and Guidelines is discussed in the comments surrounding the concept of significance, above; however two comments are worth making. First, an archaeological assessment leading to an evaluation of archaeological potential by a licensed archaeologists is monitored directly by MCL in the review of the report. This affords the consultant archaeologist less discretion than the archaeological checklist provides to local authorities to favour the interests of a development applicant. Second, while there is some

¹¹⁵ Archaeological potential is determined by building a case for the plausibility several sequential assumptions about a place: was it suited, at some time in the past, for human occupation; if it was suited, is there a likelihood that it would have been occupied; if occupied, would this occupation have resulted in materials traces that may be preserved; if they remain, is it likely that they can be found using normal archaeological field techniques?

¹¹⁶ For a local approval authority to determine whether a registered archaeological site is within 250 metres of a proposed development it requires archaeological site data from MCL. This data transfer requires that a data sharing agreement is executed between MCL and the municipal authority. For some local planners, this agreement is considered a low priority, and consequently the data is absent from their deliberations. Yet, by circular reasoning, this absence was cited as one reason why the potential checklist was not applied for all proposed subdivisions (L3).

discretion provided to archaeologists in the Standards and Guidelines to favour the interest of their client, the slack afforded local authorities is more substantial: if the archaeological assessment is not initiated then argument over the mitigation response is moot.

The limitations of the vague definitions of archaeological significance, and the transparent shortcomings of the potential checklist are recognised by local approval authorities. Although the default position of MCL is that a licensed archaeologist should be engaged to assess development properties whenever potential is uncertain, MAH does not, and MCL cannot enforce this position. Local authorities recognise that in these limitations, they gain the ability to make decisions which address local concerns, including reducing archaeological costs to development applicants by not triggering assessments.

5.2.5 Summary of Land Use Planning

Archaeology policy implementation in municipal land use planning contexts is carried out within a network created by horizontal management directives, the delegations involved in archaeological licensing, and the circulation of intermediary documents. These documents reflect the Ministry of Culture's interest in specific desirable outcomes, and should ideally centre networks of compliance. Instead, it appears that they displace the Ministry in local negotiations, and create opportunities for discretion on the part of local implementing actors. As actors, these documents expand the scope of participation in the implementation contest, and it is the instability created by this scope expansion that gives rise to the paradoxical outcome of greater task specification (in the potential checklists, provincial policy statements, and archaeological assessment reports), actually creating more discretion for local operators. In this discretionary environment, local non-specialists engaged in implementation can act on their personal understanding of archaeological potential and significance, in part gleaned from reading earlier archaeological assessment reports, or read into the absence of archaeological sites data for development properties. In local contests, vague direction is interpreted in ways that provide benefit to local actors at the expense of the provincial interest. Among the benefits are reduced workloads for municipal planning staff, and failure to require archaeological assessments of development properties.

Internal administrative divisions within the Ministry also provide opportunities for discretion by local actors. Three units are engaged in archaeology policy implementation, but are not coordinated internally. The unit that reviews and comments on municipal official plans, in which the municipal proposal to address the provincial interest in archaeological resource protection is identified, also provides technical advice to municipalities when requested. A

separate unit review the reports that result from the archaeological assessment of specific development properties. Official Plan compliance with the commitments of the plan, or of the consistency of archaeological potential evaluation is not the responsibility of either unit, although it is implicit in the five year review of Official Plans.

The discretion afforded licensed archaeologists may also be used to support local municipal planning or development interests in the decisions made when conducting and reporting on assessments. Standard operating procedures introduced to meet results based planning targets serve as the basis for report review. A successful outcome for both the Ministry and the archaeologist is one where the terms and conditions of licensing are addressed, regardless of the effectiveness of the fieldwork and analysis in identifying and making appropriate management decisions about archaeological resources present on the property. Broad concerns arising from discretion at the individual property level can be corrected through the introduction of new policy instruments over time, but this does not afford the opportunity to correct shortcomings in evaluation or assessment at the level of the individual site.

Finally, I must note that most municipalities accept the direction in Ontario Regulation 544/06, and make archaeological assessment an automatic condition of approval, but do not provide oversight to this process beyond the requirement that the review letter for any archaeological reports that are produced is included in the application.

5.3 Archaeological Authority in Non-Archaeological Context

Schattschneider's (1960) conflict theory of politics posits that many contests fail to arise, or are overshadowed by other larger contests organised around dominant social cleavages. In this section, I describe the network that forms in implementing cemeteries policy, specifically where it concerns the investigation of human remains identified outside of a registered cemetery. Policy direction on the treatment of human remains and associated objects reflects widely held social views regarding respect for the dead and treatment of human remains. The subordination of archaeology policy is noted in statute, with the Cemeteries Act taking precedence over the Ontario Heritage Act. In the resulting implementation network the regulation of archaeological practice is acknowledged as designating technical qualification. Under license, archaeologists are required to report on this technical work, but the report is not granted any particular status in the investigation process. In this contest, the Ministry of Culture's interest in being more prominent in the implementation of cemeteries policy is denied. Dominant social concerns of respectful treatment of human remains and the rights of descendant groups are the basis for restricting the role of archaeologists.

When conducted under the Cemeteries Act burial site investigations are not considered archaeological fieldwork, therefore when these investigations are conducted by a licensed archaeologist, many obligations of archaeological licensing do not apply. Instead, the archaeologist is obliged to operate according to the direction provided by the coroner or registrar of cemeteries. In this case, I describe how the role of the licensed archaeologist is redefined in relation to the policies and rules relating to burial investigations: authorities with responsibility for the investigation of accidentally discovered human remains and burial sites rely upon the archaeological licensing function of the Heritage Act primarily to define a pool of qualified practitioners, even though they do not hold an interest in archaeology or view these places as archaeological sites in all cases. In addition, I note attempts made by MCL to raise the profile of archaeology within this network have not been effective.

5.3.1 Provincial Policies on the Treatment of Human Remains

Human remains are to be expected in a range of archaeological contexts, including habitation sites; however, Ontario policy governing the handling, investigation and disposition of human remains is described in statute relating to the role of the coroner and registrar of cemeteries. Under Ontario law, human remains are not archaeological. Three statutes are noted in this section, and the order of precedence among them is identified in the text of each. The Coroners Act takes precedence over the Cemeteries Act (R.S.O. 1990, c. C.37, s. 24),¹¹⁷ and the Cemeteries Act prevails over Part VI of the Ontario Heritage Act (R.S.O. c. C.4, s. 87). When human remains from a buried context are identified, a process, set out in statute and related regulation, is initiated (Figure 5.2). A provision of the Cemeteries Act initiates the involvement of the coroner and police, authorised under the Coroners Act, then returns to the Cemeteries Act for site disposition. The Ontario Heritage Act and the role of licensed archaeologists is not indicated for this process: it is discretionary action by the registrar of cemeteries that leads to archaeologists being engaged as technical experts during the course of an investigation (MCL 1993).

¹¹⁷ Coroners Act, Section 24 asserts that the Chief Coroner may direct that a body be disinterred, “despite anything in the Cemeteries Act”.

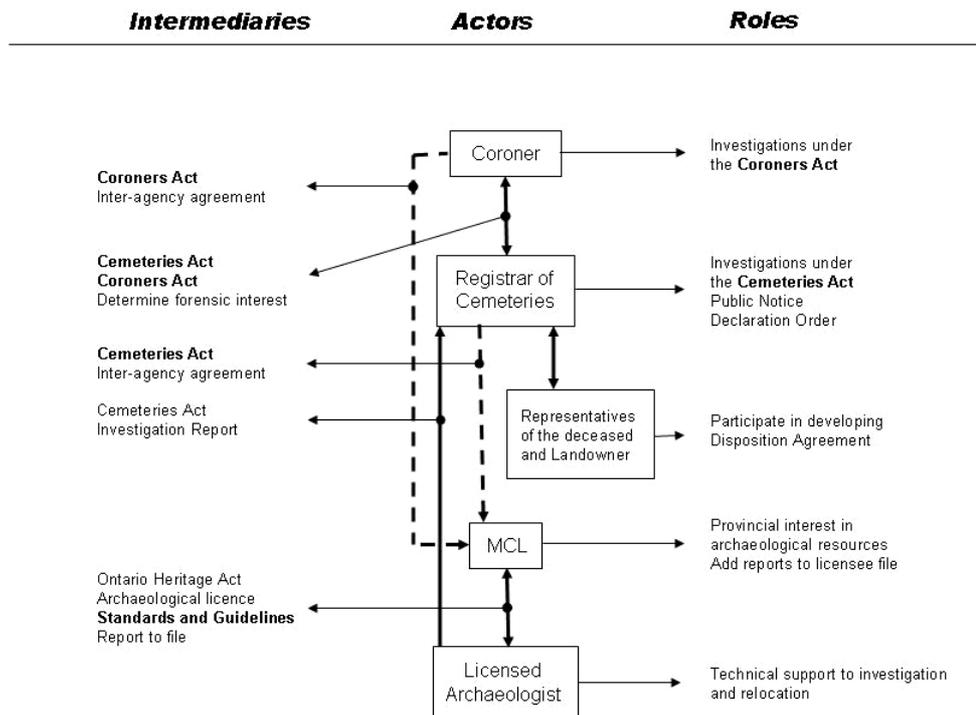


Figure 5.2 Lines of authority when human remains or burial sites are identified.

Buried human remains are within the jurisdiction of the Registrar of Cemeteries (R.S.O. c. C.4, s. 68.), but the Act also directs that any person finding, disturbing or having knowledge of a burial site, to immediately notify the police or coroner and to prevent further disturbance to the site (R.S.O. c. C.4, s. 69), unless directed to do so as part of a coroners investigation (R.S.O. c. C.4, s. 70 (2)).

Under the Coroners Act, the coroner has the prerogative to investigate any site where human remains¹¹⁸ are found to ascertain various facts: to determine the cause of death, and whether an inquest is required (R.S.O. 1990, c. C.37, s. 15(1)); to establish particular facts regarding the deceased, such as their identity and how, when, and by what means they came to their death (R.S.O. 1990, c. C.37, s. 31 (1)). The coroner, or the police acting under the coroner’s direction, will conduct an investigation to determine whether the remains hold forensic interest (i.e. whether the death was the result of foul play). In the course of an investigation, the coroner is authorised to remove the remains and any associated materials necessary to ascertain these facts (R.S.O. c. C.37, s. 16(2)).

¹¹⁸ The Coroners Act refers to “the body of a person”, rather than human remains, and includes in the definition of this terms “part of the body of a person” (R.S.O. 1990, c. C.37, s. 1(2); 2009 c. 15, s. 1(2)). In the 2006 S&Gs, MCL referred to “skeletal materials” as the focus of burial investigations.

Where the coroner determines that no inquest is required, the coroner prepares a brief statement describing the nature and outcome of the investigation (R.S.O. 1990, c. C.37, s. 18(1)), and jurisdiction, in the case of buried remains passes to the registrar of cemeteries. At the same time Cemeteries Act regulations state that once the coroner declares “that foul play is not suspected in relation to the discovered remains” the landowner becomes responsible for the safeguarding of the site and any remains present until a site disposition agreement is finalised (O. Reg. 133/92, s. 3).

The purpose of the Registrar’s investigation is to determine whether the site is either (1) an unapproved aboriginal peoples cemetery; (2) an unapproved cemetery; or (3) an irregular burial site (R.S.O. 1990, c. C.4, s. 71 (1)). The principal difference in this classification is the notion of intent. Irregular burials represent interments at a site “that was not set aside with the apparent intention” of interring human remains (R.S.O. 1990, c. C.4, s. 71 (2)). Unapproved cemeteries, on the other hand, are areas where it appears that the land was set aside intentionally for the purpose of interment “in accordance with cultural affinities” (R.S.O. 1990, c. C.4, s. 71 (3) (4)). The terms unapproved is further clarified as relating to the registration status of the cemetery (R.S.O. 1990, c. C.4, s. 71 (5)).

The prescribed process for investigating burial sites is described in O. Reg. 133/92. When an investigation is ordered, the person conducting the investigation must advise the Registrar of the possible cultural origins of the remains within five days of commencement (O. Reg. 133/92, s. 2 (1)). A final report may follow, which details: (1) the probable cultural origin or religious affiliation of the persons interred, (2) the spatial extent of the burial site, (3) the manner and form of the interments, (4) a description of any artefacts forming part of the burial site, (5) an opinion on “whether the burial site was set aside with the apparent intention of interring human remains in accordance with cultural affinities and the basis upon which the opinion is made”, and (6) any other relevant information that may be required to prepare a site disposition agreement (O. Reg. 133/92, s. 2 (2)).

If the burial is declared to be an irregular burial, the Act requires that the remains are interred in a cemetery (R.S.O. 1990, c. C.4, s. 74 (1)). Where the burials are declared to represent an unapproved cemetery, the Registrar initiates a process directed to the disposition of the site and interred remains. The site disposition agreement can either declare the cemetery closed and the remains re-interred in a cemetery, or the site is established as a cemetery (O. Reg. 133/92, s. 7(2)).

On declaring a burial site to be an unapproved cemetery, the Registrar initiates negotiations among prescribed persons, including the landowner and representatives of the interred (R.S.O. 1990, c. C.4, s. 72 (1)), concerning the final disposition of the site (R.S.O. 1990, c. C.4, s. 72 (2)). The Registrar may take steps to locate representatives of the remains, relying on the investigation report to suggest representatives based on the inferred religious denomination of the deceased, or, if determined to be of Aboriginal descent, “the nearest First Nations government or other community of Aboriginal people which is willing to act as a representative, and whose members have a close cultural affinity to the interred person” (O. Reg. 133/92, s.1). While the Act states that the owner of the land on which an irregular burial is found will have the remains interred in a cemetery (R.S.O. 1990, c. C.4, s. 74 (1)), the regulation to the Act is more generous. Here, the landowner may either have the remains interred in a cemetery located in the same municipality as the burial, or establish the land as a cemetery (O. Reg. 133/92, s. 4).

For unapproved cemeteries, site disposition agreements must include: (1) a legal description of the location, (2) a statement that the remains will be left where they are interred, or a detailed proposal for the disinterment and re-interment of the remains, (3) the timeline proposed for the re-interment, (4) provisions made for the maintenance of the cemetery in which the remains are to be located, (5) the allocation of costs, and (6) any other relevant agreements reached (O. Reg. 133/92, s. 14).

5.3.2 Role of MCL and the Licensed Archaeologist

Both the Coroner and the Registrar of Cemeteries may engage licensed archaeologists in their investigations, and often show a preference for doing so when the remains appear to have been interred for more than 50 years, or, as respondent C2 stated, “they look like they’ve been there a long time”.¹¹⁹ But, there is no requirement in statute or policy for them to do so.

A best practices document that first prepared in 1997, and later reproduced in an early internal review draft of the Standards and Guidelines sought to clarify the distribution of authority when human remains are identified. In the review draft, the Ministry of Culture was hoping to build a case for licensed archaeologist involvement in all cemeteries investigations, with archaeological resource protection a key consideration.¹²⁰ New material was added that appeared designed to expand the role of the Ministry by describing investigations in terms of the archaeological assessment process, and clarifying Ministry expectations with respect to

¹¹⁹ In northern Ontario, this is often at the discretion of the police who attend the site when the remains are first reported (C2; C4).

¹²⁰ Informant C5.

these investigations. The document interposes additional new requirements on to Registrar of Cemeteries investigations by using the language of archaeological assessment. However, in the final version of the Draft that was circulated, only general comments regarding the role of the licensed archaeologist were included (MCL 2006a).

While the Registrar of Cemeteries views the involving licensed archaeologists in cemeteries investigations favourably, the attempt by the Ministry of Culture to map archaeological assessment onto the Cemeteries Act process appears to have been rejected. The 2009 S&Gs contain no specific direction of burial investigations, apart from the terse notice that “The *Coroners Act* and the *Cemeteries Act* require anyone who uncovers human remains to cease fieldwork or construction activities and report the discovery to the appropriate authorities (police or coroner)” (Ontario 2009a, iv). This direction is also to be included, verbatim, in all archaeological assessment reports.

Archaeological interests in the site of human remains or burials is further denied in the investigation of these sites under the Cemeteries Act. Section 8 of the regulation describing investigations expressly prohibits undertaking any scientific study of human remains or associated artefacts without consent from representatives of the deceased (O. Reg. 133/92, s. 8). It is this last point, consent from representatives, that has caused the greatest frustration to archaeologists, who see contemporary questions about history being denied under contemporary agendas or beliefs. Archaeologists were noted by one respondent as pressing for scientific study of material remains associated with graves, even after the wishes of the representatives of the deceased were made clear that no study would be permitted (C5).

5.3.3 Summary of Burial Investigations

The detection of criminality, treating human remains with respect, and consideration for the wishes of representatives of the deceased are all social concerns that provide direction to the contests over implementation of policies concerning burial investigation, and are distinct from archaeological concerns with human remains as a source of information on social, cultural, and biophysical patterns (Figure 5.2). In this difference lies a clear social cleavage – or rather three parallel cleavages, in which the archaeological policy contest is subsumed (cf. Schattschneider 1957; 1960). The concern of investigators acting under the Coroners Act is the means by which the person met their end, overrides archaeological concerns. A broad social interest in the treatment of human remains is codified in the terms of the Cemeteries Act, the precedence of this interest over the Ontario Heritage Act is specified. But in both coroner and cemeteries investigations, a role for archaeologists as technical specialists, with

skills in excavation and recovery of material remains, and deriving cultural information regarding the deceased is provided for informally. Here, the archaeological license serves to identify a skilled individual, but does not admit the Ministry and the specific terms and conditions of archaeological licensing into these investigations.

5.4 Forest Management Planning

In this final case I explore how the direction of a dominant policy contest redistributes implementation participants along different lines of social cleavage, and how this redistribution is facilitated by an expanded scope of participation.

Forest management planning (FMP) is concerned with the use of forest resources for economic benefit; however, in addition to economics, there is an emerging requirement to accommodate aboriginal and treaty rights in land use planning decisions. This obligation does not arise from provincial policy; rather, the obligation to engage aboriginal groups has been set out in several court decisions. Concern for addressing aboriginal rights intersects the implementation of archaeology policy within the forest management planning network. These two implementation contests conflict, with the result that the more dominant concern for aboriginal issues subsumes concern for archaeology: in turn, aboriginal cultural heritage expertise diminishes the role of licensed archaeologists. This condition, where some conflicts and subjugated by others, and consequently changing the rules of the contest and the distribution of the participants was anticipated by Schattschneider (1957; 1960).

This case also reflects the way that changes to the scope of the implementation contest destabilises the contest and affects the ability for any actor to produce outcomes particular to their interest (Schattschneider 1960). Implementation of archaeology policy in forest management is expanded in several dimensions: representation, policy focus, and expertise. Forest management planning teams in Ontario are required to include as members representatives from all aboriginal communities situated within the forest management unit, or whose traditional use territories overlap with unit boundaries (FMPM 2004, A-129). The varied interests of these communities include archaeological resource management only indirectly; local concerns span sustainable management of non-timber forest resources such as furbearers and medicinal plants, through economic opportunities for community members in commercial forestry, to the protection of areas of cultural, spiritual and traditional value. Notwithstanding the potential impact of this consultation on aboriginal communities, the duty to consult and accommodate constructs aboriginal interests as significant actors in policy contests. Wider participation in forest management in turn affects the scope of participation

in archaeology policy implementation contests, destabilising the focus on archaeological resources and bringing new visions of what constitutes cultural heritage values to include traditional use areas and intangible heritage value sites.

With this expanded scope of subject material, the concept of expertise moves beyond archaeological licensing to include a variety of unspecified “qualified individuals” (MNR 2007). These individuals are granted authority through the MNR *Cultural Heritage Guide for Forest Management Planning* (MNR 2007), to provide advice and direction on the mitigation of development impacts acting on this expanded range of cultural heritage values. Within this expanded scope, the role of both the Ministry of Culture and the licensed archaeologist in cultural heritage resource management is destabilised, diminishing their formerly dominant role. The role of the licensed archaeologist is reduced from a proxy expert for a range of cultural heritage and indigenous concerns, to that of one technical expert among many.

This contest also demonstrates how implementation networks can be “steered” (O’Toole and Meier 2004) by dominant actors through strategic control over the scope of participation. In developing a distinct approach to addressing the provincial interest in archaeology, MNR engaged a range of different actors, human and non-human, to build the case for a unique approach to cultural heritage resource management in the forest management context. Actors engaged include: aboriginal interests, engaged directly in planning teams, and indirectly through court rulings; archaeological interests in the form of consulting reports and Ministry of Culture documents; and local Ministry of Natural Resources and industry foresters, whose knowledge of local conditions was viewed as sufficient to address many of the information requirements of archaeological protection strategies.

5.4.1 Forest Management Policy

Forest policy in Ontario is organised hierarchically, with the overall direction flowing from two sources; the Crown Forest Sustainability Act (S.O. 1994, c. 25), and the Declaration Order approving the Forest Management Class Environmental Assessment (Class EA), issued by the Ministry of Environment in accordance with the terms of the Environmental Assessment Act.¹²¹ The Crown Forest Sustainability Act requires that the Ministry of Natural Resources ensure forest management plans are prepared in accordance with the requirements of the Forest Management Planning Manual (MNR 2004). The Forest Management Planning Manual, which incorporates the forest management planning requirements of the Crown Forest Sustainability Act (S.O. 1994, c. C.25) and the Class EA approval, directs the

¹²¹ The renewal of the Class EA for forest management on Crown Lands in Ontario was approved in Declaration Order MNR-71, June 2003 by the Ministry of the Environment.

preparation and implementation of forest management plans. The Forest Management Planning Manual (MNR 2004) in turn requires that forest management guides identified in the Forest Operations and Silviculture Manual (MNR 1995) are used in the preparation and implementation of forest management plans. Among the objectives of forest management set out in these documents is to ensure the long-term health of Ontario’s forests, provide for a sustainable supply of commercial, recreational and wildlife benefits, while minimizing the adverse effects on forest values, which includes cultural heritage values and archaeological resources.

As the proponent in the Class EA, the Ministry of Natural Resources (MNR) oversees all forest management planning¹²² in Ontario. As part of this oversight, MNR develops and maintains the guides and manuals required under the terms of the Crown Forest Sustainability Act, and the Class EA. As part of a class environmental assessment, forest management must protect all environmental values, as described in the Environmental Assessment Act (R.S.O. 1990, Chapter E.18). In this Act, the environment is defined as including the “cultural conditions that influence the life of humans or a community” (R.S.O. 1990, Chapter E.18 (1)(c)), and “any building, structure, machine or other device or thing made by humans (R.S.O. 1990, Chapter E.18 (1)(d)).

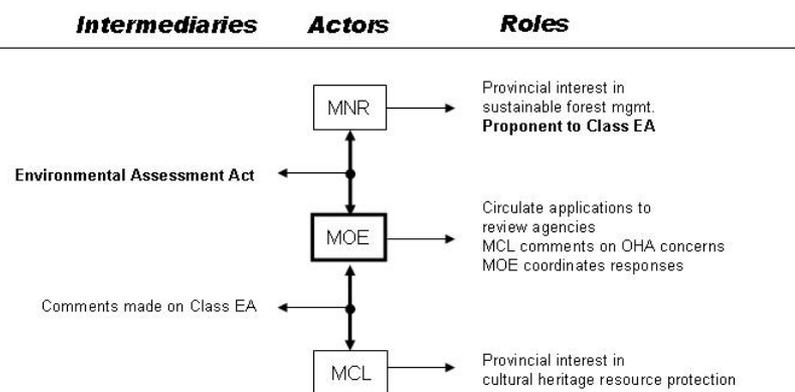


Figure 5.3 Major elements in the Class EA network.

The Forest Management Guide for Cultural Heritage Values (MNR 2007), produced and revised by MNR, replaces a 1991 Guide (MNR 1991) as part of the work relating to the

¹²² In this discussion, forest management planning refers only to those activities carried out within the area defined in the Class EA for Forest Management, but this area is significance. The Area of the Undertaking consists of approximately 34.8 million hectares of productive forest (all ownerships) on which forest management activities are conducted in Ontario. All Crown land within the AOU is subject to the conditions of the Environmental Assessment approval. The northern boundary is generally the limit of current commercial operations and the southern limit is generally the limit of forest on Crown land. (http://www.mnr.gov.on.ca/en/Business/Forests/2ColumnSubPage/STEL02_163522.html).

renewal of the forest management Class EA. As a policy planning exercise within the context of the environmental assessment process, the Ministry of Natural Resources' work was shielded from direct involvement of Ministry of Culture (Figure 5.3). Culture is one of the government agencies invited to comment on the Class EA, and, as a separate activity, MCL had representation on the 2007 guide writing team. As a reviewing agency, the Ministry was required to comment on the Class EA renewal application as a whole, while on the writing team, they participated as one of several interests working to a consensus outcome. The consensus was constrained by archaeology policy, and thus the Ministry was also represented in the Guide revision exercise by a number of intermediary documents. These documents were used to identify the objectives of archaeology policy, rather than the operational outcomes sought by Culture relating to archaeological licensing, internal performance targets, and data management.

The 2007 Forest Management Guide for Cultural Heritage Values built on the expanded scope afforded by the emerging requirement to engage aboriginal communities in forest management planning generally, and a degree of policy independence from Ministry of Culture to develop a sector specific approach to archaeological resource protection. The 2007 Guide distinguishes between archaeological resources and a range of other cultural heritage values that had previously been addressed by archaeologists in assessment, or handled in an *ad hoc* fashion by planning teams. The approach to archaeological resource protection found in the Guide addresses the underlying objectives of provincial archaeology policy, specifically the identification and mitigation of impacts to known archaeological sites, and determining areas of potential for the presence of additional sites through a predictive model. Other cultural heritage values are related to local knowledge or other areas of specialist interest through the introduction of the concept of the value-specific qualified individual.

5.4.2 Cultural Heritage Direction in Forest Management

Cultural heritage policy direction for forest management planning has been available since 1991, through the Timber Management Guidelines for the Protection of Cultural Heritage Resources (MNR 1991).¹²³ Informants note that pilot testing of different approaches to protecting known archaeological sites had been made in at least one FMU in the years immediately prior. The application of the 1991 Guide to one FMU in northwestern Ontario

¹²³ The expanding focus of forest management planning from strictly commercial forestry, to the identification and protection of a range of forest values is reflected in the language used. Prior to the Class EA *Timber* management was practiced, while it is currently termed *Forest* management. In this way forest management units were timber management units, and so forth. This distinction serves no purpose in the current discussion, and all reference to practice is rendered using the current terminology.

included placing protective buffers around archaeological sites recorded in the Ministry of Culture database (F3).

Through the 1990s compliance with the 1991 guide was generally poor. Few forest management plans had specific prescriptions for operating in areas of archaeological potential, and for the most part only archaeological sites known to the planning team were reserved from operations. Furthermore, archaeological protection was viewed by foresters as low priority in light of unclear direction, and faulty or difficult to obtain site data. Concern among foresters for what constituted a cultural heritage resource also emerged, leading to widely held concern that “a pop-tin left in the bush could be considered as a cultural heritage resource” (Arbor Vitae Consulting 2000, 186) and require protection. On the other side, Ministry of Culture felt that Ministry of Natural Resources and the forest industry were failing their obligation to protect archaeological resources in forest operations. MNR staff had heard from Culture staff the opinion that the clear-cut harvesting operations, typical in Ontario commercial forests would destroy innumerable sites (F2).¹²⁴ Although agricultural damage to archaeological sites was well known, and compensated for in many studies in southern Ontario, many archaeologists felt that the key difference was less about site damage than the less frequent opportunity to investigate forestry sites.¹²⁵

The 1991 Guide, combined with the development of a predictive model for archaeological site locations, training for the heritage community and forest management planning teams, and a monitoring programme (MNR 1991, i) constituted a proposed five part cultural heritage protection strategy. Throughout the 1990s, these other strategies progressed slowly. Predictive modelling existed as a research project for several years (cf. Hamilton and Larcombe 1994; Dalla Bona 1994), but by the late 1990s only about 10 of 55 forest management units had cultural heritage plans in place that included archaeological potential mapping.¹²⁶ Unlike the checklist developed for use in subdivision development screening, the predictive model was intended to operate at the landscape scale and include all parts of the forest management unit, not merely those proposed for operations in a given plan. The intent

¹²⁴ Images of clear felling typically show stumps, slash (branches and tree tops) and uprooted or snapped smaller diameter trees; however the visual impact is not necessarily correlated to actual soil disturbance.

¹²⁵ The OHA R.S.O. 1990, c. O.18, s. 48 (2)(b) allows the archaeological site alteration associated with normal agricultural work without a license issued under the Act. In terms of access opportunities, note that agricultural fields may be ploughed twice in a year, while commercial forestry may have a return rate of once every 40 to 90 years or more.

¹²⁶ The state of archaeological potential modelling in forest management is preserved in a web page maintained by Luke Dalla Bona, principle developer of this archaeological potential model. The map may be viewed at: <http://modelling.pictographics.com/current.htm> (Accessed June 2010). Subsequent to this map being prepared a number of forest management units obtained potential maps for use in planning. All but one of these management units were located in northeastern Ontario.

was to provide a means for identifying alternate operations areas in order to avoid costly conflict with (potential) archaeological resource areas. Training for the heritage community and management foresters was limited to sporadic presentations to planning teams.

The 1991 guide offered a wide definition of cultural heritage resources supplemented by specific examples, such as built heritage, historic trails, and aboriginal spiritual sites. These examples, drawn from earlier documents such as the *Topical Organisation of Ontario History* (MNR 1974), and the Ministry of Culture *Guidelines on the Man-made Heritage Component of Environmental Assessments* (MCL 1981), came to be viewed as the sum total of what was to be protected, to the extent that they were defined as specific classes of heritage resource in the MNR corporate database.¹²⁷

Because the Ontario Heritage Act licensing provisions, archaeologists gained a form of hegemony over cultural heritage practice in forestry where no other reasonable assessment and mitigation alternatives were readily apparent. It became common practice to rely on archaeologists to deliver comprehensive protection and mitigation solutions for all cultural heritage values, not all of which were, strictly speaking, archaeological. Thus, industrial sites, heritage trail systems, burial sites or cemeteries, and cultural landscapes were often, but not always addressed in archaeological assessment reports. As they were not part of the licensed archaeologists' remit under the Ontario Heritage Act, recommendations made by archaeologists for the treatment of non-archaeological cultural heritage resources were generally not reviewed to ensure that they represented sound practice. In some cases, this cultural heritage hegemony extended to archaeologists being asked to represent aboriginal interests, or to identify appropriate solutions to conflicts between identified traditional land use and forest operations.¹²⁸

In forest management, protection from adverse effects is achieved through area of concern planning. Area of concern (AOC) planning raises the visibility of the value, prescribes specific protection requirements, and supports compliance monitoring through the comparison of operational outcomes to the prescribed protection. Operational direction in the 1991 guide identified several approaches to protecting heritage resources, and each was discussed in terms of the cultural heritage value significance, and the limitations, costs, and benefits of the proposed strategy (MNR 1991, 11). Modified operations could be considered when a reserve

¹²⁷ Classes and subclasses of cultural heritage values were identified in the MNR Natural Resources Values Information System (NRVIS) database in a series of structured queries conducted by Tom Krahn as part of the MNR Heritage Assessment Tool development project.

¹²⁸ Here I draw on my personal experience as a licensed archaeologist when I was asked to address an issue between a forest company and a trapper over harvesting on a trap line, an issue that was well outside of my area of responsibility or expertise.

was “not practically possible or ...required” (MNR 1991, 11), based on the significance of the resource present. Archaeological salvage of significant sites, was an option, as was “minimal documentation ... normally used with less significant heritage resources” (MNR 1991, 14). The options of avoidance or minimal recording appealed to foresters, but by combining mitigation strategies with the concept of significance, there was a clear intent to involve licensed archaeologists extensively in identifying and evaluating these sites. Thus, significance, coupled with guide statements such as “the timber management planning process ... represents an important opportunity to identify heritage resources and protect them ...” (MNR 1991, 6) led MNR and forest industry staff to view the Guide as an opportunity for archaeologists to expand their practice at the expense of foresters.¹²⁹ Cultural heritage resource protection, and particularly the ambiguous concept of significance, introduced risk and additional expense to what was initially perceived as an avoidance strategy.

Perhaps the most controversial aspect of the cultural heritage guide was the requirement to treat areas of archaeological potential as values requiring protection.¹³⁰ Both foresters and aboriginal community members expressed concern for the way that archaeological potential might be constructed as a forest value. Aboriginal community members expressed concern over the fluid nature of archaeological potential, with areas appearing and, once an archaeological assessment was completed, disappearing again.¹³¹ One aboriginal commentator was reported to have suggested that the Ministry of Natural Resources was using archaeologists to remove aboriginal history in the service of the forest industry.¹³² For foresters, their views on computer modelling were formed relative to common forestry models concerning growth and yield models under different silvicultural treatments. These forecasting models bear little resemblance to the archaeological potential models, and many foresters were wary of their validity. In the 1991 guide, modelling areas of archaeological potential was acknowledged as being “experimental” (MNR 1991, 9), and while planners were asked to “provide flexibility in their use of the concept”, most deferred integration of potential into management plans until directed to do so a decade later. In deferring the

¹²⁹ Statements such as this were singled out in the review of all forest management guides for pointed criticism (Arbor Vitae Consulting 2000).

¹³⁰ A full discussion of archaeological potential modelling is beyond the scope of this thesis; however it may be sufficient to note that potential models are generally constructed on the basis of the associations between different archaeological site types and various landscape features. This approach forms the basis of most geographical approaches to archaeological site distribution studies, and adding geographical or landscape correlates and distinguishing sites on the basis of age, function, etc. leads to increasingly complex – and hopefully more accurate models. In Ontario, the main landscape association is with water courses, especially the shorelines of lakes, and this has led to criticism of potential models as simply a very expensive way of buffering rivers and lakes. Additional detail may be found in Wescott and Brandon (2000), Dalla Bona (1994), and Mehrer and Wescott (2006).

¹³¹ A common concern noted by several informants (F1; F2; and F3).

¹³² Interview (F1).

acceptance of archaeological potential, foresters felt they were simply observing another statement in the 1991 guide that “an appropriate balance must be achieved between protecting the unidentified sites ... and maintaining timber management activities on the management unit” (MNR 1991, 9). This they interpreted narrowly to mean that operations would be planned to avoid known sites when these have been identified to the planning team.

The 1991 Guide was revised to reflect implementation experience, and released as the Forest Management Guide for Cultural Heritage Values in 2007 (MNR 2007). This Guide was the product of several years of research and writing, and built on experience gained from the implementation of the 1991 guide. The 2007 Guide also reflects changes in the scope of the archaeology policy implementation contest, and successful efforts by forestry interests to steer the implementation away from archaeology towards less costly avoidance approaches.

Three key improvements can be seen in the 2007 guide over the 1991 version. First, there is a clarification of the different classes of cultural heritage values, and the recognition that individual instances of these classes may overlap spatially. Second, there is the recognition that the role of the qualified advisor to the planning team for implementation of protection prescriptions may vary according to local conditions and values class. This means that determining appropriate treatment for overlapping values may require the input of more than one qualified individual. Finally, the 2007 guide seeks to couple less ambiguous definitions of cultural heritage resources with clear operational direction to be used in preparing forest management prescriptions. The 2007 guide addresses the concerns of the forest industry by clearly identifying how operational direction once implemented contribute to the protection of cultural heritage values or areas of potential.

In this guide five classes of cultural heritage value are defined: archaeological sites, archaeological potential areas, cultural landscapes, historical aboriginal values, and cemeteries. Archaeological sites and cemeteries are distinguished on the basis of corresponding policy direction on their treatment,¹³³ while the others were defined on the basis of implementation experience from the earlier guide. Historical aboriginal values are derived from the Aboriginal Background Information Reports,¹³⁴ which include maps of Aboriginal values in the forest and is the key source of the historic data required by the cultural heritage guide. The guide requires that values be accepted and accommodated in planning whenever they are received making ongoing engagement with communities an

¹³³ The Ontario Heritage Act and Cemeteries Acts respectively.

¹³⁴ Direction for the preparation and use of the Aboriginal Background Information Report Is described in the FMPM (MNR 2004, A-135).

important consideration in planning. Cultural landscapes are subdivided primarily based on how they are mapped, as points or polygons. As a wide range of values are described under the heading of cultural landscapes, the guide is flexible in how these will be identified in the field and mapped. If, for example, a historic logging camp was reported to the planning team, the Guide sees it as reasonable that an experienced field forester familiar with the location, nature, origin and extent of the feature would be suitably qualified to flag an operational boundary.¹³⁵

The 2007 guide discusses the qualified individuals to engage for different classes of cultural heritage values. The guide states that a qualified individual:

... is considered to have the proper experience, credentials, and/or legal or community support ... [and] is dependant on the class of value being assessed. For archaeological sites and archaeological potential areas, the qualified individual is a person licensed under the [OHA]. For cultural heritage landscape values, a qualified individual is a person who has knowledge or experience with the specific landscape or similar ones, or has specialist skills (e.g. regarding built heritage structures). A qualified individual for historical Aboriginal values is an Elder or other individual who the community recognises ... as the person best able to provide information and guidance... The Registrar of Cemeteries is the qualified individual for cemeteries (MNR 2007, 26).

This system of specifying qualified individuals addresses the concern noted above that licensed archaeologists had become the default authority on most values under the 1991 guide. The direction pursued in the 2007 guide regarding qualified individuals has been adopted by Ministry of Culture in their recent Technical Bulletin on (MCL 2009c, 6).¹³⁶ This bulletin clarifies that where the archaeologist provides direction on issued not covered by their license, their work will not be reviewed or commented on if described in reports submitted to Ministry of Culture.

Foresters are granted discretion in involving qualified individuals, but the decisions made and their outcomes are reviewed as part of mandatory annual compliance monitoring (MNR 2004,

¹³⁵ Although not in the context of the interviews conducted for this research, several senior foresters have told me that they had trained under foresters who had been working when the forestry industry transitioned from manual to mechanised operations between 1950 and 1970. They noted that when mechanised logging commenced, sheds full of the old equipment were often simply abandoned. The history of this transition is reported in *Silversides* (1997).

¹³⁶ The comment in the Technical Bulletin reads: "The consultant archaeologist may be asked to provide services relating to these concerns. Where these services are being provided to the forestry licence holder, it should be noted that these concerns are not the activities for which consultant archaeologists are licensed under the *Ontario Heritage Act*. These concerns are covered off by other processes under other legislative mandates. The Ministry of Culture will not be reviewing for these concerns through the archaeological report review process. Please refer to the *Forest Management Guide for Cultural Heritage Values* or contact the Ministry of Natural Resources for guidance on addressing these concerns." (MCL 2009b, 6)

E-10), and five-year independent forest audits (O. Reg. 160/04).¹³⁷ In the context of forest management planning, compliance extends beyond applying the correct prescription to a value, to include consideration of how a single location may reflect more than one values class. In prescribing an appropriate strategy for protecting an archaeological site, any co-occurring historical aboriginal or cultural landscape values present must also be considered and appropriate prescriptions developed. The protection strategies developed must recognise these multiple meanings, employ all of the required protection strategies, and, where necessary, engage more than one qualified individual to provide direction (MNR 2007, 28).

Operational direction is specified in the 2007 guide as standards, guidelines and best practices for each class or subclass of cultural heritage value. It is a standard that archaeological sites are reserved from operations, protected by a 200 metre reserve measured from the identified centre of the site. When the site boundary has been determined through a Stage 3 archaeological assessment this reserve may be reduced to 10 metres from the boundary of the site. The reserve may be removed, and normal forest operations may proceed if the site has been removed through a Stage 4 salvage excavation, and the resulting report has been reviewed and accepted by Ministry of Culture. The standards also provide for a review of the archaeological site information provided to the planning team by Culture. Here, if the site is shown to be small, representing an isolated find or belonging to another class of cultural heritage value, then the archaeological prescription may be withdrawn and the appropriate prescription applied. Larger sites, or those with a greater cultural heritage value or interest that are identified through a documentary review would require additional assessment, larger reserves or both. Within reserves established for archaeological sites, no forest operations are allowed, although use and maintenance of existing roads may continue (MNR 2007, 29-31).

Ultimately, the planning team has two options: 1) avoid the archaeological resource by reserving it from operations; or 2) engage a licensed archaeologist and follow the process prescribed in the Standards and Guidelines (MCL 2009a). This decision would be based on a relatively straightforward calculation of the cost of the archaeology relative to the silvicultural and commercial value of conducting operations within the archaeological site reserve. It also marks a decision for the foresters concerning the scope of the local implementation network: do they wish to expand the scope to include MCL and potentially lose control over planning and production, or will they forego potential commercial benefit by making the

¹³⁷ Ontario Regulation 160/04, Independent Forest Audits under the Crown Forest Sustainability Act, 1994. The regulation was developed to meet Condition 28 of the Declaration Order for MNR's Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario. Independent forest audits are considered public, and as such engage the planning team, Local Citizens Committee, native communities, and other parties with an interest in the forest unit.

implementation decisions in-house? Where the reserve captures more than one value, the calculation would be more complex, but still based in a cost to benefit calculation. This provides tacit acknowledgement that archaeological site value need not be based on an abstract sense of significance or cultural heritage value or interest, but on the comparison of archaeological and forest resources as fungible goods. Recognising that archaeological sites may be viewed as unique and not substitutable, the cost of excavation relates principally to the ability of the planning forester to locate forest resources of equal value and cost of procurement elsewhere in the forest.

Planning for operations in areas of potential are equally complex. Archaeological potential areas are identified by the Ministry of Natural Resources through the use of a predictive model for the forest management unit. The predictive model replaces the Ministry of Culture archaeological potential checklist which was “not well suited for the forestry context” (MNR 2007, 32). This suitability was described by several foresters in this way: “that checklist could put more than half of the forest off-limits to commercial harvesting, and even with the MNR model most of those high potential areas are in the best commercial stands for some Units” (F4). Tests comparing the areas captured under the two approaches showed that the checklist defined most land as high potential, while the MNR model captured between 5 and 10 per cent of the land base. The Ministry of Natural Resources model may be more accurate, but it also appears intended to distribute benefits to foresters, rather than archaeologists.

Where lingering concern among foresters concerning the potential modelling and the nature of the model output, planning teams are given the option of using the checklist instead.¹³⁸

Implicit in this offer is a threat: whichever method is used, the “archaeological potential area, as mapped by the archaeological potential model or the Ontario Ministry of Culture’s Checklist for Determining Archaeological Potential, is the area of concern” (MNR 2007, 32).

Prescriptions for archaeological potential values require that a reserve corresponding to the area of potential be identified in the plan. Regular operations (i.e. with no restrictions) are allowed within the reserve following the completion of a Stage 2 archaeological assessment, and where no archaeological sites are found. Regular operations are also allowed provided mineral soil disturbance is maintained below 5%, and provided a compliance monitoring plan for the value is prepared. Stage 2 assessment is required for all proposed roads within the areas of concern (MNR 2007, 31-35). Best management practices caution planning teams

¹³⁸ This option was presented in FMP training, accompanied by images of the land captured by both models. While the MNR model was generally mistrusted at the outset, images of 50 to 80% of the landbase locked up in archaeological high potential AOCs generally drew planning teams onside with the MNR approach. MCLs checklist was mobilised as a threat to ensure the enrolment of foresters.

that Aboriginal communities may have an interest in the archaeological assessment, and may have historical values within the area of potential. For this reason the Guide views Aboriginal community engagement as a best practice in mapping archaeological potential and in conducting archaeological assessment (MNR 2007, 35).

Operational direction for cultural landscapes and historical aboriginal values relies on local knowledge. For cultural landscapes, operational direction attempts to address the diverse scales and elements that make up these values. Protection for visible, recent landscape features, such as cabins or mining equipment, is through avoidance, stipulated as including a ten metre reserve. Operationally, standing timber within this reserve may be accessed provided the operator does not damage or interfere with the heritage feature while doing so. In this way, the prescription is linked to operator skill, a quality that can be assessed in compliance and independent audits of the forest operation. Protection of historical aboriginal values is based on the individual characteristics of the value identified. Thus the standard includes: "...the planning team will work with the qualified individual [for each value] to help determine the protection appropriate for that value" (2007, 43), and engage this individual in the field to assist in laying out the boundaries of the area of concern.

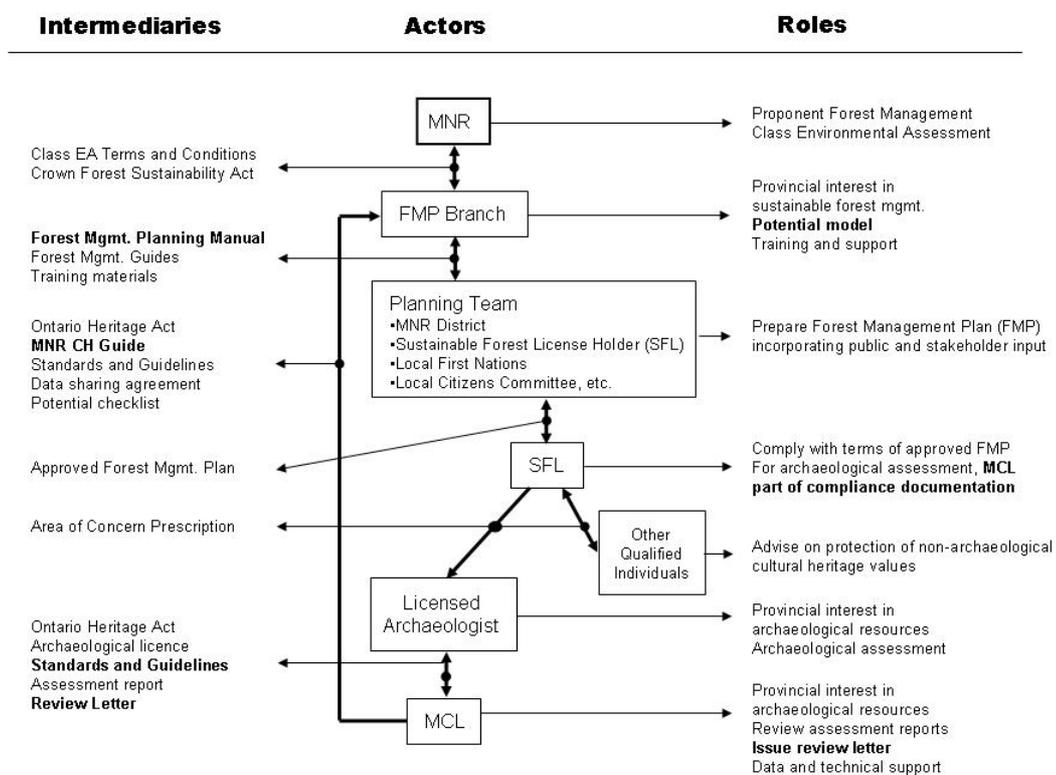


Figure 5.4 Forest management planning implementation network.

The concept of qualified individuals combined with more comprehensive definitions of what constituted the different classes of cultural heritage resources in the 2007 guide has three immediate effects. First, archaeological assessment is clearly identified as a process for evaluating management options for archaeological resources only (Figure 5.4). The earlier guide was not clear on this point, and many of the concerns raised regarding implementation of the 1991 guide related to the cost of using archaeology consultants to evaluate non-archaeological values. Second, with the option of not harvesting areas where cultural landscape, archaeological potential, or historic aboriginal resources were identified, protection could be achieved at lower cost. The primary benefit in reserving areas from operations was that the costs associated with cultural heritage resource protection became planning costs, plus whatever costs arose from foregoing harvest in the reserve area. Third, the risk involved in focussing cultural heritage planning on archaeological assessment was reduced by increased local participation in planning. Increased aboriginal engagement overall in forest management planning provided the opportunity to include aboriginal interests in cultural heritage planning. The multiple overlapping interests of aboriginal groups in the use and management of the forest and treatment of cultural heritage provides MNR and the forest industry new opportunities to negotiate broad consensus while establishing positive relationships, building good will, and engendering trust.

5.4.3 The Roles and Uses of Intermediary Documents

In the earlier case studies, intermediary documents were argued to be actors participating in negotiations over archaeology policy implementation. In forest management, these documentary actors are enrolled and mobilised in support of particular interests in an increasingly destabilised policy contest. In this section, I describe three uses of intermediary documents that show how they have been used in implementation contests between forestry and archaeology interests. These contests are recorded in the 2007 MNR Guide, an intermediary document that records the obligations assumed by the Ministry of Natural Resources and forestry interests for cultural heritage values protection. These obligations represent the outcome of policy contests between the two Ministries, and traces of this contest remain visible in the references that are made to other documents. These references stand in place of direct interaction between planning team members and Ministry of Culture, ostensibly to avoid potentially conflicting direction, but also to avoid destabilising the approaches codified in the guide. Support for the MNR approach to cultural heritage values management is also sought from the forest industry, where some of the less operationally appealing guidance in Ministry of Culture documents is used to secure support for the Guide

among planning teams, particularly among those who might view cultural heritage as an unnecessary burden on planning and operations.

In this section, I discuss three intermediaries that are deployed to steer the implementation network toward desired outcomes. The three intermediaries discussed in this section are: the Ministry of Culture archaeological sites database; the archaeological potential checklist; and the proposed operational prescriptions for forest operations in areas of archaeological potential. Each of these represent the outcome of earlier negotiations or contests, and each seek to control the scope of the implementation contest and steer implementation outcomes toward specific outcomes.

The archaeological sites database maintained by the Ministry of Culture is the source of archaeological site information for use in forest management plans (MNR 2007, 18). The database information has been collected by a range of archaeologists over the intervening years since the Ontario Heritage Act was proclaimed, and there is a high variability in the quality of the data and the types of sites registered. In some cases sites that are not archaeological were registered as there was no other clear mechanism for recording the presence of a heritage value.¹³⁹ The sites database is also inconsistent in recording when sites have been excavated and the land redeveloped, or when the site consisted of an isolated artefact find. In the latter case, collection of the artefact obviates the need for further protection. Locations provided for individual sites vary with the quality of the mapping available and the ability of the researcher to read those maps. Data inconsistencies noted during the initial transfer of archaeological site locations for use in developing archaeological potential maps created a general sense that the database was both inaccurate and incomplete.

Clarifying the nature of the archaeological sites represented in the database is not straightforward: the site location, and details of the work completed and recoveries made at the site may be incomplete or unavailable, and considered sensitive by MCL. Site information is available to a licensed archaeologist on submission of a data request, but is not available to planning teams. The 2007 guide presents the planning teams with the option of accepting the data as received, or engaging a licensed archaeologist (at a cost) to obtain additional information on the nature and disposition of the sites to be protected, including the registration form and any reports that have been prepared for the site.

¹³⁹ For example, my colleague Bill Ross has taken out a registration number for a petroglyph (rock carving) site. The image was carved into local bedrock using a power tool in the late 1980s as part of the set preparation for a film entitled *Clear Cut* (1991). He registered the site, not to promote it as authentic, but to prevent confusion in the future regarding its origin and cultural affiliation.

The MNR guide presents the options available to planning teams on receipt of the MCL archaeological sites data (MNR 2007, 30), with each option being described in terms of the risks and costs to the planning team and to the archaeological record. Planning teams are directed to either: establish a reserve on the location identified; engage an archaeologist to conduct a more detailed review of the available documentation to accurately locate the site on operations maps; or conduct an archaeological assessment to define the limits of the site, or remove it through excavation. The first option places the risk onto the archaeological record, for if the site location has been mapped incorrectly the protection measures will be emplaced in the wrong location, leaving the site open to adverse impact. Reviewing the original site documentation holds the potential for removing cultural values that are not archaeological, or, archaeological values removed through prior archaeological fieldwork. Engaging an archaeologist to conduct additional fieldwork, increases the costs of site protection to the forest operators, but a completed archaeological assessment leads to clear site boundaries, changing the area to be protected from a blanket reserve of 200 metres to the mapped boundary of the site, plus a ten metre buffer. This use envisions the Ministry of Culture database engaging a variable network of actors, including the original site recording instruments, the data coordinator, planning teams, and licensed archaeologists. As these actors are engaged, the control of the outcome, in terms of forestry operations may shift away from both Ministry of Culture and the planning teams.

The development of an archaeological predictive model by the Ministry of Natural Resource was a commitment made in the 1991 guide (MNR 1991); however, initial acceptance of this modelling approach among foresters as valid was low. To build acceptance, and to avoid additional negotiation with Ministry of Culture, the 2007 guide offers planning teams the option of using either the predictive model outputs, or the MCL checklist. The checklist is identified as both the only available option, and the less desirable (MNR 2007, 32). The areas of archaeological potential defined by the checklist require protection, and can only be modified through an archaeological assessment. In this, compliance with the 2007 direction is pursued by mobilising the threat of extended participation in planning by Ministry of Culture, licensed archaeologists, the Standards and Guidelines, and the archaeological potential checklist. As noted previously, training messages demonstrating the increased cost and planning burden that would result from this were also mobilised in supported of the MNR approach. This strategy constructed dealing with Culture, as represented by its unyielding and aggressive representative the potential checklist, as a penalty to non-compliant planning teams, and is intended to steer this aspect of the implementation network, especially recalcitrant planning teams, towards compliance with the earlier negotiated approach.

Prescribed operations in areas of archaeological potential also requires that a range of intermediaries are mobilised. For areas of archaeological potential, the top 30cm of soil is identified as the critical area to be protected, and either modified operations which create only limited mineral soil disturbance, or regular operations following an archaeological assessment must be prescribed. This standard reinforces the interest of both Ministries: modified operations support the forestry interest in not having forest management planning become the principle means of funding an archaeological resource inventory in northern Ontario, while Ministry of Culture sees archaeological potential modelling as an effective means of safeguarding the most likely areas for archaeological sites to be present, but where field survey has not yet been conducted. The prescription represents the negotiated compromise limiting archaeological assessment requirements for areas of archaeological potential in advance of forest operations that would raise forest management costs. Underlying this negotiation was the recognition that increasing the costs of archaeological protection to the forest industry beyond an acceptable level could raise the visibility (cf. Schattschneider 1957) of the implementation contest. I interpret the comments of one informant¹⁴⁰ as suggesting that increasing costs for archaeological resource protection may result in political action, with the forest industry engaging additional, political actors in the policy contest over archaeological potential. This would almost certainly place cultural heritage protection overall under threat, and lower archaeological resource protection obligations to the forest industry could result. The negotiated compromise on archaeological assessment requirements is also seen in Ministry of Culture policy, with a lower standard for field assessment in forestry than in other undertakings in the province (MCL 2009a, Section 1.4.3; 2.1.3; MCL 2009c). Here, the outcome of this contest is recorded in policy, in a manner anticipated by Schattschneider (1983).¹⁴¹

Three key intermediary documents were used in developing policy objectives for archaeological resource protection in forest management planning. Use of these intermediary documents reduced the contact between Ministry of Culture and the cultural heritage guide review team, and forest management planning teams. The archaeological potential checklist was mobilised to enlist support for the Ministry of Natural Resources archaeological potential modelling. Archaeological assessment reports completed as a results of earlier modelling were seen as both a compliance tool, and as a source of information that can reduce

¹⁴⁰ The comments made concerned how far up the MNR hierarchy the forest industry representatives might go the challenge the costs of protecting archaeological sites that “might not even be there”. The suggestion was that drawing senior management into the implementation contest, and arguing that archaeology was threatening a primary industry’ profitability – and therefore ability to create employment, archaeology would “lose”. (F4)

¹⁴¹ “The legislature referees groups struggle, ratifies the victories of the successful coalitions, and records the terms of the surrenders, compromises, and conquests in the form of statutes...” Schattschneider 1983, 43).

forest management obligations. Compliance with the Ontario Heritage Act and the provincial interest in archaeological resource protection is addressed in the Guide in the requirement for an assessment report to be completed and reviewed by MCL before acting on the recommendations of the licensed archaeologist. This hands responsibility for compliance with the Ontario Heritage Act back to the archaeologist and MCL. Assessment reports are also indicated as a source of information on the dimensions of archaeological sites and appropriate measures for altering the appropriate reserves or mitigation approaches based on the reported results of assessment are identified. Interagency difficulty in defining the locus of responsibility for safeguarding and verifying the accuracy of archaeological site data is also reflected in the Guide.

5.4.4 Summary of Forest Management

In this section I have reviewed the policy developed for archaeological resource protection in forest management. The *Forest Management Guide for Cultural Heritage Values* (MNR 2007) was produced and revised by the Ministry of Natural Resources as part of the work relating to the renewal of the forest management Class Environmental Assessment. As a policy exercise, within the context of an environmental assessment process, this work was shielded from direct involvement of Ministry of Culture (Figure 5.3). Ministry of Culture representation on the guide writing team marked only one of several interests working to a consensus outcome, and thus were unable to substantially influence the outcome.

Intermediary documents produced by Ministry of Culture, including the Ontario Heritage Act and Regulations, the archaeological potential checklist, and the Standards and Guidelines for Consulting Archaeologists were used to identify the objectives of archaeology policy, and to negotiate the reduction of this direction to specific obligations of forest management planning without engaging Ministry of Culture directly.

To develop a sector specific approach to archaeological resource protection, the 2007 Forest Management Guide for Cultural Heritage Values built on the expanded scope afforded by forest management, the emerging requirement to engage aboriginal communities in forest management planning generally, and the presence of a several policy documents to increase policy independence. The 2007 Guide distinguishes between archaeological resources and a range of other cultural heritage values that had previously been addressed by archaeologists in assessment, or handled in an *ad hoc* fashion by planning teams. The approach to archaeological resource protection found in the Guide addresses the underlying objectives of provincial archaeology policy, specifically the identification and mitigation of impacts to known archaeological sites, and determining areas of potential for the presence of additional

sites through a predictive model. Looking beyond a view that archaeological assessment was a necessary requirement whenever archaeological sites were, or were considered likely to be present, policy was developed that recognised that adverse impacts could be avoided or minimised through the combination of operational reserves, modified operations that minimise ground disturbance and combining archaeological reserves with those required for other forest values. As well, the separation of archaeological sites into a distinct values class, set apart from archaeological potential areas, cultural landscapes and historical aboriginal values allowed even greater flexibility in setting management requirements. In the Guide, these other cultural heritage values are evaluated in terms of local knowledge or other areas of specialist interest through the introduction of the concept of the value-specific qualified individual.

The development of the 2007 Guide within a policy network that included the Ministry of Environment, Ministry of Natural Resources, and the forest industry appears on the surface to have achieved an outcome that favours forest industry interests over those of Ministry of Culture and the licensed archaeologists. What had been envisioned by some Ministry of Culture staff as a boon in terms of archaeological site inventory survey and mitigation excavation, the Guide has denied by identifying measures for safeguarding known and potential archaeological sites from forest operational impacts without intervention. Commercial expansion for licensed archaeologists was also scaled back as the extent of their role as qualified individuals in cultural heritage resource planning was reduced. Aboriginal community interests on the other hand, may see a number of benefits arising from the increased recognition of local knowledge in the identification of qualified individuals, including the protection of specific cultural and heritage sites from forest operation impacts, and an increased role in planning. In reaching over recent practice of engaging in expensive archaeological assessment for areas of concern to develop a policy position that has regard for the archaeological protection intent of archaeology policy, as well as the cost effectiveness concern of the forest industry, the 2007 Guide appears to have managed to identify means for controlling costs that does not come at the expense of archaeological resource protection.

5.5 Chapter Summary

In this chapter, I have reviewed three cases to illustrate how policy implementation engages networks of participating actors, human and textual. Negotiations within these networks are directed towards engaging necessary actors, determining the rules for implementing policy, and establishing the roles of individual actors, with each actor seeking an advantage for their own interests. In reviewing the cases, I have attempted to illustrate one consequence to

implementation through a network built through negotiation, that the participation of diverse actors effects implemented, and through this, the policy itself.

The examples presented in this chapter reflect two aspects of Schattschneider's (1960) conflict theory of politics: the effect of scope on the stability of conflict, and the influence of broad social cleavages on local contests. Within the cases discussed, I draw on two additional theoretical concepts that provide insight into my explanation of how implementation contests shape outcomes: principal-agent theory (Eisenhardt 1989), and the role of sub-agents (Brower, et al. 2010); and actor-network theory, particularly in its admission of non-human actors to social exchanges (Callon 1991; Latour 1991). These implementation contests are rooted, in part, in the "muddling through" and "contested definitions of problems" noted by Rhodes (2000, 361), as typical of networks.

Archaeology policy is implemented in the context of municipal land use planning within a network created by the horizontal management directive of senior Ontario Public Service managers, and the delegation involved in archaeological licensing. The land use planning implementation network includes the Ministry of Culture, and their policy interest in archaeological resources, the Ministry of Municipal Affairs and Housing, which coordinates a wider network and range of policy interests, municipal planning authorities, and numerous development proponents with variable experience with the planning system. Archaeologists, licensed by Ministry of Culture and consulting to development proponents are also present. Although distanced from local operational decisions, the Ministry is represented in local negotiations in several documents that specify desired outcomes for archaeological resource protection. These documents, which should ideally ensure compliance, also appeared to support local actors by creating opportunities for discretion in implementation.

Discretion in implementing archaeology policy arises in part from agents being shielded from direct observation, and from the destabilising influence of expanded scope of participation. Intermediary documents, as actors in the implementation network actively contributed to this expanded scope. Although introduced in an effort to address concerns over monitoring and compliance, they gave rise to the paradoxical outcome that increased specification distributed across many documents (such as potential checklists, provincial policy statements, archaeological assessment reports), increased, rather than decreased the discretion available to local operators. Inconsistent direction across documents, or competing claims concerning what constitutes appropriate practice provided for much of this discretion. Specifically, local implementation can be affected by the interpretation of archaeological potential and significance, based in the findings of earlier archaeological field work in the local area. These

local contests can expose contradictions, or apparent contradictions in policy direction that can be used to provide benefit private interests, possibly at the expense of the provincial interest.

In my discussion of the implementation contests that arise in relation to the discovery of human remains and treatment of cemeteries, I considered the influence that dominant social cleavages (Schattschneider 1960) have on policy and implementation contests. Provincial policy is clear that statute concerning human remains, specifically the Coroners Act and Cemeteries Act take precedence over the Ontario Heritage Act. Consequently, the role of the licensed archaeologist and the Ministry of Culture in the network formed to implement these policies are shaped in relation to this policy hierarchy. When human remains are considered, two social concerns, concern for criminal acts and culturally appropriate treatment of human remains, combine to set the agenda for implementation. Archaeological interest in human remains, as sources of cultural and biological information on past human populations is set aside in favour of the exercise of technical skills related to the excavation, recover and analysis of remains. MCL is not included in this network, except as a source of in technical advice, provided though licensed archaeologists engaged for their technical skill.

The implementation of archaeology policy in forest management planning brings together the conditions noted in the preceding cases. The implementation duties of forest management planning teams was negotiated by the Ministry of Natural Resources, and the results of these negotiations set out in the Forest Management Guide for Cultural Heritage Values (MNR 2007). In this case, the Ministry of Culture is distanced from local implementation contests by the environmental assessment approvals process, as well as by intermediary documents. In addition, economic and aboriginal concerns mark dominant social cleavages that override the provincial interest in archaeological resource protection as originally proposed in forest management policy. In this case, I discuss how intermediary documents were used to support operational direction to planning teams that supported forestry interests while also setting out measures to protect archaeological resources. This was achieved by pushing back on what the Ministry of Natural Resources and the forest industry considered to be excessive obligations from archaeology policy, and also using Ministry of Culture intermediary documents to press forest industry actors to support archaeology protection measures proposed for forest management.

In the forest management planning case, the emerging requirement to accommodate aboriginal and treaty rights in land use planning decisions is an important social cleavage influencing forestry. As anticipated by Schattschneider (1960), the obligation to engage

aboriginal groups, set out in several court decisions destabilises the contests that do not align to this cleavage as new contests emerge. Among the destabilised contests is the earlier hegemony of licensed archaeologists over a broad spectrum of cultural heritage concerns. In forest management, the implementation network is expanded in several dimensions: in planning representation, policy focus, and expertise. As anticipated by Schattschneider (1960), this also destabilises the *status quo* allowing new alignments to emerge. The interests of Aboriginal communities, who hold membership on the forest management planning teams, indirectly concern archaeological resource protection, and the new composition of the implementation contest was used by MNR to shift the policy focus beyond archaeological resources to include traditional use areas and intangible heritage value sites. With this expanded scope of cultural heritage values also came a change to the concept of expertise, moving beyond archaeological licensing to include a variety of unspecified “qualified individuals” (MNR 2007). This has diminished the formerly prominent role of Ministry of Culture and the licensed archaeologist in cultural heritage resource management. In this case, I also note how the deft use of MCL sourced intermediary documents supported efforts to steer the implementation network toward outcomes that were preferred by Ministry of Natural Resources and the forest industry, while also addressing the provincial interest in archaeological resource protection.

In this chapter, I have shown how key concepts in Schattschneider’s (1960) conflict theory of politics influence the implementation of archaeology policy and affect the outcomes achieved. The scope of each contest was defined by the involvement of human and non-human textual actors. As the scope of participation expands, the agency responsible for archaeological policy is displaced from local implementation contests, represented instead by intermediary documents. This representation can either be in support of Ministry of Culture’s mandate, or intermediaries may be enrolled to contradict direction from MCL by local actors. In either instance, the addition of these actors expands the scope of participation in the implementation contest, destabilising it. Dominant social cleavages also influence implementation by underwriting the positions of individual participants. To Schattschneider (1960), these cleavages determine when individuals with an interest in a potential contest mobilise in a political fight and when they do not. Social cleavages also hold the power to align participants in implementation contests strategically, as contests that reflect dominant cleavages attract more attention, while the less compelling contests fade away through neglect (Schattschneider 1983, 73). The contests over implementation of archaeology policy is subject to all of these forces. As shown in these cases, the effect of scope, social cleavages, and the participation of non-human actors draws archaeology policy away from broad public

interest objectives to a series of local concerns. In this, the sum of the implementation parts is considerably less than the expectations raised by policy.

Chapter 6

Actors and Networks in Policy Implementation

6.1 Introduction

At the outset of this thesis, I noted that an important challenge to public administrators implementing public policy is to ensure that the outcomes of implementation correspond to policy objectives. The context of this challenge is described in the public policy literature: implementation marks the onset of bargaining within “complex chains of reciprocal interaction” (Pressman and Wildavsky 1984, xxvi) in which central actors negotiate for the participation of local actors. In this complex of negotiation, networks arise to perform the work of implementation, or, as Rhodes expresses it, “muddling through based on provisional knowledge and diverse, local policy responses to contested definitions of problems” (Rhodes 2000, 361).

In the course of this bargaining, implementation engages a network of actors who negotiate their roles and responsibilities from positions informed largely by their local social context. Bargaining is expected to be more intense when the intent or objectives of a policy are vague or contested, leaving room for participants to advocate their own visions of how implementation should proceed. This environment affords little certainty to central actors that outcomes will match objectives, and this creates an uncomfortable choice: either to leave the network to produce its own version of implementation outcomes (Rhodes 2000); or to assert authority and steer the network towards the policy outcomes sought (O’Toole 1997a). Either choice may lead to democratic shortfalls when the central actor, or the network participants hold the capacity to manage the scope of participation to produce private outcomes.

In this chapter, I discuss the results of my exploration of archaeology policy implementation in light of the theory engaged, and the specific examples derived from the cases. In generalising the outcome of this thesis, I speak to the relationships that form among actors in these networks, and how local contests and their broad social context affects archaeology policy, its implementation, and the outcomes achieved. Theoretical considerations, in particular my extension of Schattschneider’s conflict theory of politics using insights from actor-network theory, are also discussed. Here, considering policy-related texts as actors in implementation contests sees them playing a role in destabilising implementation contests, often in favour of local actors. My discussion in this chapter also considers the contribution that the critical aspects of this approach may make to ongoing policy contests, or in facing

future challenges to effective and democratic implementation. This application is not limited to archaeology policy, but may, I suggest be applied to various emerging contests, such as the emerging challenge to accommodate indigenous interests in archaeological practice. The findings of this research, particularly the way that aboriginal engagement in forest management planning has been constructed in relation to archaeology policy may describe a way forward for the implementation of archaeology policy in Ontario.

6.1.1 Review of Problem Statement

In this thesis, I have explored the question: what are the consequences of implementing public policy through a network, including the effects arising from the scope of participation, and negotiations among local actors? In particular, I wanted to understand how the interactions among participating actors influence and shape policy as it is being implemented.

The implementation example selected was archaeology policy in Ontario, Canada, an example with which I had extensive prior experience. Archaeology policy in Ontario can be found in the Ontario Heritage Act and associated supplementary documents, in the practices of the implementing actors, and in the outcomes of the numerous local negotiations and contests that take place throughout the network. Implementation engages a range of actors, but protection is in two parts: licensing and pre-development assessment.

The regulation of practice through licensing is defined in the Act, and is implemented directly by the Ministry responsible for the Act, the Ministry of Culture. In archaeological licensing, a relatively simple regulatory network is defined. The Ministry and the regulated actors interact through the exchange of licenses, reports, and report reviews, with common interests and professional norms helping to maintain the focus on operational concerns. Archaeological assessment, however, is implemented through regulatory processes developed under other policy related to environmental assessment or development. Here, the network defined in assessment is more complex, engaging multiple provincial and local agencies, along with private sector actors. To this network, archaeology is a peripheral concern, which creates the potential for archaeology policy implementation requirements to conflict with other participant priorities.

6.2 The effect of implementing policy through a network

In this thesis I have explored the question “how is archaeology policy affected when it is implemented through a network?” My interest in this question has arisen from my personal experience, having worked through changes to both policy and practice in Ontario since the

early 1980s. In the 1980s, Ontario had a large contingent of government archaeologists who developed inventory, managed collections, engaged the public, and carried out salvage. At this time non-governmental archaeologists worked mainly for universities or museums, and projects were funded through foundation or government grants. As awareness of archaeological site loss grew, and environmental and development policy evolved, the growing need for advance archaeological survey and salvage led to the emergence of the fee for service archaeology consultant. Consulting as a form of archaeological practice has grown steadily since that time commensurate with policy that supports the need to address archaeological conditions attached to development proposals for highways, housing estates, resource development and major infrastructure projects.

These changes have been reflected in public policy on archaeology: originally focussed on issuing permits, archaeological practice is increasingly set in the context of other planning and development approvals processes. It is reasonable to assert that somewhere along the line the archaeological profession became formally co-opted: exchanging a focus on planning and development approvals for secure funding for fieldwork. Although this view seems cynical, it is nevertheless correct in its fundamental assessment. However, my concern in this thesis was to explore what has happened to archaeological practice as the central agencies responsible for archaeological permitting have withdrawn, and distributed control of implementation horizontally among agencies organised according to planning and development processes.

In exploring my question, I followed Lawrence O'Toole's (1997) recommendation that implementation researchers "take networks seriously". In my case, this meant examining how the diffuse authority that arises under conditions of horizontal management and multi-stakeholder policy implementation might be leading policy and practice away from the stated intent of policy. To be clear, I see the stated intent of policy rooted in an asserted social benefit – compiling the archaeological record and contributing to the historical understanding of the human condition, yielding to a process focus where archaeological benefits are displaced by outputs, such as a series of checkpoints on an approvals 'to-do' list for development.

I used Schattschneider's (1960) conflict theory of politics as the organising theory for this research. This theory posits that political contests, which I extend to include the haggling that attends policy implementation, are destabilised as the scope of participation expands. In destabilised implementation contests it is often that the question of what the contest is about changes as participation changes, and as a result the policy objectives can also change. In unstable networks the focus of implementation can drift away from stated policy objectives to

new objectives determined through the interaction of the implementing actors. The outcomes sought by policy (achievements) may be displaced by outputs (actions), or by outcomes that are not aligned with the original intent of policy, but rather with the interests of the dominant actors.

One of Schattschneider's key insights is that the more socialised a political conflict becomes, the more difficult it is for any actor to control the contest. Some interests may benefit from restricting the range of participants in order to direct the contest towards a preferred outcome. Others may seek to expand the scope of participation in order to enrol supporters who will destabilise the contest and allow them greater opportunity for success. At the same time, Schattschneider informs us, the broad interests of society hold great potential for setting the terms of the contest and can be a force that enhances or diminishes any group's chances of success.

I extended this theory using insights from actor-network theory to admit policy documents as textual participants in implementation through their work as intermediaries. These textual actors influence implementation by drawing new associations among participants, and at times by representing and displacing the actors who deployed them initially. By extending the theory to include non-human textual actors, it also gained a capacity for a richer understanding of the social forces acting in implementation, as well as engaging a significant body of social science theory. Insights to archaeology policy include identifying consequences to archaeological practice of vague policy objectives and local policy negotiations.

At an operational level, the local negotiations that I discuss take place at varying distances from the central archaeology agency, and engage actors, including textual actors, who may have had authority to negotiate delegated to them. This leads us to consider Agency Theory. In this theory, relationships based in delegation create conditions of information asymmetry and goal conflict between principals and agents. Simply put, information asymmetry means that the principal can never be certain that the agent will carry out the delegated responsibilities as directed. When the goals of principal and agent conflict, an agent may pursue goals that are not in the principal's interest. Repeated discretionary action by agents that are contrary to the principal's interests can lead to performance of a policy that result in an irreversible alteration to policy direction. Goal conflict and information asymmetry may be heightened under network conditions: networks are formed through multiple delegations, compounding the displacement of central policy actors from local decisions. As such, opportunities for discretionary action by agents are increased.

To Schattschneider (1957, 936), “the quarrel in politics is as apt to be about the means as about the ends [and deals] largely with procedure rather than substance”. Policy implementation is very much about means and the process, particularly when it engages a network of actors: therefore, it is eminently political.

Implementation of Ontario’s archaeology policy is marked by horizontal management within the government, and a wide range of delegated authority that engages agents within and outside of government. Some delegations include licensing archaeological practice (the provincial interest), distributing archaeological potential “checklists” to approval authorities as a means of triggering archaeological assessment studies, and standards and guidelines documents that direct fieldwork and reporting. Implementation of Ontario’s archaeology policy does engage a range of human, institutional and documentary actors in implementation: therefore, it defines a network.

Finally, I would suggest that the five most significant findings of this research are that:

1. As anticipated by theory, the implementation of archaeology policy in Ontario has become destabilized in the context of a complex implementation network. As a result, the overall objective of policy has retreated from seeking purely “archaeological” objectives, to focusing on those aspects of archaeological practice that can be monitored, including specifically administrative concerns.
2. Fee for service archaeological consultants act in relation to a suite of “private interests”, not the least of which are earning a living and maintaining their archaeological licence in good standing. While development proponents can be readily seen as representing private interests, it is worth noting that the state also has private interests in relation to archaeology, such as reducing political visibility of archaeological “issues”, maintaining fiscal responsibility and participating in management directed initiatives such as results-based and horizontal management.
3. Horizontal management and results based planning – currently in vogue within government, has contributed to the complexity of the implementation networks, while the concomitant focus on measurable outcomes has afforded the opportunity for the central agencies to reframe “success”.
4. The delegation on which policy implementation networks are built supports conditions where implementation is being negotiated among local actors out of direct observation by the principal agencies. These local actors include a range of human and non-human

5. Schattschneider's theory of politics, extended to include insights from actor-network theory and Agency Theory, is an effective theoretical framework for exploring the consequences of policy implementation through a network of actors. Actor-network theory does not oblige a researcher to observe a normative privileging of institutional or semantic entities as structural and hence irreducible. Instead, legislation and large organizations are viewed as the current expression of a sequence of now largely invisible political contests that occurred in the past. Exposing the scope of participation, and the underlying assumptions that rules, roles and organizational structures are based upon, allows a positive expansion of the field of inquiry. Admitting documents as implementing actors allows them to be viewed as representatives of central agency actors, as participants in negotiations, as a strategic device for excluding different actors from negotiations, and facilitating agent discretion to pursue private objectives.

In terms of future application of the research to contests that are still waiting in the wings, the research provides a possible tool that archaeologists and policy-makers may benefit from as we move into new arenas that will engage archaeological practice, archaeological sites and heritage places, and where new efforts will be made to enroll the public in the contest. Even as the state seeks compliance with increasingly process-focused direction, the scope of participation in the implementation contest is expanding. The larger objective of providing for the protection and preservation of the archaeological record, which I have suggested is not the central concern of most of the current policy, is becoming a concern to other interests, notably indigenous communities. Archaeology policy may become the subject of yet another contest enjoined by a different suite of participants. Understanding how these contests have turned out in the past, may help deliver a beneficial outcome in these future contests.

Implementation, and it may be possible to generalise this to implementation of more than just archaeology policy, represents a complex system of exchange that is highly attuned to the private interests of the actors involved. The political contests that accompany implementation are focused on local negotiations to the extent that more central actors, displaced from the contest by delegations and intermediaries, allows. At the same time what prevents a complete slide of implementation into venality appears to be the role of professional norms among the various interests. Archaeologists, enmeshed in development processes, and compelled to show a profit and serve their clients' interests may still find consulting work an avenue to

pursue what might be, for want of a better term, more academic archaeological goals of careful excavation, data collection, research and publishing.

6.3 Findings from the case studies

Networks for implementing public policy arise when multiple actors are required for implementation. In this research, three cases of archaeology policy implementation were reviewed to identify consequences of implementing public policy through a network. In each example, archaeology policy appears within larger networks centred on land use planning, cemeteries regulation, and forest management.

The Ontario government's focus on horizontal organisation in the public service has resulted in the transfer of non-core agency functions to networks coordinated around stakeholder interests. For land use planning, this means that archaeology policy is implemented through a network centred on planning approvals. This network is centred on the municipal planning processes and coordinated by the Ministry of Municipal Affairs and Housing. The Ministry of Culture is engaged in this network in several ways, including providing input to policy direction, technical support to municipal planners, and the review of archaeological license reports prepared in response to local planner direction. The Ministry of Culture are represented at the local level by a number of intermediary documents, which identify the outcomes sought by MCL in policy implementation. These documents are available to all network participants to read, and should ideally centre networks of compliance. Instead, they appear to displace the Ministry in local negotiations, increasing the discretion of local implementing actors. The participation of these documents in implementation expands the scope, which in turn affects the stability of the network, and in this instability local actors can pursue local objectives. The number of documents present (potential checklists, provincial policy statements, and archaeological assessment reports), and their incomplete concurrence on policy intent or implementation direction allow local operators to negotiate their obligations. In this negotiation, local non-specialists engaged act on their personal understanding of vaguely defined notions of archaeological potential and significance, which may have been determined through the interaction with other documents, specifically archaeological assessment reports and archaeological sites data. As participants in local contests over planning issues as well, local actors may interpret vague policy direction in ways that provide local benefits either to themselves, or to private interests.

Internal administrative divisions within the Ministry of Culture also support local discretion. Three units are engaged in archaeology policy implementation, but lack internal coordination

on compliance. Broad policy development is the work of a dedicated policy unit. Another unit reviews and comments on municipal official plans, in which the municipal proposal to address the provincial interest in archaeological resource protection is identified, and provide technical advice to municipalities. A third unit oversees archaeological licensing and archaeological assessment report review. Local planning compliance with municipal Official Plan commitments, or the quality and consistency of archaeological potential evaluation is not the responsibility of either unit. Licensed archaeologists are also engaged in this network as representatives of the provincial interest, and as consultants to private development clients. Reports prepared for private clients are often used in negotiating local implementation obligations, for example, an assessment returning no archaeological sites may reduce the likelihood of a non-specialist planner evaluating low potential for an adjacent property.

Statutory direction for the investigation of human remains found outside of registered cemeteries requires that coroners, police investigators, and the registrar of cemeteries cooperate in resolving questions of provenance and disposition. The detection of criminality, treating human remains with respect, and consideration for the wishes of representatives of the deceased are all social concerns that guide the implementation of policies concerning burial investigation. The concern of investigators acting under the Coroners Act is the means by which the person met their end, overrides archaeological concerns. A broad social interest in the treatment of human remains is codified in the terms of the Cemeteries Act, the precedence of this interest over the Ontario Heritage Act is specified. This anticipates and denies any presumed right to archaeological study by archaeologists who view human remains as a source of data. Instead, the licensed archaeologists are identified as skilled individuals who may be engaged to address specific tasks within these investigations.

The spatial extent of forestry overlaps with the interests of many forest users, including commercial foresters, archaeologists and aboriginal communities, with the consequence that the context of archaeology policy implementation in forest management is complex. The agency overseeing forest policy, the Ministry of Natural Resources, have made strategic use of a new social context for forest policy, and an expanded scope of participation to redefine their role in archaeology policy implementation.

The Forest Management Guide for Cultural Heritage Values (MNR 2007) is a revised statement of the Ministry of Natural Resources approach to addressing the provincial interest in cultural heritage resources affected by commercial forestry. The revision of this guide was conducted in the context of renewing the forest management Class Environmental Assessment, and a growing body of judicial decisions clarifying the Crown duty to consult

and accommodate aboriginal groups in making land use decisions. As an internal policy exercise, the revision work was shielded from direct involvement of the Ministry of Culture, although they were represented on the guide writing team. In preparing the terms of the guide, MNR negotiated their obligations through a variety of policy documents that were widely available at the time, including the Ontario Heritage Act and Regulations, the archaeological potential checklist, and the Standards and Guidelines for Consulting Archaeologists. These documents were used to establish the objectives of provincial archaeology policy, set clear definitions of archaeological resources and the mitigation approaches required for their protection, and to establish the boundary between resources for which an archaeological license is required, and those which could be investigated by a non-archaeologist, and without engaging the Ministry of Culture.

The sector specific approach presented in the 2007 guide reflects the MNRs vision of how cultural heritage resources will be protected. Support for this initiative was found in the expanded scope of the forest management policy network, which now included aboriginal community representatives on forest management planning teams. This approach distinguishes between archaeological resources and a range of other cultural heritage values that can be investigated without an archaeological license while still addressing the intent of provincial archaeology policy. Looking beyond a view that assessment was required whenever archaeological sites were present, the policy promoted the mitigation of adverse impacts through modified operations and avoidance, rather than salvage. The separation of archaeological sites into a distinct values class, set apart from archaeological potential areas, cultural landscapes and historical aboriginal values allowed greater flexibility in setting management requirements, and reduced the anticipated increase in costs associated with hiring licensed archaeologists.

The Ministry of Natural Resources Guide appears to have achieved an outcome that favours forest industry interests over those of Ministry of Culture and licensed archaeologists. An anticipated spike in archaeological inventory and excavation was denied when site avoidance was promoted over salvage excavation. Commercial expansion for licensed archaeologists was also scaled back as the extent of their role as qualified individuals in cultural heritage resource planning was reduced. Aboriginal community interests were generally promoted in the guide, which may have a positive effect on cultural heritage protection, as well as representing an effort by the Ministry of Natural Resource to build strong positive relationships with aboriginal communities. In reaching over recent practice of engaging in expensive archaeological assessment for areas of concern to develop a policy position that has

regard for the archaeological protection intent of archaeology policy, as well as the cost effectiveness concern of the forest industry, the 2007 Guide appears to have managed to identify means for controlling costs that does not come at the expense of archaeological resource protection.

6.4 Reflections on Theory

In this thesis I have engaged both Schattschneider's conflict theory of politics and actor-network theory as a means of temporarily structuring my research and gaining insight into the properties of policy implementation in networks. In this section I present a short discussion of reflection on the theory engaged and how it contributed to the research.

6.4.1 Schattschneider

In this research I have followed O'Toole's suggestion (1997a; O'Toole and Meier 2004) to take networks seriously, and to consider the democratic consequences of implementing policy through a network. I also followed their suggestion that the democratic consequences of implementation networks in building upon the insights offered by Schattschneider's (1960) theory of politics to organise my exploration of archaeology policy implementation.

Schattschneider's theory holds that any political conflict results in strategic action by participants, and the strategies employed are determined, in part, by the intensity, visibility, scope, and direction of the conflict (Schattschneider 1957). These four variables are interconnected, and a change to any one has consequential effects on the others. As applied to contests over policy implementation, intensity and visibility express how different groups experience the potential or actual effects of a policy on their interests. Intensity is how strongly they sense this effect, and visibility relates to how readily the source of this effect can be identified. For the cases examined in this research, archaeology policy was highly visible: it is a distinct type of value, neither environmental nor economic, and protection requires the intervention of technical experts licensed by the state. Strategy in implementation networks for archaeology policy is directed largely to reducing the intensity, or cost, of archaeological resource protection by other participants in the implementation networks.

In this thesis, my focus was on the influence of the other two variables, direction and scope, on implementation. Direction places the contest in a wider social context, and concerns the dominant social issues that attract the interest of individuals. The direction of these wider social movements creates lines of cleavage through society, around which individuals will

organise. Two conditions apply to the direction of these contests: that contests are unequal, and that one larger contests will override many smaller ones. With each conflict, the overall population of interested individuals is divided (on either side of the cleavage), and united (into sides). Politics is stabilised when these lines of cleavage are incommensurable (e.g. the separating line for income tax reduction may differ from that concerning increased public school funding). A particular line of social cleavage underwrites the promotion of a policy issue when it controls the attention of the participants in an implementation network. That is, policy contests are guided by what the participating actors “want most” (Schattschneider 1957, 940).

What these participating actors want, however, is itself acted out in a political contest, the outcome of which is partially determined by the scope of participation. Scope, in Schattschneider’s theory, is the number of different interests engaged in a political contest. The most basic expression of this is “the proposition that the intervention of Harry, in a conflict between Tom and Dick will change the nature of the conflict, no matter what Harry does” (Schattschneider 1957, 941). With the introduction of a new participant in the contest, new interests and objectives are introduced; Tom and Dick must now contest their position with Harry in order to enrol him to their side, or to suppress the assertion of his own interests. The balance of power, and the nature of the contest cannot remain the same with the introduction of additional participants. In networks where there are more than two or three participants the balance of power is a more dynamic consideration, and it is increasingly unlikely that any one participant can gain control of the network and direct the production of outputs.

Scope is also related to direction. When a policy implementation contest, or any political contest becomes socially prominent, or gains in visibility or intensity with particular individuals, they may organise and enter the contest. Adding participants adds complexity and reduces the likelihood that authority can be asserted across the network, or that accountability can be linked to any one participant. In this complexity, the network becomes de-centred facilitating local contests over policy implementation directed towards the production of locally beneficial outcomes.

6.4.2 Actor-Network Theory

In Chapter 2, I described Schattschneider’s theory of politics as involving overt conflict between identifiable groups seeking a political resolution adjudicated by the state. My use of

this theory to organise my research into policy implementation included extending the theory using insights derived from actor-network theory, translation and durability.

Translation is the process through which actor-networks arise, stabilise, and dissolve or are absorbed into larger networks (Callon 1986), and augments Schattschneider's theory by describing the dynamic nature of politics. In actor-network theory, individual entities are defined as actors through their interactions with other actors (Callon 1991; Law 1999), and, as they are defined through interaction, all actors are themselves actor-networks (Callon 1991).

This leads to the understanding that all structured social relations are to some degree unstable and may be decomposed into the components and strategies that led to their formation.

Durability is the process by which actor-networks become stabilised and the social relations in which they are based are rendered invisible (Latour 1991). As actor-networks may draw together a variety of social and technological entities in their production, these durable networks may be human or non-human. In the present research, the benefit of the actor-network theory perspective is in the analysis of policy documents, and of the role that policy documents fulfil in complex implementation networks. These roles include obscuring unproven assumptions, directing practice, and representing central agency actors in local negotiations.

In translation, actor-network theory confronts the normative legitimacy of structural actors in society. Actor-networks are built up through processes of enrolment and mobilisation, in which individual entities are assembled into larger social or technical collectives. As they are assembled, the individuals are displaced and simplified while the central actor to the network assumes the role of representative (Callon 1986). In simplification, enrolled individuals are rendered equivalent, and as individuals and their representatives are combined into larger networks, displacement and simplification increases. Stabilising a network relies on replacing the network with a single technological object, symbol, or practice (Latour 1991; 2005), and these objects can also be combined until the original enrolment is completely invisible; a black box. The social constructionist critique¹⁴² arising from the application of actor-network

¹⁴² Latour and Woolgar (1979) have written about how scientific knowledge arises from the practice of science, which is itself the application of standardised research practices. The result of scientific investigation is the construction of a version of reality that defines experience, and reinforces the authority of the methods used in this construction (Law 2004). Science is also concerned with translation the observations made into "inscriptions" (Latour and Woolgar 1986, 51), in order to separate the text from the material basis (the equipment, assumptions, reasoning, etc.) on which the text was constructed. The material nature of the text constructs the things it describes as a material object, regardless of how intangible or ephemeral these things may be (Law 2004). As things, these texts have definite form, and any assumptions, faulty reasoning, or unexamined practices that went "into their production is deleted" (Law 2004, 36). As these texts are used in the production of other texts the distance between the original observation and the statement representing it is increased. This distance renders the text more durable and costly to challenge (Latour and Woolgar 1986; Latour 1991; 2005).

theory to any problem begins by viewing the intentions, or stated objectives of central actors as emblematic of more complex actor-networks. Understanding how translation works can complement the analysis of policy and implementation contests by identifying policies, arguments, and organisations as complex actor-networks that can be decomposed and analysed for their untested assumptions, bias, or democratic foundation. This theoretical stance is applicable to policy implementation research through two key insights: 1) that policy embeds earlier policy contests, which may institutionalise assumptions or exclusionary practices that may not have been critically examined when the policy was being formulated; and 2) policy shapes practice by presenting constraints to practice as the only alternative, and as a form of practice that the individual has already agreed to.

Policy texts direct implementation action. In this way, they are actors, capable of defining the roles and responsibilities of other entities by drawing connections between them and other actors and practices. As actors, policy texts increase the complexity of implementation networks, and destabilise them in the manner described by Schattschneider (1960). Texts on their own are incapable of negotiation, but in the context of the network, these actors negotiate by presenting a view of policy or practice that may not conform to the view held by other actors. When policy outcomes are determined in implementation, these actors participate in shaping the final form that implementation takes. In local implementation contest, these actors may also be selectively engaged: vague direction may be engaged as an invitation to exercise discretion, while highly specific direction may come to be viewed as a top-line constraint (Wilson 2000), signalling the sum total of work required in successful implementation. The variable shape of the implementation networks in which these textual actors participate allow other actors to negotiate their implementation obligations with the texts. In addition, the implementation practices that emerge from these negotiations also become durable, and when policy direction changes, earlier documents and practices will continue to play a role in negotiating implementation.

6.4.3 Local practices and global policy consequences.

Reflecting on the application of Schattschneider's theory of politics to this research, as expanded using insights from actor-network theory, the theory continues to provide a responsive and robust means for analysing political contests at the level of policy implementation. The theory is not, strictly speaking, predictive, but it does have the capacity

Ultimately, in this social constructivist view, the limits to knowledge and reality in any field are set by these statements, inscriptions, or texts (Law 2004).

to lead researchers beyond the managerial thinking that marks some of the current literature on implementation.

Beyond this managerial thinking lies the understanding that complex implementation networks are comprised of multiple local contests. Drawing on the actor-network theory concept of translation, individual actors in the implementation contest are themselves networks, drawing together and coordinating a range of other, smaller actors, documents, assumptions and practices, that shape their participation in the contest. Thus each participant is a local implementation contest, and the way in which they work with, and inter-define other participants through the exchange of intermediaries such as texts, money or techniques, define other, equally local implementation contests.

Applied to policy implementation, this perspective recommends that participants seeking to understand their roles and opportunities within the network look beyond local contests. This is especially true for central agencies seeking to manage the implementation network to produce desired outcomes. Their local contest, as I suggest in the analysis of the cases presented, involves 'head office' and 'big picture' concerns. Meeting the challenges of results-based planning when implementing policy that has vague objectives and unmeasurable outcomes draws their focus inward, toward measurable targets. Formulating new policy documents to intercede on their behalf with other implementation participants is similarly local, as the policies contained in these documents are tested against other statute, policy, or practice performed by actors local to them. In the municipal planning example, the Ministry of Culture's policy interaction was primarily with Municipal Affairs and Housing, and focussed on the goodness of fit between archaeological resource protection direction and Planning Act obligations of municipal planners and developers. Analysis would benefit in these cases from considering the local effect of the new policy document, how it fits with internal compliance and monitoring processes, and how it will add complexity to a local contest that may already be replete with a diverse range of texts and techniques.

In application, the theoretical approach taken in this research suggests a number of key considerations in future application. Each of these matches a general management strategy for engaging productively in policy implementation networks. The first consideration arises from the acknowledgement of policy documents as actors in the network. The addition of new textual actors increases the complexity of the contest in much the same manner that adding human or organisational actors does. Further, the introduction of documents intended as intermediaries between actors also presents the document as a representative of the originating actor. That is, policy documents represent and displace the actors that put them

into circulation, and as representatives they may be seen as authorised to negotiate implementation requirements on behalf of the originating actor. Increasing the complexity of the implementation network by adding actors and displacing others creates the conditions for local negotiations that do not include central agency actors directly. The displacement of the central agency can, in these local negotiations, lead to goal displacement as local considerations override policy intent (Bohte and Meier 2000; Merton 1940).

Monitoring local contests is perhaps the most effective way of determining what outcomes these contests are producing. Monitoring may also provide a means for helping the central agency to stay engaged in local contests without an excessive increase in monitoring costs (cf. Mitnick 1975). Effective monitoring requires that a communication loop is created which distributes policy direction from the central agency to local implementing actors, and then requires a response, to the same agency, that identifies how the direction was carried out. In the cases reviewed, costs of monitoring were perceived by local actors as simply adding to the burden of carrying out archaeological resource protection measures. Currently, monitoring is both direct, in the case of the reports required under the terms and conditions of archaeological licensing, and indirect where it is overseen by an agency other than the Ministry of Culture, or assumed to be addressed in the archaeological report prepared for licensing purposes. As I have discussed, the review of the archaeological report focuses on specific administrative checkpoints that address results based management commitments, not archaeological protection. Further, the report review cannot serve as a monitoring tool for municipal or forest management planning decisions regarding archaeological potential and the initiation of archaeological assessment projects. The Ministry of Municipal Affairs and Housing review of complete applications packages has a similar checklist approach to monitoring implementation of O. Reg. 544/06, by simply noting whether a report on archaeological potential has been prepared as part of the application review, but does not engage in a detailed review of the methodology or thoroughness of this report. Monitoring, in this case consists primarily of closing loops.

Managing implementation networks necessitates finding the middle ground between setting the networks loose to find their own outcomes and reasserting central authority over the network (Rhodes 2000; O'Toole 1997a). As the representative of the public interest in archaeology, a concept which I discussed in Chapter 3, the state may have a prerogative to steer implementation networks towards producing outcomes that support state priorities. O'Toole (1997a) argues in favour of central agencies acting to alter the network membership in a way that the balance of support is tilted in favour of the state's objectives. In

recommending that public administrators “shift network membership toward more supportive coalitions [and] locate key allies” (O’Toole 1997a, 48), he is recommending managing the scope of participation in implementation contests. While this ensures that the negotiation efforts of managers return the desired results, it is difficult to reconcile this approach, as a form of agenda control (cf. Majone 2006; Stewart 2007) with normative expectations of democracy in public administration. In addition, O’Toole suggests that managing participation will “act to limit uncertainty and complexity” (1997a, 48). This objective is worthwhile, as small networks comprised of participants with similar backgrounds and sharing professional norms will produce predictable results (Wilson 2000). However, in the forest management planning case discussed in Chapter 5, scope expansion resulting in an increased diversity of views destabilised the implementation network, allowing Ministry of Natural Resources to reframe archaeology policy in the context of cultural heritage protection, and provide benefit to forestry interests. Thus, while outright manipulation of participation may be effective, it is not the only means of managing networks to return desired results.

One final observation concerns the nature of policy that should be circulated within implementation networks. Each policy document, and in the case of archaeology policy the assessment reports produced and letter of approval from the central agency, are all actors within these complex, but highly local networks. Policy that is formulated in response to a perceived social need or public interest carries with it the policy narrative on which it is based, and in this the traces of the original contest that negotiated the final form of the policy. Where the underlying narrative is one that serves private interests, these interests are promoted, invisibly, through the network. Where the policy addresses administrative concerns, rather than substantive issues related to the policy subject, these rules become the objective of policy in the practice of the network. The normative objective of policy making should be the construction of a few robust statements that guide local decisions, but the results of the research reported in this thesis suggests that these local decisions would continue to serve local interests. Within diffuse networks such as the ones described, more policy coupled to more actors destabilises implementation and diminishes central actors ability to control for outcomes. Thus, a wider policy formulation objective should also be less policy coupled with greater compliance in the context of an anticipated implementation network. In seeking this it is important that implementation includes monitoring compliance and flexibility in responding to unsatisfactory outcomes, and success in this requires that the field of implementation is kept clear of an excess of contradictory actors, human and non-human, seeking to advance their private interests.

6.5 Conclusion

To use Rhodes' phrase, "it's the mix that matters" (1997). In his case, he is speaking on the mix of public and private entities engaged when developing an effective governance approach. From the research described in this thesis, the mix also matters. Here, it is not the mix of actors, but how those actors engage, or are engaged by other network actors that matters, for this influences implementation outcomes. Implementing actors can engage policy in three different ways. They may accept the policy direction as written, and implement this direction as closely as possible. This approach, which Wilson (2000) described as top-line implementation, marks an absolute limit to the level of effort a given implementing actor will expend. Another possible action is for the implementing actor who is free from direct observation to shirk (Levine and Forrence 1990), and do nothing but search for excuses from among the available direction. A third approach, the negotiated approach, lies somewhere between the two. Here, the various policy direction that is available to the implementing actor is marshalled and pressed into service in support of the actor's private interests. Other human actors may also be engaged in this fashion, either through their representatives, or directly as co-implementers within the network. In the negotiated approach vague policy results in the operator discretion anticipated by Lipsky (1980). But no actor is expected to commit to one approach only. In this implementation mix of rigid interpretation, avoidance, and bargaining to advantage when faced with implementation in complex policy environments, individual actors define themselves through the mix of approaches they choose to follow.

The dynamic nature of policy implementation is such that ongoing changes in the internal composition of the network, or the response broad social issues, means that the implementation landscape is not constant. This is especially true for archaeology policy where the subject is not considered as important as more compelling subjects, such as health or national security policy. Archaeology policy, implemented through networks developed for other policy processes, has a variable expression in these networks, and the active engagement of actors changes as other actors pass through the network.

Policy is formulated in the expectation that the implementation will proceed in an orderly and predictable manner. Evaluating potential challenges to policies are often restricted to issues and actors visible to policy-makers. The challenges and actors identified are often 'local' to the part of the implementation network that the central agency inhabits. In this way, they identify potential conflicts and resolutions primarily in terms of local issues. As a result, policies are presented that do not have any overt conflicts with other agency business, or

statutory obligations. Once implemented, the policy, in the form of documents and technical instruments, moves on to other, equally local negotiations. In this way, the implementation network includes sequences of delegation, with the central agency acting as sole principal, the several policy documents and technical instruments as sub-agents, and on to the many front line implementing agents. Within this relationship, the policy documents and instruments, as agents cannot always be expected to represent the interests of the principal (McCubbins, et al. 1987), and as sub-agents, may tend to side with the local implementing actors (Braun 1993; Brower, et al. 2010).

Within the implementation network, it appears that the documents, and not the central agency or local actors provide temporary centring of implementation practice. The documents assemble local interests, provincial interests, developers, foresters, planners, and archaeologists to achieve key policy objectives. Policy objectives are not necessarily spelled out in the policy documents, but are created in implementation through negotiation among these actors. These objectives are defined and addressed in the paperwork attendant on the planning approval process, in the evaluation of the commercial value of a particular stand of trees, or in a general sense of respect for the dead. Even more local networks refine these definitions: rain as an actor in archaeological field survey, or a golf game with the mayor acting in the municipal role in evaluating potential. The provincial interest is represented by the documents, but in reality emerges from the interstices of these local networks: protection of archaeological resources is, according to the parties to the discussion, a matter of local judgement. The implementation of public policy is enacted in a series of local networks distributed across a hierarchical arrangement of actors: implementation is a series of local events, and these local events have global repercussions in policy.

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Appendix A

Respondent Interviews

Case 1: Municipal land development planning.

| <i>ID</i> | <i>Role</i> | <i>Agency</i> | <i>Date</i> |
|-----------|-------------------|---------------|---------------------------------|
| L1 | Regional Planner | MAH | Dec. 2008 |
| L2 | Regional Planner | MAH | July, 2008 |
| L3 | Municipal Planner | (medium city) | July/Sept., 2008 (2 interviews) |
| L4 | Municipal Planner | (small town) | June, 2008 |
| L5 | Policy/Operations | MCL | August, 2008 |

Case 2: Human Remains and Cemeteries Investigations

| <i>ID</i> | <i>Role</i> | <i>Agency</i> | <i>Date</i> |
|-----------|-------------------------|---------------|--------------------|
| C1 | Registrar of Cemeteries | MCS | presentation, 2006 |
| C2 | Coroner | MCSCS | June, 2008 |
| C3 | Coroner | MCSCS | July, 2008 |
| C4 | Provincial Park staff | MNR | June, 2008 |
| C5 | Policy/Operations | MCL | June, 2008 |

Case 3: Forest Management Planning

| <i>ID</i> | <i>Role</i> | <i>Agency</i> | <i>Date</i> |
|-----------|-------------------|---------------|-----------------|
| F1 | Forest Policy | MNR | September, 2008 |
| F2 | Forest Policy | MNR | September, 2008 |
| F3 | District Forester | MNR | October, 2008 |
| F4 | District Forester | MNR | October, 2008 |

Note: All interviews were conducted with public officials and concerned only questions of how they, or their agency implemented archaeology policy. Respondents were interviewed without recording devices, other than notes taken at the time or immediately after interviews were completed. All respondents are identified by code to respect the conditions of the interviews, which included anonymity in the final report. This promise of anonymity resulted, I believe, in greater candour in several of the interviews than might have been anticipated if the responses were to be made public.

Acronyms:

| | |
|-------|--|
| MAH | Ministry of Municipal Affairs and Housing |
| MCL | Ministry of Culture |
| MCS | Ministry of Consumer Services |
| MCSCS | Ministry of Community Safety and Correctional Services |
