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Thinking Like a Mountain:¹

The American Antiquities Act in Its Political and Ideological

Milieu

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¹ This phrase has been adapted here from the title of Aldo Leopold's famous essay, "Thinking Like a Mountain," in *A Sand County Almanac, and Sketches Here and There*, ed. Curt Meine (New York, 2013), pp. 114-117.

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Abstract

The nucleus of this project is a text, the American Antiquities Act. It was the desire to understand this text more fully on its own terms that compelled me to begin asking questions like: “What can this document reveal about the historical moment from which it emerged?” “How does it bear witness to, and itself help to effect a fundamental shift in the way we think about the land we inhabit?” What, in essence, is its intellectual and historical genealogy?” Today, the Antiquities Act may seem to be an uncomplicated reality, its *raison d'etre* self-evident and easily taken for granted; but it does not exist, nor was it created, in a vacuum. The Antiquities Act is a testament to the will of a society to reorient itself towards a new relationship with the natural world. In examining this reorientation, this project explores major historical influences that spurred the growth of conservationist ideals in the United States, highlighting key individuals in order to understand their motivations and trace the formation of their support for the Antiquities Act. Finally, it examines the document itself and discusses, in part, the legislative history and legacy of the act. As these inquiries demonstrate, the American Antiquities Act was not the inevitable outcome of any natural or inexorable processes at work in American culture or society. Rather, it represents a product of the confluence of specific political, philosophical, and societal energies that animated the Act’s historical context. It is these energies and their contexts that give the American Antiquities Act historical cogency.

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An Act for the Preservation of American Antiquities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

Sec. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: *Provided,* That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

Sec. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided,* That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

Sec. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.²

Approved, June, 8, 1906

² 16 U.S.C. §431-433, "The American Antiquities Act of 1906."

Introduction

It has almost become cliché to say that those who do not study history are bound to repeat the mistakes of the past; yet the saying is no less true. Nor is it any less true that the triumphs and achievements of history stand little chance of being preserved and built upon in the present and future if we do not constantly remind ourselves of how they came about. Such is the case with the origins of the conservation movement in the U.S. This period in American history, like any other, has left markers that we can follow, and that is what we will do now. The following section will attempt to establish the cultural context in which American society and government began to understand that their rapid expansion and growth required a new approach to dealing with the land, its resources, and the way we, as a nation, would understand our interrelationship with nature. The change would start slowly until reaching a point of divergence, from one path to another, and it is during that historical moment of direction change that the Antiquities Act emerged as a tool to knit all the nascent discourses and energies together. Indeed, the Antiquities Act was the first piece of legislation in American history that called for the protection and preservation of *all* the nation's resources, whether they are ancient ruins or any other objects of historic or scientific interest.

Chapter One: The American Conservation Movement and Its Cultural Context

First, some context is in order. The height of the conservation movement in the United States occurred during the greatest period of expansion that the country had ever seen. No modern nation had ever consumed so much or expanded so rapidly as the United States did in the late 19th and early 20th century. Mark Twain referred to this period as the “The Gilded Age” for the significant wealth it generated and the impressive progress that was made, but also for the underlying corruption and greed that such wealth produced. The conquest of the American West, fueled by the railroad, logging, cattle, and mining industries, contributed, in kind, to this unprecedented growth. During the Civil War in 1862, Congress passed the Homestead Act, which granted any citizen over the age of twenty-one up to 160 acres of government land under the condition that they would live there and cultivate the land. After 5 years the land was to be granted to the claimant free of charge — or, if the claimant preferred not to wait the 5 years, they also had the option to purchase the land at the price of \$1.25 per acre after six months residency (assuming the government was satisfied with cultivation efforts to that point).³

The act was, unfortunately, vulnerable to fraud, and of some 500 million acres of land doled out within the next 40 years or so, only approximately 80 million went to actual settlers, while the other 420 million acres was scooped up by unscrupulous

³ Act of May 20, 1862 (Homestead Act), Public Law 37-64, 05/20/1862; Record Group 11; General Records of the United States Government; National Archives [Online version, <http://www.ourdocuments.gov/doc.php?flash=true&doc=31>, May 27, 2015].

interests, including those in the mining, lumber, and railroad industries.⁴ While this certainly helped to expand these industries, there were also those who observed with concern the nation's seemingly unrestrained enthusiasm. The apparent lack of forethought led some to question the wisdom of such haste. Viscount James Bryce wrote of America's great promise in his expansive work, *The American Commonwealth*, but at the same time he urged restraint from the young nation:

Gentlemen, why in heaven's name this haste? You have time enough [. . .] Why sacrifice the present to the future, fancying that you will be happier when your fields teem with wealth and your cities with people? In Europe we have cities wealthier and more populous than yours, and we are not happy.⁵

Bryce saw that the rate at which the United States was consuming its resources was unsustainable and threatened to poison the country's potential, stressing that thought must be given to ensuring that the opportunity of the present would fulfill its obligation to the future. "Your work is great and noble," he writes, and "it is done for a future longer and vaster than our conceptions can embrace." "Why," he asks, "do things rudely and ill which need to be done well, seeing that the welfare of your descendants may turn upon them? Why, in your hurry to subdue and utilize nature, squander her splendid gifts?"⁶

The progress that the American people achieved during the second half of the 19th century was indeed dramatic, and reading the words of Viscount Bryce today, the

⁴ Ibid.

⁵ James Bryce, "The Temper of the West," in *American Commonwealth*, Vol. 2 (Indianapolis, 1995), p. 1494.

⁶ Ibid.

warning contained in them has the ring of premonition. In the course of barely two hundred years, the United States grew from a few colonies on the East Coast to one of the wealthiest and most powerful nations on Earth, with populations and territories spreading across the entire North American continent. When Bryce posed his questions in 1888, it was, indeed, still hard for many to imagine human activity capable of threatening such a vast land overflowing with natural resources. Yet by the mid-1890s the American Bison and the Passenger Pigeon were nearly extinct, and in certain circles, concern was building about the protection of the country's most spectacular landscapes and natural resources.



Figure 1: Man stands on top of enormous pile of buffalo skulls; another man stands in front of pile with his foot resting on a buffalo skull; rustic cage is at foot of pile, 1892.

Questions like those posed by Viscount Bryce succeeded in driving generations of conservationists to strive for a reordering of priorities regarding our relationship with the American landscape. The Antiquities Act may appear, at a glance, out of place among this history, but despite its seemingly narrow and obscure origins as a tool for protection ancient artifacts, it would become one of the nation's greatest tools for the protection of land and resources.

America's natural wonders were a source of national pride, but the country itself was still attempting to forge a new history and identity based on capitalist industry. The focus of American society was on progress at full speed, and the challenge this presented to early conservationists was, according to John Reiger, "nothing less than the national myth of progress."⁷ The foundations of resistance to the nation's reckless enthusiasm thus gained strength only gradually during the first half of the 19th century and were expressed in subtle but significant ways before finding purchase in the progressive government reforms of the late 19th and early 20th century. Such purchase would not have been tenable, however, without the broader assent of the American people. Indeed, to effect so profound a change in the national ethos, the public's support was indispensable.

The American public's investment in the natural world was marshaled in several ways: on the one hand, through the literature of the day, and on the other, through advancements in science and education. Charles Darwin's *The Origin of Species*, in particular, spurred heated debate about the fundamental principles of nature, while the

⁷ John F. Reiger, *American Sportsmen and the Origins of Conservation* (Norman, 1986), p. 46.

writings of Henry David Thoreau, Ralph Waldo Emerson, and others, expressed a reverence and awe for nature that would inspire academics and amateurs alike. For his own part, writing in 1863, Thoreau exclaimed that, “Wilderness is the preservation of the World,” meaning that humankind, where it flourishes, owes that life to nature; or in his words: “From the forest and wilderness come the tonics and barks which brace mankind.”⁸ According to Thoreau, moreover, where we find ourselves flourishing as a result of nature’s bounty, we have a duty to do so responsibly, to maintain the health of both human society and nature. As he explains: “There is a difference between eating and drinking for strength and from mere gluttony.”⁹ Such a sentiment eventually spread to progressive lawmakers, who believed it was the duty of the privileged few to ensure the long-term health of the country and to protect the nation’s resources from the abuses of self-serving individuals and break-neck industry.

Insofar as the gifted words of men like Thoreau galvanized the public imagination, the personal experience of average citizens also proved a powerful source of inspiration, and some felt the urge to express their wonder at the magnificence of their country. Among the earliest of public expressions of esteem for nature are the albums of Table Rock, in which are accumulated the impressions and feelings of tourists visiting Niagara Falls. This cultural document preserves the sense of religious awe many felt when experiencing the raw power of nature on display at the falls, and it also demonstrates that the sentiments of the conservation movement did not develop in a vacuum among great poets and esoteric naturalists. Instead, individuals like Henry

⁸ Henry David Thoreau, *The Writings of Henry David Thoreau*, Vol. 5 (Boston, 1906), p. 224.

⁹ Ibid.

David Thoreau and John Muir should be seen as important catalysts for public sentiment and conversation – the stokers of the flames – while average citizens, such as those found among the inscriptions at Table Rock, represent the emerging consciousness of the American people.

It was not only locations such as Niagara Falls that kindled feelings of sublimity and attracted new visitors. Perhaps ironically, American expansionism and the explosion of railroad networks across the U.S. landscape meant that more than ever before the public had access to and was able to enjoy the benefits of spending time in once remoter sites of natural grandeur. With increased access to nature, it became a common belief that many of the ills that plagued the citizens of the industrial age might be cured by increased familiarity with the natural world. Patients suffering from malaise or respiratory illness were sometimes prescribed trips to the country for the benefits of clean air and natural surroundings. Indeed, a young Theodore Roosevelt was one such patient; and the country did more for him than ease his asthma, as we shall see later on.

In this sense, nature was now being recognized for its moral, physical and spiritual benefits, even as increased access to previously inaccessible wilderness meant that more people were also able to hunt, fish, and generally exploit the natural resources that seemed so bountiful. After the Civil War, in particular, those of the gentlemanly class increasingly enjoyed hunting for sport. Where previously such activity would have seemed frivolous and wasteful, hunting for sport now became a recognized pastime of the wealthy. Paradoxically, then, just as America's citizens were beginning to learn a greater appreciation for nature, commercial and private hunting, lumbering, and

other activities were simultaneously devastating the country's once vast populations of wildlife as well as its forests.

It is only during the middle of the second half of the 19th century that we begin to see educators and sportsmen take increasing interest in the importance of studying and appreciating nature. "Proper" sportsmen, for example, developed a code of moral behavior towards animals, which included, "knowledge of the quarry and its habitat; a familiarity with the rods, guns, or dogs necessary to its pursuit; a skill to cast or shoot with precision and coolness that often takes years to acquire; and a 'social sense' of the many do's and don'ts involved."¹⁰ Evidence of this growing interest and concern may also be seen in the publication of the inaugural 1871 issue of the *American Sportsman*, followed in 1873 by *Forest and Stream*, the first issue subtitle of which reads, "A Weekly Journal Devoted to Field and Aquatic Sports, Practical Natural History, Fish Culture, the Protection of Game, Preservation of Forests, and the Inculcation in Men and Women of a Healthy Interest in Outdoor Recreation and Study."¹¹

Just as a literate, well-read public was deemed essential to the advancement of the nation, so too was it through the academic study of nature, in particular, that broad sections of the public were exposed to scientific reasoning as well as the moral, spiritual, and intellectual benefits of close association with the natural world. It is in this context, as well, that Louis Agassiz founded in 1873 the Anderson School of Natural History and created America's first professional biological field station on Penikese Island in

¹⁰ Kevin C. Armitage, *The Nature Study Movement: The Forgotten Popularizer of America's Conservation Ethic* (Lawrence, 2009), p. 46.

¹¹ Reiger, p. 45.

Buzzards Bay.¹² During the same period, American education experienced significant pedagogical changes through the adoption of Swiss educator Johann Pestalozzi's style of instruction, referred to as "object teaching."¹³ Through this shift, book learning and memorization were deemphasized in favor of genuine experience and physical interaction with the object of study, a technique tailor-fit to the study of the natural world.¹⁴

Object teaching found robust support from American educators such as H.H. Straight and John Dewey, who encouraged a holistic approach to learning about the human relationship with the natural world, providing an intellectual basis for the understanding that humanity is an integrated part of, not separate from, the natural world.¹⁵ This perspective penetrated American society only gradually, however, and did not form the basis of any government actions until well into the 20th century when the science of ecology began to develop through the studies and writing of individuals like Aldo Leopold. Nevertheless, as Armitage notes, "Progressive educators such as Straight and Dewey intended to inculcate children with the instrumental, problem-solving side of scientific investigation as well as with a love of non-human nature and natural piety."¹⁶

The result of all these developments was a broad public interest in nature and science, and those who took up these studies, including a young Theodore Roosevelt,

¹² Armitage, p. 15.

¹³ Ibid, p. 22. Object teaching was essentially what we understand today as experiential or "hands on" learning, whereby students learn through interaction instead of memorization. In the case of nature study this meant interacting with tangible objects like plants and animals instead of reading about them in books.

¹⁴ Ibid.

¹⁵ Ibid, p. 23.

¹⁶ Ibid, p. 24.

came to firmly believe in the importance of scientific learning and nature study, both for their importance in a modern world and, with nature study in particular, for the great pleasure it contributed to life.¹⁷ No less importantly, it was also the astonishing speed with which unregulated industry was monopolizing nature that aroused the concern of individuals such as John Muir and Frederick Law Olmsted. Both of these men, among many others, witnessed with great distress the rape for profit and progress of virgin land that had until only recently lain hidden beyond the barrier of the Rocky Mountains.

For Muir, in particular, the fight to rescue nature from the destructive hands of man was intensely personal. Assuming the role as the nation's "wilderness prophet,"¹⁸ so-to-speak, Muir's deep spiritual connection to the natural world explains his resentment towards individuals with more utilitarian views. In his journal, he writes that "the gross heathenism of civilization has generally destroyed nature, and poetry, and all that is spiritual."¹⁹ Muir also took to writing for popular publications in an attempt to reach the public and share with them the beauty of America through his gospel of nature. While much of his writing contains resplendent descriptions of the beauty of the high sierras and the Yellowstone valley, he occasionally wrote more incisively, perhaps in the attempt to rouse the conscience of the nation. In 1897, for example, Muir penned an article for *The Atlantic Monthly* entitled, "The American Forests," in which he passionately advocates for greater government protection of

¹⁷ Ibid, p. 1.

¹⁸ This name is adapted from the first chapter title, "The Yosemite Prophet," in Stephen Fox's work, *The American Conservation Movement: John Muir and His Legacy* (Madison, 1985), p. 3.

¹⁹ Quoted in Ibid, p. 13.

forests, while at the same time leveling sharp criticism at those who would continue to misuse the great gifts of nature:

Any fool can destroy trees. They cannot run away; and if they could, they would still be destroyed, — chased and hunted down as long as fun or a dollar could be got out of their bark hides [. . .] Through all the wonderful eventful centuries since Christ's time — and long before that — God has cared for these trees, saved them from drought, disease, avalanches, and a thousand straining, leveling tempests and floods; but he cannot save them from fools, — only Uncle Sam can do that.²⁰

Given such sentiments, it is no surprise that Muir resisted what he saw as a utilitarian shift in conservation efforts, a shift which retained the anthropocentric views he so abhorred.

During the Roosevelt Administration, Chief Forester, Gifford Pinchot, would come to epitomize this utilitarian vision by directing forest conservation efforts in a policy of responsible use of natural resources for the betterment of society; as he put it, “the greatest good to the greatest number for the longest time.”²¹ As a result of this utilitarian policy, Muir in fact jettisoned the term “conservation” in regard to protecting nature, instead opting to focus on “preservation.” Once interchangeable, these two terms began to diverge around the turn of the century and would increasingly signal the corresponding differences in approach and philosophy among their supporters.²² Early pioneers like Muir envisioned the “preservation” of the environment as it was,

²⁰ John Muir, "The American Forests," *The Atlantic Monthly* 80.478 (1897), p. 157.

²¹ Gifford Pinchot, *The Fight for Conservation* (New York, 1910), p. 48.

²² Fox, p. 108.

protected from human activity, while “conservation” came to represent the utilitarian view towards nature ascribed to by a new breed of government scientists and professional conservationists like Pinchot. It would only be after the passing of the Antiquities Act that “conservation” would start to be used as a general term that comprehended all the aspects of the environment that needed protection.²³



Figure 2: John Muir, full-length portrait, facing right, seated on rock with lake and trees in background, ca. 1902.

²³ Ibid.

Chapter Two: Government Conservation Efforts and Land Control Precedents

Parallel to the emergence of a greater public appreciation for nature in the U.S., the movement to memorialize and preserve historic places, beginning in earnest following the end of the Civil War, provided a favorable climate for the broader positive valuation of historic preservation.²⁴ As we have noted before, the government's focus was largely set towards the future, not the past. It is not surprising, then, that government was, for the time, content to leave historic preservation to local groups who spread their efforts to the different regions of the country. What is significant about these parallel developments, however, is that as local historical preservation efforts spread westward, the conservation movement was setting important precedents through government legislation, establishing a philosophy of leadership and stewardship that would prove vital to both conservation efforts and to the creation of the Antiquities Act.

In 1872, Congress passed "An Act to set apart a certain Tract of Land lying near the Head-waters of the Yellowstone River as a public Park," effectively creating Yellowstone National Park, the first such park in the world at the time.²⁵ The "Yellowstone Act" directed the Secretary of the Interior "to make and publish such rules and regulations as he may deem necessary or proper for the care and management [. . .]" of the park, and that:

²⁴ Hal Rothman, *Preserving Different Pasts: The American National Monuments* (Urbana, 1989), p. 7.

²⁵ U.S. Statutes at Large, Vol. 17, Chap. 24, pp. 32-33. "An Act to set apart a certain Tract of Land lying near the Head-waters of the Yellowstone River as a public Park."

such regulations shall provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition.²⁶

The creation of Yellowstone National Park is an early precedent in which the government assumed greater responsibility and more direct control over resources it deemed valuable to the nation. Whether the objects preserved are “mineral deposits” and “natural curiosities” or “objects of historic or scientific interest,” the trend begins to flow in one direction, towards an increasingly centralized power within the American government to remove land from the public domain and dictate the rules associated with its use in an effort to defend the country’s resources. Until the passing of the Antiquities Act, however, no legislative precedent existed recognizing the specific importance of preserving the American landscape for scientific reasons. Moreover, it was only after the justification had been formally articulated that objects of historic or scientific interest could include more than just those objects of interests to archaeologists that the profound significance and reach of the Antiquities Act truly began to be realized.

In looking at several important documents, beginning with the creation of Yellowstone National Park, and culminating with the passing (and broad interpretation) of the Antiquities Act, we can see a rudimentary pattern in the evolution of conservation legislation. The Yellowstone Act clearly states its purpose to be the creation of a “public park or pleasuring-ground for the benefit and enjoyment of the

²⁶ Ibid.

people.” The Forest Reserve Act of 1891, which enabled the president to declare forest reserves of unlimited size by public proclamation,²⁷ allowed the cutting and removal of timber by residents for the purpose of cultivating existing property, as long as such actions did not “operate to enlarge the rights of any railway company to cut timber on the public domain.”²⁸ Later, once Gifford Pinchot was chosen to head the management of the nation's forest reserves (later renamed “national forests”), even more allowance was made for the harvesting of timber, mining, and other activities essential to the continued growth of the nation, albeit with a greater focus now on regulating the extent of these activities. Evidence within government of this gradual movement away from earlier preservationist ideals and towards the scientific management of resources can be seen in the passing of the Transfer Act of 1905, which squarely places the management of timber resources in the hands of Gifford Pinchot within the Department of Agriculture.²⁹

This does not mean, however, that tension did not exist between the need to utilize nature and the desires of many to protect the American landscape. On the contrary, the Forest Reserve Act of 1891, in particular, reflects the desire to balance the real utilitarian needs of the country to utilize its resources, while recognizing that forests were essential to the health of the land as a whole. Later, with the passing of the Antiquities Act, the government continues to establish a framework for resource

²⁷ U.S. Statutes at Large, Vol. 26, Chap. 561, pp. 1095-1103. “An act to repeal timber-culture laws, and for other purposes.” [H.R. 7254; Public Act No. 162.]

²⁸ Ibid, Sec. 8.

²⁹ U.S. Statutes at Large, Vol. 33, Part 1, Chap. 288, p. 628. “An Act for the transfer of forest reserves from the Department of the Interior to the Department of Agriculture.” [H.R. 8460, Public Resolution No. 34.]

protection that tries to balance the dual desires of progress and preservation. These various pieces of legislation clearly display the evolution of thinking within government about how best to protect a broad range of resources, from breeding grounds, watersheds, and scenic wilderness, to archaeological artifacts and other objects of importance to a wide variety of scientific interests.

When we look at the issues that lawmakers wrestled with in working out a solution to these challenges, a key stumbling block appears over and over again. In fact, we still deal with it today, and rightly so. This reoccurring obstacle seemed to many a hindrance, and getting around it was as controversial in the early 20th century as it is today. The obstacle, of course, is the question of “How much power can a democracy safely entrust to its chief executive?” Will the “greatest good” always be clear or agreed upon? Who gets to determine by what means that good will be pursued? Questions of “public interest” sometimes place the government and its citizens in positions of seemingly opposing interests, and often Congress is left with the duty of deciding if the “greater good” is the appropriate unit of measurement. Considering the utilitarian bent of the conservation movement under Roosevelt’s administration, it is not surprising, then, that congressmen and regular citizens often disagreed on the answers to such questions.

A close examination of conservation legislation further reveals that these same issues continue to be relevant to both the Forest Reserve Act and to the discussion surrounding the Antiquities Act. Lawmakers were legitimately concerned over the enormous power granted to the President under the Forest Reserve Act to restrict the

use of public lands, and the effect that such restrictions might impose upon ordinary citizens who wished to build a life for their families. In the case of the Forest Reserve Act, the only condition governing the size of land withdrawals by the President was that the lands in question be “wholly or in part covered with timber or undergrowth, whether of commercial value or not,” and understandably, this concerned members of Congress who questioned the wisdom of granting such broad authority to any government officer, let alone the chief executive.³⁰ On the other hand, the language of the Antiquities Act restricts the size of national monuments declared by the President to “the smallest area compatible with the proper care and management of the objects to be protected,” which also places a great deal of power in president’s hands to interpret what is means by such a phrase.³¹

During one of the final debates over the Forest Reserve Act, representative Thomas McRae (D) of Arkansas argued that the portion of the act granting the President authority to declare forest reserves, section 24, “is an extraordinary and dangerous power to grant over the public domain.”³² In explaining his objection to section 24 of the bill, he states that:

³⁰ H.R. 7254; Public Act No. 162, Sec. 24.

³¹ 16 U.S.C. §431, “The American Antiquities Act of 1906.”

³² “Forest Reserve Act: Debates and Proceedings,” in *Congressional Record: Containing the Proceedings and Debates of the Fifty-First Congress, Second Session*, Vol. XXII. (Washington, 1889-1891), p. 3614.

The people of the country who are without homes and otherwise qualify have a right to the public lands. If the lands are fit for agricultural purposes they should never be withdrawn from such settlement.³³

Mr. McRae's objection is characteristic of the history of land use legislation in the U.S. in connection with the conservation and preservation of nature, where states' and individual rights often clash, or must be balanced, with seemingly conflicting priorities of those in the federal government.

As the following exchange evidences, there are clearly conflicting opinions about the greatest good at stake here as well. In response to Mr. McRae's concerns, representative Lewis Payson (R) of Illinois, argued that while:

the right of a settler to make a home upon the public domain should be carefully cherished by the Government [. . .] there are sections of this country now covered in timber which is being rapidly diminished.³⁴

Moreover, he states that:

In the extreme Northwest the water supply is in danger of being largely diminished if not absolutely destroyed by the destruction of timber on the great watersheds; and the right of a private citizen to make a home upon the public domain ought as a matter of policy to be subordinated to the larger and broader principle of conserving the general good by preserving the watersheds of the Union [. . .].³⁵

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

This awareness of the importance of forests as vital components in protecting watersheds, conserving water, and preventing topsoil erosion and soil infertility, as reflected in Payson's remarks, had indeed existed for some time through the observable results of clear-cutting and other unsustainable and damaging practices in other areas of the world, such as Spain, Palestine, China, and North Africa.³⁶ Theodore Roosevelt, as a student of history and science, was himself fully cognizant of the environmental impact that resulted from the inconsiderate use and destruction of natural resources. In an article titled "How I Became a Progressive," he writes, "I have always been impressed with Liebig's statement that it was the decrease of soil fertility, and not either peace or war, which was fundamental in bringing about the decadence of nations."³⁷ By way of clarification, he states that, "While unquestionably nations have been destroyed by other causes, I have become convinced that it was the destruction of the soil itself which was perhaps the most fatal of all causes."³⁸ This particular passage grants valuable insight necessary to understanding Roosevelt's use of the Antiquities Act, as we shall see. For now, it serves merely to indicate another example of one perspective held by many in Roosevelt's time — that the natural heritage of the country and the preservation of resources occupy the highest level of importance to the country's future.

Unfortunately, by the time government reacted to threatened forests with creation of forest reserves and the development of the forestry profession, the

³⁶ Theodore Roosevelt, "How I Became a Progressive," *Outlook* 102 (1912), p. 295.

³⁷ *Ibid.*

³⁸ *Ibid.*

utilization of timber resources had reached such wasteful proportions that even young sequoias were heavily lumbered, while sheepherders burned underbrush and logs to improve pasturage. Meanwhile, the oldest trees in the world, the mature giant sequoias, were being wantonly burned and discarded because of their less desirable, brittle wood.³⁹ Thankfully the government response was proportionate to the threat, and by 1905, when the U.S. Division of Forestry was renamed the U.S. Forest Service and transferred from the Department of the Interior's General Land Office to the Department of Agriculture, 63 million acres of forest reserves had already been declared.⁴⁰ The realization that the nation's natural resources were finite may have been an inevitable result of the closing of the Western frontier, and turn-of-the-century anxieties that the days of westward expansion were over instilled a sense of urgency among those who saw the need to plan for the country's future. In 1908, addressing his audience at the Conference for the Conservation of Natural Resources, President Roosevelt expressed this sentiment aptly. He writes that:

We have become great because of the lavish use of our resources. But the time has come to inquire seriously what will happen when our forests are gone...when the soils have still further impoverished and washed into the streams [. . .] It is time for us now as a Nation to exercise the same reasonable foresight...that would be shown by any prudent man in conserving and widely using the

³⁹ Fox, p. 60.

⁴⁰ Robert M. Utley and Barry Mackintosh, *The Department of Everything Else: Highlights of Interior History* (Washington, 1988). [Online: http://www.nps.gov/parkhistory/online_books/utley-mackintosh/interior6.htm, November 8, 2014.]

property which contains the assurance of well-being for himself and his children.⁴¹

By 1909, when Roosevelt left office, he had more than doubled the nation's forest reserves to over 150 million acres.⁴² When the Antiquities Act is passed in 1906, it becomes another tool at Roosevelt's disposal to address his concerns over the abuse of the country's resources. Yet, in order to understand the Antiquities Act fully, we must first address its origins. Only then can we turn to the discussion of its use and legacy.

⁴¹ Theodore Roosevelt, Address at the Opening of the Conference on The Conservation of Natural Resources, at the White House, May 13, 1908. [Online: <http://www.theodore-roosevelt.com/images/trenvpics/conservationconferencespeech1908.txt>, May 14, 2015]

⁴² The following chart was used in calculating the approximate acreage of forest reserves established during Theodore Roosevelt's presidency (1901-1909). [Online: <http://www.foresthistory.org/ASPNET/places/National%20Forests%20of%20the%20U.S.pdf>, May 14, 2015]

Chapter Three: The Preservation of American Antiquities

The Antiquities Act would eventually become one of the greatest combined tools for nature conservation and resource preservation in U.S. history. When looking at its origins, however, this is hardly obvious. The true power of the Antiquities Act lies in its great versatility —conceived humbly enough as a tool for protecting American archaeological sites and prehistoric artifacts — while coming into being at precisely the right moment to become a tool of Roosevelt’s progressive approach to government and enthusiastic use of executive power. It will be worthwhile, then, to examine the modest origins of the Antiquities Act before moving on to consider its legacy.

In the late 1870’s, while early surveys of the nation’s forests were underway, the discovery of prehistoric ruins in several Western states drew the interest of academics interested in the opportunity to tell the story of the nation’s prehistory. A brand new area of study was suddenly available to researchers who now had the chance to be the first to tell the story of prehistoric America. During the late 19th century individuals like Lewis Henry Morgan, Frederick W. Putnam, and Charles Eliot Norton would help to grow this budding field of American archeology and influence the emergence of anthropology as a recognized academic discipline. In 1879, Congress would also create the Bureau of Ethnography, appointing Major John Wesley Powell as the bureau’s first director, an action that further increased attention on the study of ancient American civilizations.⁴³ By the 1890s, then, the field of anthropology was rapidly expanding, and schools like

⁴³ Rothman, p. 11.

Harvard, Columbia, and Clark were among the first universities to seriously commit to this area of study. Clark University, in 1892, historically issued the country's first Ph.D. in anthropology and, in 1899, Franz Boaz created America's first full-fledged anthropology program at Columbia University.⁴⁴

Just as they were coming into their own, however, the disciplines of anthropology and archeology faced a serious threat — and it was precisely this threat that prompted scholars to push for the protection of American antiquities. Both museums and universities were interested in preserving the ruins of newly discovered ancient civilizations, but there was little consensus on how to do so. Museums for their part, wanted to add to their collections, while the universities desired to preserve prehistoric sites for active academic study. Simultaneously, both had to contend with pot-hunters, amateur archeologists and explorers who sought ancient artifacts for gross profit or for personal collections. Checking the depredations of this latter group represented the most immediate motivation for legislation. The details of who would oversee access to the protected sites, though vital to building consensus, was secondary to the more urgent need to immediately halt all removal and destruction of artifacts and ruins.

The year 1879 marks the very beginning of the fight to protect American antiquities — an effort that would take more than two decades to bear fruit. This slow pace was largely due to the fact that relatively little knowledge concerning American archaeology had been accumulated, in particular among those in government. There

⁴⁴ Ibid, p. 14.

was, moreover, as yet little sense of urgency in government to address what must have seemed a matter of middling importance. Yet significantly, 1879 also saw the establishment of the Bureau of American Ethnology in the Smithsonian Institute. In that same year, Frederick W. Putnam, Curator of the Peabody Museum of American Archaeology and Ethnology at Harvard, co-edited an important study under the lengthy title, *Reports upon Archaeological and Ethnological Collections from Vicinity of Santa Barbara, California, and from Ruined Pueblos of Arizona and New Mexico, and Certain Interior Tribes*, while revered American anthropologist, Lewis Henry Morgan, was elected as the president of the American Association for the Advancement of Science (AAAS). Under Morgan's leadership, the AAAS would establish a committee to promote government action for the protection of American antiquities.⁴⁵

Several more important organizations came into being in the same year as well, including the Archaeological Institute of America (AIA), led by Harvard history professor, Charles Eliot Norton – and the Anthropological Society of Washington (ASW) — whose members contributed to the creation of the American Anthropological Association in 1902.⁴⁶ In the year following, a member of the AIA, Adolf F. Bandelier, conducted an important investigation of the pueblo ruins of Pecos in New Mexico. His report on his excursion described Pecos as “probably the largest aboriginal structure of stone within the United States, so far described,” and proved the structure to be the “the famous Pueblo, called by the Spaniards ‘Cicuye,’ first visited in the autumn of 1541 by Alvarado,

⁴⁵ Ronald F. Lee, "The Origins of the Antiquities Act," in *The Antiquities Act: A Century of American Archaeology, Historic Preservation, and Nature Conservation*, ed. David Harmon, Francis P. McManamon, and Dwight T. Pitcaithley (Tucson, 2006), pp. 15-16.

⁴⁶ *Ibid*, p. 16.

the lieutenant of Coronado.”⁴⁷ Apart from verifying the historical importance of the site, the report also describes the appalling conditions Bandelier found there:

In general the vandalism committed in this venerable relic of antiquity defies all description. It is only equaled by the foolishness of such as, having no other means to secure immortality, have cut out the ornaments from the sculptured beams in order to obtain a surface suitable to carve their euphonious names [. . .] Not content with this, treasure-hunters, inconsiderate amateurs, have recklessly and ruthlessly disturbed the abodes of the dead.⁴⁸

As a result of Bandelier’s report, members of the New England Historic Genealogical Society prepared a petition to go before Congress, which was presented by Senator George Frisbie Hoar of Massachusetts in 1882.⁴⁹

According to congressional record, no one denied that the damage to the ruins was problematic; however, the matter of protecting them was quickly dismissed as physically impossible considering the sheer number of similar ruins in that area of the country.⁵⁰ The petition quickly died, likely due to the fact that as Senator Hoar had presented it, the document offered very few specific logistical recommendations, other than requesting that the lands upon which the ruins sat “be withheld from public sale

⁴⁷ Charles E. Norton, et al., *Sixth Annual Report of the Archaeological Institute of America, 1884-1885* (Cambridge, MA, 1885), p. 34.

⁴⁸ Adolph F. Bandelier, "A Visit to the Aboriginal Ruins in the Valley of the Pecos," in *Papers of the Archæological Institute of America: American series*, 2nd edition (Boston, 1883), p. 43; as quoted in Lee (2006), p. 17.

⁴⁹ Lee (2006), p. 18.

⁵⁰ *Congressional Record: Containing the Proceedings and Debates of the Forty-Seventh Congress, First Session*, Vol. XIII (Washington, 1882), p. 3777.

and their antiquities and ruins be preserved.”⁵¹ Absent as well was any mention of how many ruins should be protected or how much land could be reasonably set aside. Although the issue had been brought to the government’s attention, no action was taken, and it would be another seven years before the issue was raised again.⁵²

Exploration continued throughout the intervening years until 1889, when fourteen prominent citizens of the Boston area, including Mary Hemenway, Oliver Wendell Holmes, and John Greenleaf Whittier, addressed a petition to Congress to protect the well-known Casa Grande ruins from ongoing deterioration and destruction.⁵³ Perhaps learning from his previous unsuccessful attempt, this time Senator Hoar presented a petition requesting the protection of Casa Grande alone, while noting the support of Mary Hemenway, “has already been at large expense for the preservation of this ruin.”⁵⁴ Moreover, Senator Hoar stressed that the petitioners “ask no outlay of money from the government for the purpose; that will be assumed, and they are willing that all the scientific discovery there shall go to the benefit of the Smithsonian or other Government institution.”⁵⁵ The rhetorical strategy apparently worked, and on March 2, 1889, Congress passed the Sundry Civil Appropriations Act, which included the following:

Repair of the ruin of Casa Grande, Arizona: To enable the Secretary of the Interior to repair and protect the ruin of Casa Grande, situated in Pinal County,

⁵¹ Ibid.

⁵² Lee (2006), p. 18.

⁵³ Ibid, p. 19.

⁵⁴ *Congressional Record: Containing the Proceedings and Debates of the Fiftieth Congress, Second Session*, Vol. XX (Washington, 1889), p. 1454.

⁵⁵ Ibid.

near Florence, Arizona, two thousand dollars; and the President is authorized to reserve from settlement and sale the land on which said ruin is situated and so much of the public land adjacent thereto as in his judgment may be necessary for the protection of said ruin and of the ancient city of which it is a part.⁵⁶

Throughout the late 1880's and 1890s public interest in archaeology continued to increase. Articles appeared in newspapers advertising the discovery of "Buried American Cities," and "Lost Civilizations," providing readers across the country with elaborate descriptions of excavated ruins and the peoples who had once lived there.⁵⁷ As alluded to above, the growing prominence of American archaeology also meant an increased demand for artifacts and curios, particularly from universities and museums, placing successful amateurs like Richard Wetherill at increasing odds with professional archaeology community.⁵⁸ Many professionals considered amateurs excavators like Wetherill to be pot-hunters and "no better than criminals," and while they were concerned over the fate of plundered artifacts, they were also anxious to prevent these amateurs from threatening the viability of their profession.⁵⁹ When Wetherill developed a close partnership with the American Museum of Natural History, and, perhaps, even worse, began selling artifacts that would later surface in Sweden,

⁵⁶ 26 Stat. 961; as quoted in A. Berle Clemensen, *Administrative History Casa Grande Ruins National Monument, Arizona: A Centennial History of the First Prehistoric Reserve 1892 – 1992*, p. 21-22 [Online edition, <http://www.nps.gov/cagr/learn/management/upload/CAGR%20-%20Centennial%20History%20-%20MAR%2092.pdf>.]

⁵⁷ "Buried American Cities. The Lost Civilization of the Salt River Valley," *New York Herald* 8 Jan. 1888, p. 17.

⁵⁸ Rothman, p. 18.

⁵⁹ *Ibid*, p. 19.

American scientists were outraged.⁶⁰ The ruins which their nascent profession relied upon for its own self-realization were being dug up and shipped away by amateurs, and the worst part was that Wetherill was not breaking any laws. No permits were required for excavation on public lands and anyone with the requisite knowledge and a thirst for adventure could strike out into the arid expanse of the American Southwest and dig up whatever they pleased.

There had to be an equitable solution to protect prehistoric dwellings and artifacts from being carted away that would also allow institutions fair access to study the story of humankind on the American continent. After all, like the northern forests and Yellowstone Valley, these sites were and are a part of the nation's heritage, which should belong to the people, not coveted jealously by any one institution. The reality, however, was not so straightforward, and professionals did not all behave more responsibly than Wetherill — in fact, Putnam of Harvard served as the scientific advisor on one of Wetherill's most destructive expeditions. Between 1896-1899, a team designated by Professor Putnam, consisting of Wetherill and one of Putnam's students, George Pepper, excavated approximately 198 rooms and many artifacts from the Pueblo Bonito site in the Chaco Canyon ruins.⁶¹ Together they dismantled and shipped off complete rooms to the American Museum of Natural History, causing concern among amateurs and professionals alike that irreplaceable artifacts were being removed without proper scientific study.⁶² Motivated by this threat, and by the challenge that

⁶⁰ Ibid.

⁶¹ Lee (2006), p. 26.

⁶² Ibid.

Wetherill's success posed to the various professions interested in the study of prehistoric America, in 1900 the American Association for the Advancement of Science and the Archaeological Institute of America enlisted the help of Rep. Jonathan Dolliver (R) of Iowa to present proposal H.R. 8066 before Congress.⁶³

The proposed legislation would grant expansive powers to the president, but while it accurately represented the scientific community's belief in the importance of preserving American antiquities, it also reflected the ignorance of Eastern academics regarding the politics of Western land rights. The proposal simply sought the designation of the same powers that allowed the president to create forest reserves under the Forest Reserve Act of 1891, except that here they would be applied to prehistoric ruins. Without any mention of size restrictions, and the inclusion of language for the protection of scenic areas in addition to historic or prehistoric sites, the bill was quickly rejected and Rep. John F. Shafroth of Colorado introduced a counter bill the very next day. Shafroth's bill, H.R. 8195, focused more narrowly on punitive measures for anyone disturbing ruins, but it also made a statement — broad public land use restrictions were unpopular in the West — and if the goal of the current legislation was to preserve prehistoric ruins, then efforts to do so should be targeted narrowly and avoid granting broad executive authority.⁶⁴

In March of 1900, Shafroth drafted a third bill, H.R. 9245, which would allow the secretary of the interior to create reservations limited to 320 acres — the hope being to reconcile the need to protect prehistoric sites with the legitimate fears of Westerners

⁶³ Ibid, p. 21.

⁶⁴ Rothman, p. 21.

over losing control of large portions of their land.⁶⁵ Unfortunately, none of the three bills met with approval in Congress, a fact which highlights the conflicting perspectives that existed between the House Committee on Public Lands and the Department of the Interior. House Committee members favored protecting ruins on terms that would specifically limit executive power, while the Department of the Interior seemed determined to press legislation that would grant the president broad authority to create reserves based on “their scenic beauty, natural wonders or curiosities, ancient ruins or relics, or other objects of scientific or historic interest.”⁶⁶ The comingling of purposes between ongoing government nature conservation efforts and the protection of antiquities would remain a challenging but ultimately important point of intersection, if only Congress could somehow reach consensus.

A revised version of this more general preservation bill was introduced later that year in an attempt to reconcile the views of the House Committee on Public Lands with those of the Department of the Interior. The new bill, H.R. 10451, included both the size limitation of 320 acres found in H.R. 9245, and a section providing that discretion be granted to the Secretary of the Interior to impose “penalty for any injury, destruction, or carrying away of any aboriginal antiquity, monument, or ruin.”⁶⁷ Unfortunately, once again the Department of the Interior and the Smithsonian Institution were unable to come to terms over the question of who should have jurisdiction over the management

⁶⁵ Ibid.

⁶⁶ Lee (2006), p. 30.

⁶⁷ Preservation of Prehistoric Monuments, Etc., 56th Congress, House of Representatives Report No. 1104, To accompany H.R. 10451.

of the reserves and all progress on legislation ground to a halt.⁶⁸ In September of the following year, 1901, after the assassination of William McKinley, Theodore Roosevelt would become the 26th President of the United States. Yet despite Roosevelt's commitment to the conservation of the nation's resources, little progress would occur regarding the protection of American antiquities until a young archaeologist named Edgar Lee Hewitt entered the conversation.

⁶⁸ Undated, unsigned document entitled "A Bill for the Preservation of Prehistoric Monuments, Ruins, and Objects, and to Prevent their Counterfeiting, and for Other Purposes"; as quoted and referenced in Lee (2006), p. 30.

Chapter Four: Edgar Lee Hewett

Among the many people deserving of recognition for bringing the Antiquities Act into existence, perhaps none were more vital to its passing than Edgar Lee Hewett. Born in Warren County, Illinois, in 1865, Hewett spent most of his youth on a farm — first in Illinois, and again in Hopkins, Missouri, where his family later moved in 1880.⁶⁹ Having received little in the way of schooling by the age of 15, he resolved to pursue an education, and though his family could provide little monetary support, they supported his decision.⁷⁰ He managed to pay his own way through school and eventually graduated from Tarkio College in Missouri.⁷¹ Hewett studied a variety of subjects, including business and law, but his passions seemingly lay elsewhere. Upon graduating from Tarkio, he spent two years there as a professor of literature and history and went on to become Superintendent of Schools between 1889 and 1892, first in Fairfax, Missouri, and then in Florence, Colorado.⁷² Two years later, in 1894, he accepted the position of superintendent of the training department at the Colorado Normal School, and it is during his four years there (1894-1898) that his interests in archaeology first began to surface.⁷³

⁶⁹ Donald D. Brand and Fred E. Harvey, eds., *So Live the Works of Men: Seventieth Anniversary Volume Honoring Edgar Lee Hewett* (Albuquerque, 1939), p. 13.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, p. 14.

⁷² *Ibid.*

⁷³ Paul A. F. Walter, "Edgar Lee Hewett, Americanist, 1865-1946," *American Anthropologist* 49.2 (1947), p. 260.

During Hewett's time in Colorado at the Normal School, he and his wife, Cora, spent their summers in Santa Fe, New Mexico, where she would join him on amateur expeditions to nearby Pecos and the Pajarito Plateau; it is here that Hewett would conduct his first archeological field work.⁷⁴ It is clear that Hewett was an accomplished administrator and was recognized as such by his peers, because in 1898 he was called to be the first president of the Normal University in Las Vegas, New Mexico. It is also clear that his amateur forays into archaeology had awakened an interest that would fuel his desire to protect the ruins of the Southwest for scientific research. To Hewett and his contemporaries in the nascent disciplines of American archaeology and anthropology, the ruins at Pajarito Plateau and elsewhere represented “a salve for the cultural woes of fin de siècle America and a crucible in which to establish their discipline.”⁷⁵ During his five years as president of the Normal University he organized the first college courses in American archaeology and led students on field expeditions to the Pajarito Plateau.⁷⁶

Recognizing the unique scientific resources of the Pajarito, in 1899 Hewett contacted the General Land Office (GLO) and requested that they review the area and its suitability for national park status.⁷⁷ There were several problems with this, however, and, in particular, with using national park designation as a tool for antiquities preservation. A fundamental difficulty was that any proposition for a park in the Southwest was likely to meet resistance from locals. We have seen this in earlier

⁷⁴ Ibid.

⁷⁵ Rothman (1992), p. 56.

⁷⁶ Walter, p. 260.

⁷⁷ Raymond H. Thompson, "Edgar Lee Hewett and the Political Process," *Journal of the Southwest* 42.2 (2000), p. 281.

attempts at legislation in the disapproval of Western representatives when broad presidential powers were proposed. The national park approach was also ill suited to the protection of ancient artifacts for a number of reasons.

Firstly, all of the existing national parks were large, remote areas — think Yellowstone, Yosemite, and at the time, the recently created Mount Rainier National Park. Their intent was to preserve pristine areas with awe-inspiring features and views, not ancient artifacts. Unlike these places, the Pajarito Plateau was barely 25 miles from Santa Fe and boasted no snow-capped peaks or grand vistas. It was an area where humans had settled for hundreds of years, evidenced by the ruins themselves — and this settlement was unlikely to cease — while the plateau itself had been an important resource to locals for some time.⁷⁸ The area could hardly be claimed to equal the grandeur of existing parks, and this, in part, meant that the Pajarito Plateau was extremely unlikely to receive national park status.⁷⁹ Moreover, there were countless other ruins all over the Southwest, separated by varying distances, and a single park could never protect them all.⁸⁰ A permanent solution was needed that was flexible enough to protect sites of varying size, while creating a new category that did not carry with it the difficulties associated with creating a national park.

Hewett soon discovered how unpopular his proposal truly was among local community representatives. While he had succeeded in having Congressman John Fletcher Lacey introduce his bill in January of 1901, the bill was rejected. Two years

⁷⁸ Hal Rothman, *On Rims & Ridge: The Los Alamos Area since 1880* (Lincoln, 1992), p. 56.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

later, when his appointment at the Normal University came up for renewal, he learned the hard lesson that not everyone in the state of New Mexico placed the same value as he on archeological research. Rothman points out that “Western sentiment against the exercise of federal power was strong, and so was the distaste for easterners who offered book knowledge as a substitute for years of actual experience in the West.”⁸¹ It seems that Governor Miguel Antonio Otero held influence with the Normal School Board of Regents, and he was not supportive of a large park that would prevent private use of the land. Moreover, Otero did not approve of Hewett’s approach to education, viewing his summer archaeology trips as a waste of time.⁸² The result was that Hewett’s appointment was not renewed and he was essentially forced out of a job.

Finding himself at a crossroads of sorts, Hewett decided in 1903 to pursue archaeology professionally and began studying for his doctorate at the University of Geneva in Switzerland. Through his experience with Pajarito, Hewett learned a great deal about the political process and developed good working relationships with those who supported antiquities legislation. This is evidenced by the fact that, upon his return from his studies in 1904, it was Hewett that General Land Office Commissioner William Afton Richards turned to with a request for an updated report on the condition of the Southwestern ruins.⁸³

In Hewett’s report, entitled *Memorandum Concerning the Historic and Prehistoric Ruins of Arizona, New Mexico, Colorado and Utah, and Their Preservation*, he

⁸¹ Rothman (1989), p. 16.

⁸² Thompson, p. 37.

⁸³ Ibid, p. 39.

notes that knowledge of the ruins on these lands has been accumulating for many years and that they are known “to be very numerous and of great value.”⁸⁴ He admits that while some of the ruins are located on lands that would be suitable in their own right for national park status, other sites would merely need to be temporarily withdrawn until they could be thoroughly studied. He notes that the removal of artifacts without proper data and record collection ruins their value to science and that “No scientific man is true to the highest ideals of science who does not protest against this destructive work.”⁸⁵ The rest of the report contains a complete overview of all regions known to contain ruins, together with maps and descriptions of each area and a listing of the seven most important and vulnerable sites. The purpose of the report was to press the urgency of the issue; yet while Hewett included a list of recommendations, there would be no renewed attempts at legislation until 1905.

After witnessing the failure of a national park approach first hand, and aware that antiquities-only legislation had failed in the past as well, Hewett devised to create a bill that would appeal to all parties. First, he inserted language making it a crime to disturb ruins or remove artifacts from lands owned or controlled by the Government of the United States, granting management authority not to the Smithsonian (a proposition that had deeply angered academic constituents), but to the government agency responsible for the particular land where the ruin was located. The exact wording made it a crime to:

⁸⁴ Edgar L. Hewett, "Government Supervision of Historic and Prehistoric Ruins," *Science* 20:517 (1904), p. 4.

⁸⁵ *Ibid.*

appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated [. . .].⁸⁶

Hewett's strategic phrasing here seems aimed at removing the likelihood of jurisdictional objections to the bill. To appease those opposed to the national park approach, he also removed any wording referring to national parks, and instead substituted the term “national monument,” the creation of which was to be “confined to the smallest area compatible with the proper care and management of the objects to be protected.”⁸⁷

The extent to which this last clause fully satisfied Western representatives is somewhat unclear, since the question was raised over whether this clause would be abused or interpreted narrowly. In the final discussion in Congress before the vote was cast approving Hewett’s version of the Antiquities Act, Rep. Stephens from Texas asked Congressman Lacey, “how much land will be taken off the market in the Western States by the passage of the bill?” Lacey simply replied, “Not very much. The bill provides that it shall be the smallest area necessary for the care and maintenance of the objects to be protected.”⁸⁸ When Mr. Stephens further inquired if the Antiquities Act would be used in similar fashion to the Forest Reserve Act of 1891, which resulted in the setting aside

⁸⁶ See above, p. 1.

⁸⁷ Ibid.

⁸⁸ *Congressional Record: Containing the Proceedings and Debates of the Fifty-Ninth Congress, First Session*, Vol. XL (Washington, 1906), p. 7888.

of well over 50 million acres of land, Senator Lacey reassured him, "Certainly not. The object is entirely different. It is to preserve these old objects of special interest and the Indian remains in the pueblos in the Southwest, whilst the other reserves the forests and the water courses."⁸⁹ Congressmen Lacey's explanation must have been satisfactory, because that same day the House approved Hewett's draft, and three days later on June 8, 1906, President Roosevelt signed the Antiquities Act into law. Whether or not Lacey realized that President Roosevelt would see things differently is open to interpretation; however, considering Lacey's long career in government and his record as a conservationist, it is highly unlikely that he did not perceive the ample flexibility of Hewett's wording.

⁸⁹ Ibid.

Chapter Five: The Conservationist President

Where Edgar Lee Hewett was essential to the creation of the Antiquities Act, it is the way in which the act has been interpreted and used since its creation that makes it a document of such importance to the broader conservation movement in the 20th century. Indeed, it is worth questioning whether the Antiquities Act would ever have evolved to become such a broadly utilized tool, if anyone other than Theodore Roosevelt had been in office in 1906. It is also worth considering how Roosevelt became such a prolific conservationist, and what might have motivated him to interpret the use of the Antiquities Act as broadly as possible. The precedent for broadly interpreting the Antiquities Act begins with him, and just like his use of executive powers in creating forest reserves; the Act has been criticized and challenged throughout its existence.⁹⁰

It is clear that Theodore Roosevelt's affinity towards nature was present from a young age. Some of his earliest memories as a boy involve summers spent in the country with his siblings, and he writes of the "uninterrupted and enthralling pleasures" that were available to young children there. It was during these summers in the country that he learned the joy of being outdoors, of running around barefoot, of "picking

⁹⁰ See, e.g., *Cameron et al. v. United States*, 252 U.S. 450 (1920), [Online: <https://www.law.cornell.edu/supremecourt/text/252/450>, February 8, 2015]; also *Mountain States Legal Found. v. Bush*, 306 F.3d 1132 (2002), [Online: <http://www.justice.gov/osg/brief/mt-states-legal-found-v-bush-opposition>, March 11, 2015]; also *Alaska v. Carter*, 462 F. Supp. 155 (1978), [Online: <http://law.justia.com/cases/federal/district-courts/FSupp/462/1155/2142606/>, March 11, 2015]; also *National Monument Fairness Act*, H.R. 2114 (2002), [Online: <https://www.congress.gov/bill/107th-congress/house-bill/2114/text>, March 11, 2015].

apples, hunting frogs successfully and woodchucks unsuccessfully.”⁹¹ There he had not only the company of his siblings, but of many family pets, including “cats, dogs, rabbits, a coon, and a sorrel Shetland pony named General Grant.”⁹² He was not well as a young boy, suffering from severe asthma attacks, and received the common prescription of the day for those with repertory issues — more fresh air. This often meant leaving the city where he lived for places where breathing was less difficult, and for this reason, among other more pleasant ones, he much preferred the country.⁹³

As a young boy he developed a keen interest in animals, and his parents encouraged this by supplying him with books, which he eagerly absorbed. The stories in these books merged tales of adventure with natural histories of varying quality, some more scientific than others, but what captured his attention most of all was the excitement and romance of exploration and the descriptions of animals that he read about in the pages of authors like David Livingstone and Mayne Reid.⁹⁴ Roosevelt credits one early event in particular with connecting the adventures in his mind with a more serious interest in the study of nature.

While walking up Broadway near his parent’s home in New York, he happened to pass a local market where he found the body of dead seal put out on display. A certain fascination or curiosity for such things is not uncommon among children, but this seemed different. The seal sparked his imagination and he later recalls being filled

⁹¹ Theodore Roosevelt, *An Autobiography of Theodore Roosevelt*, ed. Stephen V. Brennan (New York, 2011), p. 8.

⁹² *Ibid.*

⁹³ *Ibid.*, p. 14.

⁹⁴ P. R. Cutright, *Theodore Roosevelt: the Making of a Conservationist* (Urbana, 1985), p. 5.

“with every possible feeling of romance and adventure.”⁹⁵ For days he returned to the shop, taking the animal’s measurements, recording them, and questioning the shopkeeper about the animal’s origins. With this information he set about writing, and created his own natural history for the seal. Clearly young Theodore was experiencing more than just normal childhood curiosity, as he thought about how he might obtain and preserve the body of the animal. Failing in this, he managed to end up with the seal’s skull, and with it he founded the Roosevelt Museum of Natural History in his bedroom with his two cousins.⁹⁶

Another challenge in Theodore’s young life, apart from debilitating bouts of asthma, was that he was terribly near-sighted, and for some time, completely unaware of the fact. This affected him in a number of relevant ways. In his autobiography he writes that, “while much of my clumsiness and awkwardness was likely due to general characteristics, a good deal of it was due to the fact that I could not see and yet was wholly ignorant that I was not seeing.”⁹⁷ His poor vision also meant that he could only study specimens up close or discover those that he “ran against or stumbled over.”⁹⁸ Upon receiving his first gun from his father, a moment he surely looked forward to with jubilation, he was instead met with frustration. He soon discovered that he could not see the things his friends were shooting at, and could not even see the letters on a billboard that they easily read aloud.⁹⁹ Finally, after speaking with his father he was

⁹⁵ Roosevelt (2011), p. 15.

⁹⁶ Ibid, p. 16.

⁹⁷ Ibid, pp. 20-21.

⁹⁸ Ibid. p. 20.

⁹⁹ Ibid.

given glasses, and the world he believed he knew was brought into clear focus for the first time. Writing about the experience, he recalls, “I had no idea how beautiful the world was until I got those spectacles.”¹⁰⁰

Not only could he now truly observe the world for the first time, new opportunities to further his interests in the natural world opened themselves to him. He was now able to go hunting with his father, and when he was thirteen, received permission to study taxidermy in the workshop of John G. Bell.¹⁰¹ It is here in Bell’s shop that Theodore found further encouragement for his interest in collecting specimens, and in the following year his parents took him on his second tour of Europe. Of his first trip at the age of ten, he writes, “I cordially hated it.”¹⁰² But, at fourteen, he was now mature enough to benefit from the experience and recalls, “My first real collecting as a student of natural history was done in Egypt during this journey.”¹⁰³ The trip seems to have inflamed in him a burning question, one that every child asks: “What will I do with my life?” Upon returning to America a year later, he had decided, and went about preparing himself to attend Harvard with the hopes of becoming a naturalist.

After arriving at Harvard he would be sadly disappointed to discover that outdoor naturalists were considered to be unscientific, and that if he wanted to pursue a career in natural science, much of his time would be spent bent over a microscope.¹⁰⁴ During his time at Harvard he did indeed become a member of the Nuttall Ornithological

¹⁰⁰ Ibid.

¹⁰¹ Cutright, p. 31.

¹⁰² Roosevelt (2011), p. 14.

¹⁰³ Ibid, p. 21.

¹⁰⁴ Ibid, p. 26.

Club, studied biology, and eventually became vice-president of the Harvard Natural History Society.¹⁰⁵ Yet, faced with the prospect of a career endlessly vivisectioning specimens in the lab, and despite his continued love of animals and nature, Roosevelt decided to abandon his dream of becoming a natural scientist.

This experience and others during his youth, including his travels to Egypt, provide partial evidence to explain why Roosevelt later became so invested in the conservation of the nation's resources. At the same time, we also find that the experiences of his adult life were equally crucial in marrying his love of nature with the ideals of an extremely grounded, moral, and energetic public servant. In particular, Roosevelt was strongly influenced by his father, whom he credits for instilling in him many of the values that he would later draw upon as President of the United States. As biographer Paul Cutright notes, Roosevelt's father, Theodore, Sr., was a successful glass merchant by trade, but engaged himself outside of his profession as an active philanthropist, founding both the New York Children's Aid Society and the Society for the Prevention of Cruelty to Animals. Perhaps more significantly still, Theodore, Sr. was closely involved in founding the American Museum of Natural History and the Metropolitan Museum of Art.¹⁰⁶ He was also a loving father and husband who adored his children and was equally adored by them. Theodore describes his father as "the best man I ever knew. He combined strength and courage with gentleness, tenderness, and great unselfishness."¹⁰⁷ A strong belief in the importance of such qualities appears

¹⁰⁵ Cutright, p. 109.

¹⁰⁶ Ibid, p. 3.

¹⁰⁷ As quoted in Cutright, p. 8.

repeatedly in Roosevelt's writings and speeches, and they are likewise reflected in his approach to progressive political reform and towards life in general.

Significantly, in reflecting on his time at Harvard, Roosevelt observes that missing from all of the normal lessons and books that taught the importance of character and individual virtue was any mention of the need for collective action and collective responsibility.¹⁰⁸ As a result of both his experiences in life and politics, however, he came to believe fiercely in the importance of promoting a collective sense of fair play in government. As generally happens in such cases, he also learned valuable lessons about himself in the process. In 1882, at age 23, Roosevelt became the youngest State Representative in New York history — an experience that taught him a great deal about the difficulties of navigating the political process at a time when progressive ideals were not always popular among local interests. During his time in New York politics he quickly learned the value of strong character, as well, for his attempts at government reform and his position on an investigation committee put him at odds with newspapers and the powerful financiers and politicians that owned them.¹⁰⁹ Roosevelt and his allies dodged numerous traps laid by their political adversaries which would have ended their public careers, and he quickly came to understand that: “no man can lead a public career really worth leading [. . .] nor strike at great abuses, nor afford to make powerful and unscrupulous foes, if he is himself vulnerable in his private character.”¹¹⁰

¹⁰⁸ Roosevelt (2011), p. 27.

¹⁰⁹ Ibid, p. 80.

¹¹⁰ Ibid, p. 81.

Roosevelt's famous "speak softly, and carry a big stick" style of diplomacy refers, in general, to his foreign policy, yet we see similar principles here that define his approach to politics more generally. He indicates this more fully when he writes that his early experiences with corruption in New York politics led him to believe that an effective legislator "must walk warily and fearlessly, and while he should never brawl if he can avoid it, he must be ready to hit hard if the need arises."¹¹¹ Not only must an effective legislator be willing to hit hard, but "let him remember [. . .] that the unforgivable crime is soft hitting."¹¹² Roosevelt never seemed to worry about making enemies, yet he also understood the necessity of meeting people halfway when possible. In writing of the importance of give-and-take, he notes, "that in the principle activities of life no man can render the highest service unless he can act in combination with his fellows." Yet he also believed that worrying about career success was a certain way to cripple his ability to serve the public. He vowed to himself at that time to "proceed on the assumption that each office I held would be the last I ever should hold [. . .]."¹¹³ He writes that, "for me personally this was the only way in which I could either enjoy myself or render good service to the country, and I never afterwards deviated from this plan."¹¹⁴

During this early part of his career Roosevelt also established himself as a reformer by exposing railroad magnate Jay Gould for his corrupt dealings with a New

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid, p. 82.

¹¹⁴ Ibid.

York Supreme Court Justice.¹¹⁵ Then, in 1884, tragedy struck. On February 13, Theodore's mother died of typhoid fever, and his wife of four years, Alice, followed the very next day, dying while giving birth to their daughter.¹¹⁶ Theodore was obviously devastated, yet it seems that he never truly addressed or dealt with his grief, at least not openly — a fact perhaps indicated by the total absence of any reference to Alice in his autobiography.¹¹⁷ He seems to skip over the event completely and instead launches into a lively discussion of his ranching years in North Dakota.

After the death of his wife and mother, Roosevelt decided to leave New York and politics behind for a time, and returned to the North Dakota badlands, a solitary and tough country, which he had fallen in love with months before during a hunting trip with his friend Joe Ferris.¹¹⁸ The hard work and long days guiding cattle may have provided the solitude he needed to wrestle with his grief and the physical exhaustion at the end of the day promoted easy sleep, yet he wrote only of his enjoyment and how life on a cattle ranch “taught a man self-reliance, hardihood, and the value of instant decision.”¹¹⁹ That land so deeply impressed itself on him that he built two ranches there, The Elkhorn, the larger of the two, and the Maltese Cross, the former now encompassing a portion of Theodore Roosevelt National Park. It is clear that this period, too, was responsible for solidifying his attachment to “open country,” and certainly played its own special part in driving his actions as a conservationist president.

¹¹⁵ "New York State Representative: 1882-1884," [Online, Almanac of Theodore Roosevelt, <http://www.theodore-roosevelt.com/trpolitician.html>, 29 May, 2015].

¹¹⁶ Cutright, p. 149.

¹¹⁷ Ibid.

¹¹⁸ Roosevelt (2011), p. 89.

¹¹⁹ Ibid, p. 90.

In 1886 he was remarried to his childhood friend Edith Carow, and the following year, along with George Bird Grinnell, he founded the Boone & Crockett Club. Roosevelt was clearly one of those gentlemen hunters who so valued unspoiled nature in which they enjoyed their sport, even if the interest was largely on their continued ability to hunt. The organization was founded on the principles of ethical, sportsmanlike hunting, and the conservation of wildlife and their habitats, and, in general, reflected the notions of the day; nature was being conserved for sport and for use. A photograph exists of Roosevelt in a buckskin suit, which he had made for himself, an image in which some might criticize today for its irony.



Figure 3: Theodore Roosevelt, full-length portrait, seated, in deer skin hunting suit, holding rifle, 1885.

When he became President in 1901, however, Roosevelt found himself in a position to do much good in the name of conservation. The American landscape in his view was the birthright of all citizens born and unborn, and he worked to balance as well as possible the material needs of the nation with the understanding that what was enjoyed today could not be taken for granted.

Roosevelt's perspective on conservation was very much in line with his stance on reform in general, and particularly corporate reform, in that, while he believed that businesses should be treated fairly, he also saw that new laws were necessary to keep pace with the country's massive industrial expansion and changing needs. In other words, the laws and approaches to government that had worked for a small, fledgling America were no longer adequate to protect the future of a rapidly expanding nation.¹²⁰ He believed that corporations needed to be subject to government oversight, just as he believed that government agencies should shoulder the task of guarding and conserving the nation's resources. As he writes:

When, at the beginning of my term of service as President [. . .] I took up the cause of Conservation, I was already fairly well awake to the need of social and industrial justice; and from the outset we had in view, not only the preservation of natural resources, but the prevention of monopoly in natural resources, so that they should inhere in the people as a whole.¹²¹

Though Roosevelt strove to meet the practical, material needs of the nation, he also understood that the preservation of natural beauty went hand-in-hand with healthy

¹²⁰ Roosevelt (1906), p.115

¹²¹ Roosevelt (1912), p. 294.

growth. While trees and minerals indeed needed to be cut and mined, there were certain places that deserved protection, as much for their special beauty and value to science as for their crucial role in telling the story of America. Nature is the great stage on which human history is played out and the Antiquities Act, perhaps more than any other piece of legislation, exemplifies recognition of this for the first time in America. We find in the use Antiquities Act and in the unique character of national monuments, that the will of Progressives reformers to acknowledge and preserve this great but fragile tapestry, so improbably woven out of the new knowledge and emerging sensibilities of the time, endures yet today, finding its continued validation in its use by all but three presidents since Roosevelt.

As the first President to use the Antiquities Act, Roosevelt was uniquely positioned to establish its worth and to do so by drawing on strongly held convictions that began their growth early on, in the head and heart of a curious, near-sighted young boy. The strength of these convictions set Roosevelt apart from many politicians of his day because, while acknowledging the utilitarian value of the nation's resources, his anthropocentric beliefs were in constant tension with the youthful fascination and love of nature that never left him as an adult. Roosevelt believed emphatically in the intrinsic value of beauty, and by recognizing this beauty in the essential connections between the American people and their land, Roosevelt's conservation efforts helped to foster a national conscience that discerned both the practical utility and the sublime majesty of nature. After all, he writes, to a crowd of Stanford University students in 1903, "There is nothing more practical [. . .] than the preservation of beauty, than the

preservation of anything that appeals to the higher emotions in mankind.”¹²² Equipped with these remarkable sensibilities, how, then, did Roosevelt make use of the newest arrow in his legislative quiver — the American Antiquities Act?

Roosevelt’s first use of the Antiquities Act is well in line with the limited interpretation of the act likely intended by its creators. Devil’s Tower in Wyoming is a unique geological feature, recognizable to many today as the central plot element in the 1977 Stephen Spielberg science-fiction movie, *Close Encounters of the Third Kind*; however, prior to the colonization of the continent by Europeans, the site was a place of worship for the Lakota, Shoshone, Kiowa, and Cheyenne tribes.¹²³ The Lakota refer to it as Mato Tipila, “Bears Lodge,” and there is archaeological evidence that Native Americans have lived near the site for more than 10,000 years.¹²⁴ As such, it was a perfectly suited site for monument status, as it linked unique geology with vital evidence in the story of Native American civilizations. Roosevelt’s next several monument proclamations followed the same path, adhering to a conservative interpretation of the Antiquities Act. El Morro in New Mexico, Montezuma Castle in Arizona, and Petrified Forest national monument in Arizona were all proclaimed on December 8, 1906.¹²⁵ The following year Roosevelt proclaimed five more monuments including Chaco Canyon, Cinder Cone, and Gila Cliff Dwellings National Monument.

¹²² Theodore Roosevelt, Address at Leland Stanford Junior University, Palo Alto, California, May 12, 1903 [Online, <http://www.theodore-roosevelt.com/images/research/txtspeeches/66.txt>, May 11, 2015]

¹²³ Mark Jenkins, "Devils Tower, Sacred Space," *Virginia Quarterly Review* 89.1 (2013), pp. 232-237.

¹²⁴ Ibid.

¹²⁵ Harmon, et al., Appendix.

The Grand Canyon National Monument is the first instance where use of the Antiquities Act differs markedly from what legislators seem to have intended. Up to this point, Petrified Forest had comprised the largest of Roosevelt's proclamations, encompassing 60,776 acres in Arizona. Yet in 1908 he withdrew a whopping 808,120 acres to establish the new monument.¹²⁶ This was indeed an unprecedented move. Certainly, the discussions held in Congress lead one to believe that the founding intent of the act was to reserve only very limited and relatively small tracts of land — but the question remains whether Hewett and others might have anticipated that Roosevelt would seize upon the act's broad language to advance his conservation interests. Lacey, who repeatedly supported the act and helped introduce its many iterations to Congress, was himself a well-established conservationist as well, having drafted the law that set aside Yellowstone, and passing what became known as the Lacey Act, the first piece of national legislation to protect wildlife.¹²⁷ The latitude granted by the phrase, "objects of historic or scientific interest,"¹²⁸ also inherently provided the president with much leeway when it came to justifying monuments that seemed outside the intent of the act's original supporters. Hewett's own provision of wording limiting the size of monuments to "the smallest area compatible with proper care and management of the objects to be protected," moreover, entailed that the Antiquities Act could function

¹²⁶ Ibid.

¹²⁷ H.R. 6634, Public Act No. 119.

¹²⁸ 34 Stat. 225, 16 U.S.C. 431-433 (1906)

quite well as a tool for the protection of whole landscapes and natural areas.¹²⁹ Such language indeed naturally lent itself to broad interpretation.

Some insight into Roosevelt's motivations, regarding the creation of Grand Canyon monument in particular, may perhaps also be found in his remarks addressed to a local audience during his first visit to the Grand Canyon in 1903:

Leave it as it is. You cannot improve on it. The ages have been at work on it, and man can only mar it. What you can do is to keep it for your children, your children's children, and for all who come after you, as one of the great sights which every American if he can travel at all should see. We have gotten past the stage, my fellow-citizens, when we are to be pardoned if we treat any part of our country as something to be skinned for two or three years for the use of the present generation, whether it is the forest, the water, the scenery. Whatever it is, handle it so that your children's children will get the benefit of it.¹³⁰

Guided by similar sentiment, in the course of his administration Roosevelt would further go on to create the U.S. Forest Service, and a total of 5 National Parks, 51 Federal Bird Reservations, 4 National Game Preserves, and 150 National Forests. After signing into law the American Antiquities Act of 1906, he also declared 18 monuments that included not only prehistoric sites, but also vast areas such as the Grand Canyon, the uniqueness and scientific value of which is still appreciated today.¹³¹

¹²⁹ Ibid

¹³⁰ Theodore Roosevelt, Address at Grand Canyon, Arizona, May 6, 1903 [Online, <http://www.theodore-roosevelt.com/images/trenvpics/trgrandcanyonspeech.pdf>, March 8, 2015]

¹³¹ <http://www.nps.gov/thro/learn/historyculture/theodore-roosevelt-and-conservation.htm>

Chapter Six: The Legacy of the Antiquities Act

While always maintaining its identity as a tool for the preservation of archaeological artifacts, soon after its passing the purview of the Antiquities Act quickly expanded to encompass far more than artifacts. Whereas the criteria for establishing national parks were stringent, the requirements for a national monument were relatively simple, allowing the President to circumvent sluggish congressional deliberations. The national monument category thus made it possible to protect not only many relatively small, yet significant tracts of land, where there was disagreement about whether or not a larger area met the high standards required to warrant national park status, the Antiquities Act gave the president the ability set aside such areas until a time when consensus could be reached. We see this dynamic at work in numerous cases throughout the Act's history, where areas threatened by human activity have been designated as national monuments and later converted to or incorporated into existing national parks.¹³²

However, the way in which national monuments eventually became important tools of conservation was not necessarily straightforward. While many of the early monuments were created to protect geological "curiosities," for instance Devil's Tower in Wyoming, and the Grand Canyon in Arizona, these kinds of features would eventually

¹³² See, e.g., 39 Stat 442, 16 USC §201(1916), also 40 Stat 1175, 16 USC §221 (1919), also 41 Stat. 356, USC §344 (1919), also 52 Stat 1241, also USC §251 (1938), also 72 Stat 69, also 16 USC §119 (1958), also 16 USC §410ooo-1 (2013), etc. For a more complete list of monuments that were eventually re-designated as national parks, the following chart is extremely helpful, <http://www.nps.gov/archeology/sites/Antiquities/MonumentsList.htm>

be recognized for their unique value to science, including their roles in preserving the nation's geological diversity.¹³³ Other areas, including the Muir Woods, Pinnacles, Mount Olympus, and Sieur de Monts National Monuments, were recognized variously for their botanical and zoological attractions.¹³⁴ In particular, government biologist, T.S. Palmer, while speaking at the National Parks Conference on January 4, 1917, recognized that the Pinnacles National Monument was "important as one of the last strongholds and breeding grounds of the California condor."¹³⁵ He further notes:

The value of Muir Woods as a wild life refuge lies not only in the preservation of the redwood trees, but in the preservation of all those species of plants, birds, and other animals which find their native habitat in the peculiar conditions under which the redwoods thrives.¹³⁶

Palmer also understood that the distinct character and huge variety represented by each of our national monuments were goods to be utilized to the fullest extent. He discerned that Muir Woods "is interesting not only as a monument to the species for which it was established, but also to the public spirit of the donors and the memory of the eminent Californian, John Muir;"¹³⁷ and, indeed, National monuments have continued throughout their history to symbolize the interconnectedness of Americans to our landscape, our wildlife, and our history in a way that cannot be easily separated.

¹³³ Harmon, et al., p. 201

¹³⁴ T.S. Palmer, p. 6

¹³⁵ Ibid, p. 14

¹³⁶ Ibid, p. 13

¹³⁷ Ibid, p. 12

In the more recent times, the Antiquities Act has been used to create a variety of different monuments, including those located offshore and underwater.¹³⁸ These monuments have ranged in size and purpose, from the small and specific to the huge and aimed at broader goals of ecosystem protection. President Bill Clinton's creation of the Grand Staircase-Escalante monument in Utah in 1996 represents an example of the latter type and is still the largest and one of the most controversial monuments in the continental United States, encompassing nearly two million acres of land.¹³⁹ We also find monuments specifically dedicated to the human legacy with which a piece of land has been indelibly stamped. President Barack Obama's recent designation of the Harriet Tubman Underground Railroad National Monument¹⁴⁰ and the Honolulu National Monument,¹⁴¹ preserving the landscapes "where free African Americans and the enslaved led a clandestine movement of people out of slavery towards the North Star of Freedom," as well as the sites where Japanese Americans and others were held in internment during World War II, represent excellent examples.

¹³⁸ See e.g., George W. Bush: "Proclamation 8031 – Establishment of the Northwestern Hawaiian Islands Marine National Monument," June 15, 2006. [Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/index.php?pid=139>]; also George W. Bush: "Proclamation 8336 - Establishment of the Pacific Remote Islands Marine National Monument," January 6, 2009. [Online by Gerhard Peters and John T. Woolley, <http://www.presidency.ucsb.edu/ws/index.php?pid=85405>,] etc.

¹³⁹ Sanjay Ranchod, Sanjay. "The Clinton National Monuments: Protecting Ecosystems with the Antiquities Act," *Harvard Environmental Law Review* 25.2 (2001), pp. 535-536.

¹⁴⁰ Barack Obama, "Proclamation 8943 – Establishment of the Harriet Tubman Underground Railroad National Monument," March 25, 2013. [Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/index.php?pid=103403>.]

¹⁴¹ Barack Obama, "Proclamation No. 9234 – Establishment of the Honolulu National Monument," February 24, 2015. [Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/index.php?pid=109665>.]

But monuments also came to develop their own character, each of which seems to encompass some unique and precious detail that preserves the unparalleled variety of the nation's landscape. Various complete ecosystems, geological features, breeding grounds, habitats, and historically charged locations have been incorporated into and protected by the monument system, all in their own way justifying their monument status. As concepts of ecosystems and biodiversity have evolved over the years, moreover, the areas that were set-aside at the turn of the last century are now more valuable than ever. And as we have learned the critical importance of complete ecosystems, the existential utility of the monument designation has become more and more apparent.

In this respect the act has become a potent tool of the president to leverage political action for the protection of threatened areas in cases when Congress has been slow to take alternative measures. During the Clinton administration, for instance, Interior Secretary Bruce Babbitt threatened to recommend an area of the Shivwits Plateau in Arizona to the president for monument status because the current legislation under consideration did not in his opinion "establish a management standard adequate for long-term protection of the unique resources of this area."¹⁴² This type of bold, executive action is perfectly in line with Roosevelt's understanding of presidential authority. As Roosevelt explains in his autobiography:

¹⁴² Mark Squillace, "The Monumental Legacy of the Antiquities Act of 1906," *Georgia Law Review* 37.2 (2003), p. 510, n. 238.

I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by laws. Under this interpretation of executive power I did and caused to be done many things not previously done by the President and the heads of departments. I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare, I acted for the common well-being of all our people, whenever and in whatever manner necessary, unless prevented by direct constitutional or legislative prohibition.¹⁴³

With the passing of the Antiquities Act, Roosevelt saw his chance to protect the unparalleled wonder of America's natural patrimony. And indeed his use of the act is characteristic of his approach to governance in general, informed by the belief shared with his fellow Progressives that executive power should be used to its fullest extent for the good of the people.

¹⁴³ Roosevelt (2011), p. 304.

Conclusion

The Antiquities Act came into being during a period when government had, for the first time, developed a clear understanding of the vulnerability of its many great resources. Today, its enduring legacy and that of the conservation movement is still directly tied to Roosevelt and his fellow Progressives. Their notion that government must step in to take control when the public or business entities seem incapable of restraint is a principle that has lived on through the Antiquities Act in the proclamations of all but three American Presidents since Roosevelt first put the act to use. Quoting Edmund Burke in his 5th Annual Message to Congress in 1905, Roosevelt reminds his audience that:

Men are qualified for civil liberty in exact proportion to their disposition to put moral chains upon their own appetites...Society cannot exist unless a controlling power upon will and appetite be placed somewhere, and the less of it there be within the more there must be without.¹⁴⁴

Much of the legislation passed regarding conservation of natural resources was done so with similar principles in mind. As we have noted, Progressives such as Roosevelt set many precedents that placed previously public lands under the management of government. In the midst of such government reforms, the needs of the archaeological community to protect artifacts from ruin found alignment and common cause with the concerns of those conservationists, like Lacey and Roosevelt, who saw such pressing

¹⁴⁴ Theodore Roosevelt, Fifth Annual Message, December 5, 1905. [Online: <http://www.presidency.ucsb.edu/ws/index.php?pid=29546>, March 3, 2015]

need for the protection the nation's natural resources. In the unlikely yet logical alliance that formed as a result of Hewett's perceptive political work, the two sides were finally brought together in the American Antiquities Act.

While the history of the Antiquities Act extends beyond Roosevelt's day, it was his use of the act that established its potential and enduring legacy as a valuable tool for the preservation of not only ancient artifacts, but of entire landscapes and ecosystems. It is also by understanding the emergence of the act in its historical context that we begin to understand the value of its flexibility — for it is Theodore Roosevelt, the Bull Moose himself, who first set the precedent for its expansive interpretation. What we see in Roosevelt, perhaps better than any other figure of his day, are the tensions that existed in the consciousness of the nation at the moment the Antiquities Act came into existence. We also struggle with the conflicts these same tensions bear today. We cannot seem to help ourselves — we love nature, yet we continue to exploit and diminish it.

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