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RICHARD WEST SELLARS*

A Very Large Array: Early Federal Historic Preservation – The Antiquities Act, Mesa Verde, and the National Park Service Act**

ABSTRACT

Vandalism to archeological areas in the American Southwest provided the chief motivation for passage of the Antiquities Act of 1906. One of the Progressive Era's foremost preservation laws, this Act firmly established research and education in science and the humanities as valid goals of public land management in the United States. In addition, the Act authorized the use of presidential proclamations to create "national monuments" on public lands that are especially significant to science or history. The Act's leading congressional advocate, U.S. Congressman John F. Lacey of Iowa, also supported the creation of Civil War battlefield parks in the East and national parks in the West, as well as early wildlife refuges and national forest reserves. The Antiquities Act thus came into being within the context of an array of new conservation and preservation legislation, which included the 1906 Mesa Verde Act and the 1916 National Park Service Act. All together, the legislative histories and the wording of these three statutes – plus management activities ongoing in the early battlefield parks, national monuments, and national parks – formed the philosophical and policy foundations for national park service historic preservation practices throughout much of the twentieth century.

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** A list of abbreviations that appear in the footnotes to indicate some of the sources used for this article can be found at the end of the article.

But at the same time, those places are now occupied by a higher form of life, if you will, the spirits of our ancestors....So these places for us are sacred, living places....that's one of the vital connections that we have that's really not captured in any way by archaeologists, in any shape or form.

Joseph H. Suina, descendant of the ancient Puebloan people who lived on Northern New Mexico's Pajarito Plateau

I saw it, on that first morning, through a veil of lightly falling snow. Far up above me, a thousand feet or so, set in a great cavern in the face of the cliff, I saw a little city of stone, asleep. It was as still as sculpture – and something like that.

Willa Cather, "Tom Outland's Story," in *The Professor's House*

The immensity of man's power to destroy imposes a responsibility to preserve.

U.S. Congressman John F. Lacey, 1901

Centuries ago, beginning about the latter half of the first millennium, AD, people living in what is now the southwestern United States developed techniques for constructing large, often multi-storied, communal dwellings made of stone or adobe. They located these pueblo structures, which included open plazas for work and socializing and kivas for religious and civic ceremonies, close to water sources and tillable lands. The village-like pueblos provided shelter from the elements and defense against enemies. There, over many generations, these different Indian tribes lived and worked, tended their young and old, buried their dead, and altered their buildings and villages according to need. Mainly during the first half of the second millennium, AD, and under such pressures as drought, resource depletion, and warfare, many of the tribes left their pueblos, seeking more favorable locations in which to settle. They left behind buried remains of their forebears, as well as scattered objects – tools, household utensils, and other items of daily life. Yet they carried away a reverence for their past, their ancestors and their homelands, and the structures set in vast, unbounded landscapes.

By the early twentieth century, the ancient Indian pueblos in the southwestern United States, with their dramatic settings, imposing structures, and carefully crafted objects, had become the most renowned archeological sites in the country and were of increasing interest to scholars studying past cultures.¹ Although across the Southwest vast numbers of

1. The epigraphs are from Julian Martinez & Joseph H. Suina, *Two Pueblo Perspectives on the Pajarito Plateau*, in *THE PEOPLING OF BANDELIER: NEW INSIGHTS FROM THE ARCHAEOLOGY OF THE PAJARITO PLATEAU* 130–31 (Robert P. Powers ed., 2005); WILLA CATHER, *THE PROFESSOR'S HOUSE* 201 (1925); John F. Lacey, Address to the League of American Sportsmen,

smaller and earlier sites had existed for thousands of years, for the most part it was the architecturally outstanding structures that first drew attention from modern-day European Americans. Early in the European exploration of the Southwest, a legend arose that linked these architectural wonders to another civilization of great builders, the Aztec Indians. It was believed that the Aztecs had built the large Southwestern structures and in time abandoned them, moving south to the Valley of Mexico. By the latter part of the nineteenth century, however, explorers and others who studied the Southwest had become aware that these and similar sites were not built by the Aztecs. Instead, these structures had been built by ancestors of the Pueblo Indians, who themselves had never forgotten their connections to the ancient sites.²

GENESIS OF THE NATIONAL PARK SYSTEM

The Southwestern archeological sites had also by the beginning of the twentieth century become tied to the modern market economy, with pot hunters, wealthy collectors, and others acutely aware of the profits, prestige, and personal satisfaction that acquisition of ancient artifacts could bestow. A kind of "archeological frontier" had reached the American Southwest, with unrestrained destructive extraction of thousands of valuable objects from age-old Indian sites that paralleled the rampant extraction of natural resources, such as timber and minerals, taking place throughout the West. The uncontrolled digging and relic hunting in ancient sites set up increasing conflict with another faction of European Americans, mainly anthropologists and educators, who sought to preserve sites for what they could reveal about the past. Seeking to put a halt to the extensive relic hunting, this competing faction turned to the federal government, since most of the

New York, (1901) (Lacey-SHSI, Box 267). Among many accounts of early Southwestern inhabitants, see, for example, CARROLL L. RILEY, *BECOMING AZTLAN: MESOAMERICAN INFLUENCES IN THE GREATER SOUTHWEST, AD 1200-1500* (2005); FRANCES JOAN MATHIEN, *CULTURE AND ECOLOGY OF CHACO CANYON AND THE SAN JUAN BASIN* (2005); and LINDA S. CORDELL, *PREHISTORY OF THE SOUTHWEST* (1984). See also Joseph Owen Weixelman, *Hidden Heritage: Pueblo Indians, National Parks, and the Myth of the "Vanishing Anasazi"* (2004) (Ph.D. dissertation, University of New Mexico).

2. The Aztec myth inspired place names such as for Montezuma Castle and Montezuma Well in Arizona and Aztec Ruins in New Mexico, plus the modern towns of Aztec, New Mexico and Cortez, Colorado. See Weixelman, *supra* note 1, at 102-51; see also DON D. FOWLER, *A LABORATORY FOR ANTHROPOLOGY: SCIENCE AND ROMANTICISM IN THE AMERICAN SOUTHWEST, 1846-1930*, at 50-54 (2000); JOSH PROTAS, *A PAST PRESERVED IN STONE: A HISTORY OF MONTEZUMA CASTLE NATIONAL MONUMENT* 23-26, 40 n.17, 172-73 (2002); ROBERT H. LISTER & FLORENCE C. LISTER, *AZTEC RUINS NATIONAL MONUMENT: ADMINISTRATIVE HISTORY OF AN ARCHEOLOGICAL PRESERVE* 3-6 (1990) (Santa Fe: National Park Service, Southwest Cultural Resources Center, Professional Papers No. 24).

outstanding archeological sites were on public lands—the vast national domain administered by the national government, mostly by the Department of the Interior. Meanwhile, the tribes of the Southwest, many of whom had cultural and historical ties to the ancient sites, lacked any substantial influence in federal policy. The Indians were generally relegated to the sidelines, while non-Indians determined the fate of the ancient ancestral places. The choices to be made—continued rampant extraction or some form of protection and preservation for the archeological sites—remained fundamentally a struggle between competing European-American factions.

The federal government, having very limited experience in protecting historic places, only slowly roused itself to action. Its response to the worsening situation in the Southwest was cautious and erratic, coming in the form of laws intended to preserve and protect ancient sites located on public lands that were, of course, public property. Indeed, the government would ultimately set aside many of these areas for preservation and research. Most of these preserved sites would be designated “national monuments,” as distinct from national parks.

The early preservation of a number of national monuments and other archeological sites in the Southwest served, in effect, as a western counterpart to the preservation of the Civil War battlefields in the East and South. There, during the 1890s, the federal government had authorized establishment of five national battlefield parks: Chickamauga and Chattanooga battlefields (administratively combined) in Georgia and Tennessee, 1890; Antietam in Maryland, 1890; Shiloh in Tennessee, 1894; Gettysburg in Pennsylvania, 1895; and Vicksburg in Mississippi and Louisiana, 1899. All of the battlefield parks were associated with national cemeteries (Union Army burial grounds) and were administered by the U.S. War Department. Except for Antietam, all of them were sizeable. For example, Congress authorized up to 7,600 acres for Chickamauga, 6,000 acres for Shiloh, and provided that Gettysburg acquire acreage on essentially an “as necessary” basis. The large majority of the acreage that would be included in the new parks was not public land, but private farmlands and woodlands. This made federal acquisition of these battlefields for historic preservation purposes and with considerable use of eminent domain procedures even more remarkable than had the battlefields been on public lands.

The early battlefield parks constituted by far the federal government’s greatest effort in historic preservation through the nineteenth century. Most of these parks were much larger than any other protected historic sites, private or public, in the country. Steadily improving transportation in the East and South and the proximity of several of the battlefields to growing population centers meant that the military parks were accessible to increasing numbers of people. In contrast, for the vast

majority of Americans the Southwestern archeological sites were remote and difficult to reach. By 1906, at a time when few tourists had visited the ancient Southwestern Indian sites, it was claimed that approximately 250,000 people had visited Chickamauga and Chattanooga National Military Park.³ Surely, visits to the battlefield parks provided many Americans with their first exposure to formally preserved and developed historic places.

Together, the archeological areas in the Southwest and the early Civil War military parks in the East and South comprised the true genesis of the United States' federal historic preservation programs. They represented highly significant aspects of American history and culture, places that the national government first deemed worthy of its special care and attention. They were also vastly different kinds of sites: The battlefield parks commemorated history of a very brief duration, when opposing factions of a modern nation sought to annihilate one another through technologically advanced military engagements lasting from one day to a number of weeks. By contrast, the archeological sites represented the culture and life ways of ancient communities in periods of peace or war extending over centuries of time.

The federally preserved battlefield parks and Southwestern archeological areas would eventually join their larger siblings, the national parks, which protected huge tracts of magnificent natural scenery, to comprise the three early major components of America's national park system, altogether a diverse array of preserved areas deemed of special importance to the American public. At the beginning of the twentieth century, soon after the five battlefield parks were created under the War Department and when the legislative campaign for comprehensive archeological site protection was just getting started, the scenic national parks still represented a relatively novel idea. After Yellowstone's establishment in 1872, Congress created no more truly sizeable national parks until the 1890s, when it established Sequoia, Yosemite, and Mount Rainier. Thus by 1900 there were only four large national parks. They marked an early attempt to save especially majestic landscapes from the onslaught of European-American settlement in the West and exploitation of resources on public lands.⁴

3. See Richard West Sellars, *Pilgrim Places: Civil War Battlefields, Historic Preservation, and America's First National Military Parks, 1863-1900*, 2 CRM: J. HERITAGE STEWARDSHIP, Winter 2005, at 22-52; see also JOHN C. PAIGE & JEROME A. GREENE, ADMINISTRATIVE HISTORY OF CHICKAMAUGA AND CHATTANOOGA NATIONAL MILITARY PARK 39-41, 61 (1983).

4. By the end of the nineteenth century, Congress had set aside two other national parks and two reserves, all minuscule when compared to the big western parks. The two national parks were General Grant National Park (incorporated in Kings Canyon National Park in 1940); and, on an island in Lake Huron, the small, scenic Mackinac National Park, created in

The General Land Office, the public land management arm of the Department of the Interior, had long pursued a policy of disposing of public lands to private, state, or other non-federal ownership. Such measures as grants to states for education and other purposes, vast land grants to railroad companies, transfer of lands to timber companies, and the Homestead Act of 1862 were viewed as part of the nation-building process through extracting resources, improving public education, and increasing national wealth.

However, by the latter decades of the nineteenth century, second thoughts had arisen. Certain parts of the public lands, mainly those that were scenically spectacular, came to be perceived as possessing special qualities and values beyond purely economic factors and therefore worthy of being retained by the federal government as a public trust, not to be disposed of and treated in the customary ways. Direct federal intervention that set aside these select places for preservation, and then actively managed them for the general public good, arrived most emphatically on March 1, 1872 with the creation of Yellowstone National Park – more than two million acres reserved from sale or other disposition and dedicated to the “benefit and enjoyment of the people.”⁵

The rush to dispose of the public lands was checked to some degree by the rising concern for preservation and conservation, which became a significant priority in the Progressive Era. During this period of political, social, and economic reform, which extended from about the late 1890s through the World War I era, the federal government asserted greater control over the national domain. In 1916, as part of this effort, Congress created the National Park Service as a bureau within the Department of the Interior, assigned to administer the gradually expanding national park system.

1875 and turned over to the State of Michigan in 1895. Hot Springs Reservation in Arkansas dated from 1832 and the Casa Grande Ruin Reservation in Arizona Territory dated from 1892. See NAT'L PARK SERV., *THE NATIONAL PARKS: SHAPING THE SYSTEM* 18 (2005); see also KEITH R. WIDDER, *MACKINAC NATIONAL PARK, 1875–1895*, at 6, 41–46 (1975) (Mackinac Island State Park Commission reports on Mackinac History and Archeology).

5. See PAUL W. GATES, *HISTORY OF PUBLIC LAND LAW DEVELOPMENT* 319–462 (1968); ALFRED RUNTE, *NATIONAL PARKS: THE AMERICAN EXPERIENCE* 19–47 (2nd ed. 1980); SAMUEL P. HAYS, *CONSERVATION AND THE GOSPEL OF EFFICIENCY: THE PROGRESSIVE CONSERVATION MOVEMENT*, 261–76 (1959); RICHARD WEST SELLARS, *PRESERVING NATURE IN THE NATIONAL PARKS: A HISTORY* 7–20 (1997). A short history of the Department of the Interior is found in ROBERT M. UTLEY & BARRY MACKINTOSH, *THE DEPARTMENT OF EVERYTHING ELSE: HIGHLIGHTS OF INTERIOR HISTORY* (1989). The quote is from the Yellowstone National Park Act of 1872, ch. 24 17 Stat. 32; see also HILLORY A. TOLSON, *LAWS RELATING TO THE NATIONAL PARK SERVICE, THE NATIONAL PARKS AND MONUMENTS* 25 (1933).

THE ARCHEOLOGICAL FRONTIER IN THE SOUTHWEST

As the United States expanded westward in the nineteenth century, the federal government, as well as many private groups, repeatedly probed the trans-Mississippi West seeking more information about the country and its potential—assessing lands that the nation was acquiring in huge increments through conquest, purchase, and treaty. These expeditions amassed data on the natural and human history of the Great Plains, Rocky Mountains, and beyond to the Pacific Coast, informing the government and the public on topics including climate, topography, soils, minerals, geology, forests, rivers, wildlife, railroad routes to the Pacific, and the native people who inhabited Western lands.

A resurgence of exploration in the post-Civil War years brought more intensive research on Native Americans in the West than ever before. At a time when westward expansion was forcing Indians into ever-smaller reservations, the federal government and newly formed anthropological organizations sought to learn more about Indian life ways that were in upheaval, being greatly impacted by disease, warfare, and removal of tribes from their homelands. Anthropologists pursued answers to questions such as the origins of people who had no European cultural roots, the characteristics of different tribes—including social systems, religion, language, and food acquisition, plus complex intertribal relationships. Of more practical and immediate concern, information about Indians could provide clues as to how different tribal ways might be influenced, changed, and regulated by the government and its representatives.⁶

American Indians living in the pueblos of the Southwest attracted particular intellectual interest among non-Indian scholars. The sedentary Puebloans had deep roots in their long-established villages and surrounding lands, making them and their traditional ways accessible for close study. Moreover, by the latter decades of the nineteenth century it had become clear to most informed Americans that the Puebloans were the descendants of the people who built the great ancient structures made of stone or adobe and found in the Southwest. Within the United States, only Native Americans (and particularly the Puebloan groups) had the special continuity of living in age-old villages while also having direct ancestral ties to even more ancient home sites that included structures built in

6. Extensive accounts of exploration, documentation, and scientific research in the West are found in WILLIAM H. GOETZMANN, *ARMY EXPLORATION IN THE AMERICAN WEST, 1803-1863* (1959); WILLIAM H. GOETZMANN, *EXPLORATION AND EMPIRE: THE EXPLORER AND THE SCIENTIST IN THE WINNING OF THE WEST* (1967); and DONALD WORSTER, *A RIVER RUNNING WEST: THE LIFE OF JOHN WESLEY POWELL* (2001). See also CURTIS M. HINSLEY, JR., *THE SMITHSONIAN AND THE AMERICAN INDIAN: MAKING A MORAL ANTHROPOLOGY IN VICTORIAN AMERICA* (1981); FOWLER, *supra* note 2, at 34-49.

architectural styles somewhat akin to modern European-American construction and aesthetics. The Pueblos provided an especially enticing prospect for anthropological research, including comparative studies of the continuity and change between ancient and contemporary cultures.

In the late 1870s, two important organizations were launched to pursue American Indian studies: the Smithsonian Institution's Bureau of Ethnology (later the Bureau of American Ethnology) and the privately established Archaeological Institute of America. The Bureau of Ethnology was founded with the intention of advancing ethnographical and archeological knowledge of Indian tribes. The Archaeological Institute included among its goals increased understanding of American archeology, although most of its leaders were intently focused on classical archeology and related studies of the ancient Mediterranean world. Still, both organizations included the American Southwest in their agendas. The ethnographers were to study and compare the cultures of contemporary Indians, focusing on social systems, religion, language, and related cultural phenomena. Their studies would connect with the work of those who employed archeological techniques seeking to comprehend ancient Indian cultures. These endeavors became part of a succession of numerous government and non-government expeditions that made their way to Southwestern Indian sites in the 1880s and 1890s in pursuit of various combinations of knowledge, adventure, and personal or institutional status. The reports and activities coming from the ethnographic and archeological expeditions would raise public alarm about the increasing destruction of ancient sites and the marketing of artifacts, alarm that would reach into the halls of Congress and highlight the need for federal action to halt the vandalism and looting and to protect the sites in the interest of the American public.⁷

In Congress, the first show of concern about the ongoing destruction of ancient Southwestern sites came soon after the Archaeological Institute of America sent Adolph Bandelier, a Swiss-born student of American archeology and ethnography, to undertake research on the pueblos of the Southwest. Bandelier initiated his fieldwork in the summer

7. See FOWLER, *supra* note 2, at 92-127; WORSTER, *supra* note 6, at 396-402; JOSEPH C. PORTER, PAPER MEDICINE MAN: JOHN GREGORY BOURKE AND HIS AMERICAN WEST 73-133, 189-209 (1986); JAMES L. SNEAD, RUINS AND RIVALS: THE MAKING OF SOUTHWEST ARCHEOLOGY 8-12 (2001); Ronald Freeman Lee, *The Antiquities Act of 1906* (first published by National Park Service, 1970), ed. By Raymond Harris Thompson, 42 J. OF THE SOUTHWEST 198 (2000) (special issue on the Antiquities Act). A brief overview of Southwestern archeological activities leading into the twentieth century is found in Raymond H. Thompson, *Cliff Dwellings and the Park Service: Archeological Tourism in the Southwest*, in INTERNATIONAL PERSPECTIVES ON CULTURAL PARKS: PROCEEDINGS OF THE FIRST WORLD CONFERENCE, MESA VERDE NATIONAL PARK, COLORADO, 1984, at 219-23 (1984).

of 1880 at the Pecos Pueblo, located near Santa Fe, the territorial capital of New Mexico, beginning what became a long and distinguished professional career in Southwestern studies. He prepared numerous detailed measurements and descriptions of the remains of the pueblo structures and the adjoining Spanish missionary church. Bandelier found Pecos badly vandalized by relic hunters, and in his 1881 report he vividly described the extensive damage, noting that the site had been "thoroughly ransacked," and "recklessly and ruthlessly" pillaged by relic hunters.

Bandelier's account of the antiquities destruction at Pecos appalled members of the Archaeological Institute and its supporters in the Northeast – one of whom, U.S. Senator George F. Hoar of Massachusetts, introduced a petition in the Senate in May 1882 condemning those who "plundered and destroyed" ancient sites. The petition did not specify preservation of the Pecos Pueblo, but instead made a broad recommendation that "at least some" of the ancient sites "be withheld from public sale and their antiquities and ruins be preserved" for scholarly studies of the past. Hoar's 1882 petition, the first formal recommendation in Congress for federal preservation of Southwestern archeological remains, went nowhere. A reluctant Senate, inexperienced in such matters and apprehensive about the prospect of protecting an undetermined number of sites on the vast public lands, took no action on the petition.⁸

The next congressional move toward antiquities protection did not come until 1889. Again, it had the backing of Senator Hoar and his colleagues in the Northeast. This time the focus was on preserving the Casa Grande site, a huge, multi-storied, earthen structure located in south-central Arizona Territory. Unlike Hoar's 1882 petition, this one received a positive response, due in large part to reports of vandalism and of erosion resulting from nearby irrigation that was weakening Casa Grande. A small group centered in Boston and including such prominent figures as jurist Oliver Wendell Holmes, historian Francis Parkman, and poet John Greenleaf Whittier reacted by petitioning Congress to preserve Casa Grande.

With Senator Hoar's backing, the petition succeeded. On March 2, 1889, an Act was signed to "repair and protect" Casa Grande. To this end, the law (a rider on a Sundry Civil Appropriations Act) authorized the President to "reserve [the site] from settlement and sale" and to include in the reserve as much of the adjacent public lands "as in his judgment may be necessary" for protecting the major structure and its associated village. The legislation also authorized \$2,000.00 for stabilizing the structure, which began before President Benjamin Harrison signed the executive order

8. See A.F. Bandelier, *A Visit to the Prehistoric Ruins in the Valley of the Rio Pecos*, *ARCHAEOLOGICAL INSTITUTE OF AMERICA* 42–43, 63–64, 81, 87, 95, 97–98 (1881); see also Lee, *supra* note 7, at 200–04; FOWLER, *supra* note 2, at 172–74.

officially creating the Casa Grande Ruin Reservation (later Ruins Reservation) in June 1892. Harrison's order established a 480-acre protected reserve, including Casa Grande's main structure and remnants of the surrounding village. This reserve, to be managed by the Interior Department's General Land Office, marked the beginning of federal historic preservation in the Southwest.⁹

However, Congress did not grant any broad, general proclamation power for presidents to set aside other historic or archeological remains located on public lands. This one-at-a-time approach suggested that the preservation community, which included Interior Department officials, especially in the General Land Office, could well face lengthy legislative struggles in seeking to set aside permanently other important sites. Still, despite Harrison's long delay in executing the Casa Grande authority, the utility of using presidential proclamations as a means of creating archeological reserves had been demonstrated.

Yet even before Harrison's Casa Grande proclamation, the use of presidential proclamation authority was on its way to becoming a major factor in the disposition of huge areas of forested public lands, thus providing a clear example of the means by which any number of archeological sites might someday be set aside. In March of 1891, President Harrison signed into law the Forest Reserve Act, which allowed presidents to establish "forest reserves" on public lands by proclamation. The Interior Department's General Land Office would manage them. Significantly, the law placed no limits on the number or size of such reserves. Congress would later declare that these areas were to "furnish a continuous supply of timber for the use and necessities of citizens of the United States," thus confirming that, unlike the national parks and historic areas, the forest reserves were open to extractive economic uses such as timber harvesting. The forest reserve proclamation authority was aggressively used, with a total of about 151 million acres set aside by 1907 (Theodore Roosevelt having proclaimed more acres than any other president). In that year, Congress rescinded this authority with respect to a number of the public land states. Members of Congress, especially many from the West, opposed the creation of forest reserves that were to be permanently held by the national government; and after the rescission, use of the proclamation was

9. See A. BERLE CLEMENSEN, *CASA GRANDE RUINS NATIONAL MONUMENT* 29-56 (1992); see also *Repair of the Ruin of Casa Grande, Arizona*, ch. 411, 25 Stat. 961 (1889); Lee, *supra* note 7, at 207-09; HAL ROTHMAN, *PRESERVING DIFFERENT PASTS: THE AMERICAN NATIONAL MONUMENTS* 12 (1989) (reprinted as *AMERICA'S NATIONAL MONUMENTS: THE POLITICS OF PRESERVATION* (Lawrence: University of Kansas Press, 1994)); THOMAS ALAN SULLIVAN, *PROCLAMATIONS AND ORDERS RELATING TO THE NATIONAL PARK SERVICE UP TO JANUARY 1945*, at 140 (1947).

curtailed.¹⁰ The reserves became known as national forests, and collectively they dwarfed the combined acreage of national parks, national monuments, Civil War battlefield parks, and other federal historic sites.

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By the time President Harrison signed the Casa Grande proclamation in 1892, destructive digging in the ancient Indian sites on Mesa Verde in southwestern Colorado had begun to attract attention, provoking more demands for federal intervention. A few exploring parties from the East had come upon Mesa Verde sites in the years after the Civil War. But the encounter with Mesa Verde that ultimately brought national recognition to the area came when two ranchers saw one of its largest cliff dwellings, Cliff Palace, from a distance on a cold December day in 1888. By nightfall the next day they found two more of the area's most spectacular sites: Spruce Tree House and Square Tower House. Nestled in protective, overhanging alcoves eroded into the sides of steep cliffs, these ancient stone villages, which are still known by the names the ranchers gave them, would greatly inspire archeologists and the American public and gain international renown.

This encounter, legendary in the annals of Southwestern archeology, was made by members of the Wetherill family, who ranched along the Mancos River and often pastured their cattle on the high mesa cut by streams and deep canyons. Soon after their initial encounter, the Wetherills began a determined pursuit of Mesa Verde's antiquities, a potential bonanza and a means of augmenting the income from their struggling ranch operations. Of the family's six siblings, Richard Wetherill became the most enterprising and the most widely known. Working with family and friends, Wetherill collected and sold pottery and other artifacts and guided tourists from the ranch headquarters to some of the most awe-inspiring sites. Although Wetherill's buyers included tourists and other private individuals, he became interested in the practice of archeology and sold various artifacts to, and cooperated with, professional archeologists and their institutions. Yet, overall, his collecting and selling of artifacts earned him a reputation as a threat to the integrity of ancient Southwestern sites.¹¹

10. An Act to repeal timber-culture laws, and for other purposes, ch. 561, 26 Stat. 1095 (1891); *see also* Surveying the Public Lands, ch. 2, 30 Stat. 32, 34-36 (1897) (including the "continuous supply" quote); HAROLD K. STEEN, *THE U.S. FOREST SERVICE: A HISTORY* 26-28, 33, 36-37 (Forest History Society & University of Washington Press, 2004) (1976); HAYS, *supra* note 5, at 35-38, 47; Robert W. Righter, *National Monuments to National Parks*, W. HIST. Q., Aug. 1989, at 283.

11. DUANE A. SMITH, *MESA VERDE NATIONAL PARK: SHADOWS OF THE CENTURIES* 12-30 (2002); FRANK McNITT, *RICHARD WETHERILL: ANASAZI* 21-38 (rev. ed. 1974); FOWLER, *supra* note 2, at 187-89.

The Wetherills soon became peripherally involved in a highly publicized conflict over shipping Mesa Verde artifacts out of the United States. In July 1891, the family hosted Gustav Nordenskiöld, a young, tubercular, Swedish-Finnish nobleman who had studied archeology and arrived at the ranch to learn about Mesa Verde. Assisted by the Wetherills, Nordenskiöld began research that involved excavation of sites on the mesa that were not already badly impacted by relic hunters, including the Wetherills. Nordenskiöld's detailed investigating, mapping, and photographing provided valuable data, while serving to instruct Richard Wetherill in archeological methods and theory. However, when artifacts from the excavations were sent to Durango, Colorado, to be shipped to Sweden, the railroad, responding to local and statewide outrage, refused to handle them. An angry confrontation broke out, centering directly on the issues of removing archeological materials from public lands and disposing of them at will – in this case out of the country. After a brief legal skirmish, Nordenskiöld won the right to ship the Mesa Verde materials on the solid grounds that there was no state or federal statute prohibiting the removal of archeological properties from public land. Ancient remains located on the national domain were subject to unfettered access and disposition. Legally, these artifacts could be shipped anywhere, and they were eventually placed in the Finnish National Museum in Helsinki.

The Nordenskiöld dispute increased calls for legal solutions, as Colorado newspapers demanded laws to halt the indiscriminate removal of Mesa Verde artifacts. Public rancor about taking the collection abroad seems to have been much stronger than concerns about shipping artifacts *within* the United States. Still, the confrontation raised public apprehension about archeological looting on public lands, whatever the ultimate disposition of the collections. And the affair increased concern about the Wetherills' commercial collecting. Even considering their ties with professional archeologists and the 1893 World's Columbian Exposition in Chicago, the family set an example of artifact collecting and marketing in the Southwest that still remains under question.¹²

Richard Wetherill went from Mesa Verde to excavate Indian sites in Arizona Territory and Utah before relocating in the mid-1890s to Chaco Canyon in northwestern New Mexico Territory, where his activities again

12. Nordenskiöld had a serious scholarly interest in analyzing and comprehending the prehistoric Southwest. Following his return home from Mesa Verde in early 1892, he completed *THE CLIFF DWELLERS OF THE MESA VERDE* (1893) (reprinted by Mesa Verde Museum Association, 1990), a classic archeological study that remains highly regarded today. In 1895, Nordenskiöld succumbed to tuberculosis and died at age 26 in his native Sweden. See SMITH, *supra* note 11, at 30–36; MCNITT, *supra* note 11, at 38–44; Weixelman, *supra* note 1, *passim*; FOWLER, *supra* note 2, at 187–92. A recent and favorable account of the Wetherills is found in FRED M. BLACKBURN, *THE WETHERILLS: FRIENDS OF MESA VERDE* (2006).

drew criticism. At Chaco, he and members of his family established operations near the massive stone structure known as Pueblo Bonito, one of the Southwest's largest and most majestic ancient buildings. Funded by wealthy philanthropists and affiliated with the American Museum of Natural History in New York City, the Wetherills began extensive collecting, predominantly at Pueblo Bonito. Working at this site intermittently over several years, they excavated almost 200 rooms and shipped huge collections of artifacts to the American Museum, including complete contents from a number of rooms.

Richard Wetherill played a pivotal role in early Southwestern archeology and remains an enigmatic figure. Although having learned from, as well as advised, experts in the archeological profession, he continually needed money and made a portion of his living by selling prehistoric artifacts. Even though excavating under the supervision of the American Museum, Wetherill came under criticism from archeologists concerned about alleged slipshod artifact hunting and probable profit making from selling ancient objects taken from public lands. His critics included the Santa Fe Archeological Society, spurred on by Edgar Lee Hewett—then president of the New Mexico Normal School in Las Vegas—who had a deep interest in Southwest archeology, to which he would soon turn full time. The Interior Department's General Land Office responded to the criticism by conducting several investigations into the complex situation, and it eventually stopped Wetherill's excavations altogether.¹³

In the meantime, aware of the extensive use of the presidential proclamation authority for creating forest reserves, yet stuck with the Casa Grande model of piecemeal, one-site-at-a-time archeological site protection by Congress, frustrated General Land Office officials resorted to land "withdrawals" to protect against vandalism. Beginning in the 1890s, they declared selected archeological and natural sites threatened by vandalism and looting and located on public lands to be temporarily set aside from sale or other disposition. Prior to passage of the Antiquities Act in June 1906, the Office had withdrawn a number of archeological areas, including Chaco (partly in response to the Wetherill's activities there) and El Morro in New Mexico Territory, Montezuma Castle in Arizona Territory, and portions of Mesa Verde, in addition to natural areas such as Devils Tower in Wyoming and Petrified Forest in Arizona Territory.

The General Land Office commissioners, with support from the Department of the Interior secretaries, proved potent allies in the antiquities

13. See ROTHMAN, *supra* note 9, at 17-20, 49; Lee, *supra* note 7, at 217-19; FOWLER, *supra* note 2, at 192-202. Much later, New Mexico Normal School became New Mexico Highlands University.

protection efforts, making withdrawals in urgent situations, and repeatedly expressing concern for ancient Indian sites on public lands. In 1905, however, the Land Office lost its authority over the forest reserves—including their archeological sites—when Congress transferred administrative control over the reserves from the Department of the Interior to the Department of Agriculture. Thus, Agriculture's U.S. Forest Service would administer the reserves (soon designated as national forests) and oversee the withdrawn archeological sites within the national forests. This transfer of authority did not affect the General Land Office's administration of the Department of the Interior's remaining lands, which still constituted far and away the most extensive part of the national domain.¹⁴

THE 1906 ANTIQUITIES ACT AND CONGRESSMAN JOHN F. LACEY

Near the very end of the nineteenth century, President William McKinley signed two important preservation bills into law within a few days of each other. The first, signed in late February 1899, established at Vicksburg the last of the early national battlefield parks. Nine days later another law created Mount Rainier National Park, the last of the large, scenic national parks established before the century closed. Then, in the early months of 1900, four separate bills for the protection of American antiquities on federally controlled lands were introduced in the House of Representatives. These four bills reflected a far greater government concern than ever before for confronting the exploitation and vandalism of ancient Southwestern Indian sites. Also, this surge of preservation laws and pending bills evidenced a broad and growing interest in direct federal action to protect especially important places, from historic and archeological areas to the scenic national parks.

On April 26, Congressman John F. Lacey of Iowa put forward the last of the four antiquities bills, a version recommended by Department of the Interior officials. A prolonged legislative campaign to protect ancient sites had begun. It would conclude in June 1906 with the passage of the Antiquities Act, one of the true cornerstones of American preservation and conservation law. This statute became informally known as the "Lacey Act" (not to be confused with an earlier wildlife act given the same designation)

14. Edgar Lee Hewett, *Government Supervision of Historic and Prehistoric Ruins*, 20 SCIENCE 723 (1904); see also ROTHMAN, *supra* note 9, at 54-59; Lee, *supra* note 7, at 219-23; CHAR MILLER, GIFFORD PINCHOT AND THE MAKING OF MODERN ENVIRONMENTALISM 195-96 (2001). For a discussion of the constitutional and legal aspects of withdrawals, see David H. Getches, *Managing the Public Lands: The Authority of the Executive to Withdraw Lands*, 22 NAT. RESOURCES J. 279 (1982).

as a tribute to the conservative Iowa Republican who, as the influential chair of the House Committee on Public Lands, had steered the antiquities bill safely through Congress in the spring of 1906.¹⁵ Named in honor of Congressman Lacey, this Act would provide authority for the initial setting aside of more than half of the total acreage in the national park system as it exists in the early twenty-first century.

Lacey was not acting alone when he introduced this comprehensive bill. Rather, he had allies and was the bill's sponsor, not its author. In 1899, responding to a deepening concern over desecration of archeological sites in the Southwest, two leading scientific professional organizations, the American Association for the Advancement of Science (AAAS) and the Archaeological Institute of America, had created special committees to seek statutory protection for antiquities. Their efforts, which included drafting an antiquities bill that also contained strong nature conservation components, provided the primary impetus for the legislative campaign that followed. Before introducing his bill, Lacey had requested comments from the Department of the Interior on the three earlier antiquities bills of 1900. Top Interior officials, who were steadfast advocates for antiquities preservation, provided Lacey with a new draft proposal, and Lacey introduced his bill on April 26, 1900. It had much in common with the proposals of the AAAS and the Archaeological Institute, as well as with the very first one of the antiquities bills that had been introduced earlier in the year.¹⁶

Lacey's April 1900 antiquities bill bears special notice because of its farsighted, visionary scope, endorsing preservation of places significant in both human and natural history. Remarkably, it included not only early versions of all of the major elements that would appear in the 1906 Antiquities Act, but also most of the principal elements of the 1916 National

15. U.S. Representative Jonathan P. Dolliver, also of Iowa, introduced the first of the 1900 antiquities bills upon which the Lacey bill was generally based. Soon chosen to fill a vacant Senate seat, Dolliver did not continue actively promoting antiquities legislation. See ROBERT CLAUS, INFORMATION ABOUT THE BACKGROUND OF THE ANTIQUITIES ACT OF 1906 (1945) (Department of the Interior internal report, May 10, 1945) (NPS-W-H); see also Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. REV. 473, 478-80 (2003); Lee, *supra* note 7, at 224-26; Raymond Harris Thompson, *Edgar Lee Hewett and the Political Process*, 42 J. OF THE SOUTHWEST 273, 276-78 (2000); JOHN ISE, OUR NATIONAL PARK POLICY: A CRITICAL HISTORY 149-50 (1961). Although use of the "Lacey Act" designation has diminished over time, it remains part of the archeological lexicon. See SNEAD, *supra* note 7, at 80-81, 93, 218, 222. The official title of the Antiquities Act is "An Act for the Preservation of American Antiquities." See *For the Preservation of American Antiquities*, ch. 3060, 34 Stat. 225 (1906). The full wording of the Act is also found in *THE ANTIQUITIES ACT: A CENTURY OF AMERICAN ARCHAEOLOGY, HISTORIC PRESERVATION, AND NATURE CONSERVATION* 3-5 (David Harmon et al. eds., 2006).

16. Lee, *supra* note 7, at 223-27.

Park Service Act. Studies of these two important acts have generally focused on one or the other of them, not both.¹⁷ Yet when viewed in tandem, the legislative histories of these acts, together extending (with some interludes) from 1899 to 1916, reflect common goals regarding preservation of historic and natural resources, as do the language and the intent of both acts. The extended efforts to pass these legislative proposals reveal the political and intellectual connections that existed among a very large array of preservation and conservation issues in the late nineteenth and early twentieth centuries.

Among those who have deeply influenced preservation and conservation on a truly national scale, John F. Lacey remains one of the least appreciated in American history. Not only do lands that were initially set aside as "national monuments" under the Antiquities Act comprise more than 50 percent of the total acreage in today's national park system, but also, of the 20 areas in the United States having the special prestige of being designated World Heritage sites (places deemed to have outstanding international significance), seven were initially preserved by authority of the Act. Moreover, the Act has provided decades of greatly enhanced protection for archeological and paleontological sites on federally controlled lands.¹⁸

Lacey usually carried on his congressional work without fanfare, and he received no great public exposure or acclaim through his speeches or writings. (He also did not keep copies of much of his outgoing conservation correspondence, making it difficult for scholars to document his accomplishments.) Yet Lacey was the first member of Congress to make preservation and conservation truly central to his political agenda, an agenda that advocated federal intervention to curb what he saw as waste and misuse of both natural and historical aspects of the American scene.¹⁹

17. For works that focus primarily not on both acts, but rather on either the Antiquities Act or the National Park Service Act, see, for example, on the Antiquities Act: ROTHMAN, *supra* note 9; THE ANTIQUITIES ACT, *supra* note 15; and on the National Park Service Act: SELLARS, *supra* note 5, at 28-46; RUNTE, *supra* note 5, at 97-105; Robin W. Winks, *The National Park Service Act of 1916*, 74 DENV. U. L. REV. 575 (1997).

18. THE ANTIQUITIES ACT, *supra* note 15, at 6.

19. Sister Mary Annette Gallagher, John F. Lacey: A Study in Organizational Politics (Ph.D. dissertation, University of Arizona, 1970) [hereinafter Gallagher, A Study in Organizational Politics] is the only extensive biography of Lacey. The discussion of his conservation concerns is revised and published, see Annette Gallagher, *Citizen of the Nation: John Fletcher Lacey, Conservationist*, 46 ANNALS OF IOWA 9-24 (1981) [hereinafter Gallagher, *Citizen of the Nation*]. For a more recent account of his political career, see Rebecca Conard, *John F. Lacey: Conservation's Public Servant*, in THE ANTIQUITIES ACT, *supra* note 15, at 48-63. Lacey's speeches and essays, plus articles on him and his career, are found in MAJOR JOHN F. LACEY MEMORIAL VOLUME (Louis H. Pammel ed., 1915) [hereinafter MEMORIAL VOLUME]. Pammel's volume provides the most accessible source of Lacey's own ideas, as it includes a

His dedication to these causes during his congressional career was extraordinary and highly consequential. The scope of Lacey's efforts, of which the national park system was one of the chief beneficiaries, makes him an archetype through which to view historic and natural resource preservation at the turn of the nineteenth and twentieth centuries.

The breadth of Lacey's April 1900 antiquities bill, prepared at his request by his Interior Department allies and based on earlier bills and proposals, is evident in its opening paragraph, which authorizes the President to reserve by proclamation certain significant public lands. The lands were to be chosen "for their scenic beauty, natural wonders or curiosities, ancient ruins or relics, or other objects of scientific or historic interest, or springs of medicinal or other properties" that were considered desirable to protect in the public interest. These varied types of reserves were to be administered by the Secretary of the Interior. Lacey's bill went far beyond the limited, single-site Casa Grande statute and, unlike the Forest Reserve Act, focused on resource preservation rather than harvesting and extraction.

Moreover, the bill authorized the Secretary of the Interior to establish a "service" to manage and care for the protected areas. This service was to make certain that the reserves remain essentially unimpaired: It would ensure the "preservation from injury or spoliation of any and all objects therein of interest or value to science or history." And, recognizing the tourism potential of the reserves, the bill authorized the service to provide for the "accommodation of visitors," one of the few specific references to tourism in the Antiquities Act legislative campaign.

To protect the reserves' scientific knowledge base, Lacey's bill called for a research permitting process, plus penalties for vandals and looters. First, the permits would limit the "examination, excavation, and gathering" of artifacts and other objects of interest to those who were "properly qualified," as determined by the Secretary of the Interior. Conversely, those who would "appropriate, injure, or destroy any game, fish, timber, or other public property therein, or injure or destroy any caves, ruins, or other works or relics" were to be subject to possible fines or imprisonment. Overall, the Lacey bill of 1900 included much of what anthropologists, national park proponents, and other preservationists would seek to legislate over the next 16 years for federal preservation of selected public lands.²⁰

large number of Lacey's quotes, speeches, and articles. The State Historical Society of Iowa in Des Moines has the most extensive collection of Lacey papers.

20. To Establish and Administer National Parks, and For Other Purposes, H.R. 11021, Comm. Pub. Lands, 56th Cong. (1900). Using the title, "A Bill to Establish and Administer National Parks, and for Other Purposes," Lacey intended that the lands to be set aside be

* * *

In addition to support from the Department of the Interior and other sources, Lacey had his own personal interests in natural and human history to draw from; and, given the broad impact of his preservation and conservation efforts, his career is worth examining. Having served in the United States Army during the Civil War, and afterwards practiced law (he became a specialist in railroad law), Lacey won a seat in the U.S. House of Representatives in 1888, entering office the following year. Except for one term when he was not reelected (1891–1893), he remained in Congress until early 1907, chairing the House Committee on Public Lands for 12 years beginning in 1895 and using this influential position to further his conservation agendas.²¹

Regarding the out-of-doors, Lacey had none of the rough-and-ready ways of the conservationist Theodore Roosevelt. Instead, he seems to have possessed a kind of low-keyed, yet decided, interest in nature. Lacey's essays and speeches often reveal strong aesthetic feelings about landscapes, plants, animals, and other aspects of the natural world. Many such statements typified the sentimental, romantic nature rhetoric of the times, while also connecting directly to his patriotic sentiments and conservation concerns. A hunter and a lover of birds, for two decades Lacey also corresponded occasionally with Louis H. Pammel, one of Iowa's most distinguished biologists and a leading figure in the state's conservation movement. Such factors likely helped nurture Lacey's long-time commitment to protecting aspects of the natural world, which, with his legal knowledge and political acumen, he was able to help transform into statutory law.²² Also, as a patriotic Union veteran, Lacey favored preserving and

known as "national parks," rather than "national monuments," a term that had not yet been used regarding reserved public lands.

21. John F. Lacey, *Excerpts from the Autobiography of John F. Lacey*, in MEMORIAL VOLUME, *supra* note 19, at 381–423.

22. See L.H. Pammel, *Major John F. Lacey and the Conservation of Our Natural Resources*, in MEMORIAL VOLUME, *supra* note 19, at 36–47; Col. G.O. Shields, *A Tribute to Major Lacey from a Fellow Bird Lover*, in MEMORIAL VOLUME, *supra* note 19, at 16–17. For Lacey's comments on nature aesthetics, see John F. Lacey, *Interstate Commerce in Game and Birds in Violation of State Law: Let Us Save the Birds (1900)*, in MEMORIAL VOLUME, *supra* note 19, at 149; John F. Lacey, *Forestry (1905)*, in MEMORIAL VOLUME, *supra* note 19, at 83–84; John F. Lacey, *Forests Vital to Nation's Welfare (1905)*, in MEMORIAL VOLUME, *supra* note 19, at 89; John F. Lacey, *Pajarito: An Outing with the Archeologists*, in MEMORIAL VOLUME, *supra* note 19, at 219 [hereinafter Lacey, *Pajarito*]. See also John F. Lacey, *Speech on National Parks* (n.d.) (draft of speech) [hereinafter Lacey, *Speech on National Parks*] (Lacey's comments indicate that he wrote this speech a short time after passage of the Antiquities Act, June 8, 1906) (Lacey-SHSI, Box 267). Conard emphasizes not Lacey's personal interests and motivations, but rather his "broad knowledge of law" and his interest in the "intergovernmental nature of legal issues" as they involved the public lands in the West and related concerns. Conard, *supra* note 19, at 57.

memorializing the Civil War battlefields and cemeteries. And, in line with his conservation interests, he sought to preserve other remnants of the human past, especially Southwestern archeological sites.

Although Lacey's Progressivism was pretty much limited to conservation and public land issues, his efforts covered a range of natural and historic resource concerns that gained widespread support during the Progressive Era. The conservative congressman from a small town in Iowa influenced congressional policy on such important matters as national forests, national wildlife refuges, national parks, nationwide bird and game protection, and preservation of significant historic, archeological, and paleontological sites. At the time that he introduced his 1900 antiquities bill, however, Lacey's growing reputation as a conservationist rested almost entirely upon his repeated advocacy for laws protecting the country's natural resources.

Even in his freshman congressional term, Lacey had helped draft the Forest Reserve Act, an indication of his willingness to set aside certain public lands and place restrictions on the disposition and use of those lands. His work on this Act also involved him with two precedents that would bear directly on his later efforts to enact an antiquities protection law: first, using presidential proclamations as a means of determining the use of certain public lands; and second, placing no specific limits on the size of individual reserves.

Lacey intensified his conservation efforts upon returning to Congress in 1893. He supported the setting aside of areas for protection of bird and game populations that would ultimately bring about the national wildlife refuge system. As part of this effort, Lacey aggressively backed an 1894 law that strengthened wildlife protection in Yellowstone National Park, where the declining bison population was of special concern. The following year, he gained the chairmanship of the House Committee on the Public Lands.²³ Then, in 1900, after years of persistent politicking by Lacey,

23. Lacey's political conservatism is discussed in Gallagher, *A Study in Organizational Politics*, *supra* note 19, *passim*. His personal recollection of early involvement with drafting the act allowing presidential proclamations of forest reserves is found in John F. Lacey, *Address to the Bankers' Convention 7-8 (June 18, 1907)* (SHSI, Box 283-A); *see also* Pammel, *supra* note 22, at 42; STEEN, *supra* note 10, at 26-27; HAYS, *supra* note 5, at 23, 36-37. Lacey's views on forestry in general (which vary from the highly romantic to serious conservation matters) are in a number of his speeches and articles. *See* MEMORIAL VOLUME, *supra* note 19, at 69-153. Lacey also supported the 1905 law that transferred administration of forest reserves from the Department of the Interior to the Department of Agriculture, *see* *Forestry - The Tree Is the Mother of the Fountain - A Tree Is the Best Gift of Heaven to Man*, MEMORIAL VOLUME, *supra* note 19, at 110-14; on wildlife refuges and the 1894 Yellowstone Act, *see* Gallagher, *Citizen of the Nation*, *supra* note 19, at 10, 13-14; An Act to protect the birds and animals in Yellowstone National Park, and to punish crimes in said park, and for other purposes, ch. 72, 28 Stat. 73 (1894); TOLSON, *supra* note 5, at 30-33.

Congress passed his bird and game protection Act, which remains today a major cornerstone of wildlife protection in the United States. President William McKinley signed it into law on May 25, about a month after Lacey introduced his first antiquities bill.

As with the Antiquities Act that would come later, this highly significant bird and game law became commonly known as the "Lacey Act" in recognition of the congressman's determined efforts to gain its passage. It is still widely referred to by that designation. Knowledgeable about interstate commerce through his extensive work in railroad law, Lacey made use of the federal government's constitutional authority over interstate commerce. The statute outlawed the almost unbelievably massive slaughter of birds and game for commercial shipment (mainly for restaurant and millinery markets) across state boundaries whenever the animals were killed illegally under state law. Congressman Lacey considered the bird and game law to be one of his most important accomplishments.²⁴

The Act came in response to the dramatic population decline of several American species, most prominently the bison and the passenger pigeon. The bison survived, perhaps partly through Lacey's efforts, but the passenger pigeon did not. The renown of this bird species and the scientific and historical significance of its extinction make it especially illustrative of the bird and game concerns that Lacey shared with many Americans, including President McKinley and a majority of the Congress. The passenger pigeon population is estimated by modern-day experts to have been two-to-three *billion* during the early nineteenth century. This attractive, varicolored species amounted to perhaps as much as 25 to 40 percent of all birds in what is now the United States, and may have been the most populous bird species ever to have existed. As Lacey feared, his bird and game law came too late for the passenger pigeon, and the last known member of this species died in 1914—a stunning symbol of the squandering of America's natural bounty. In a speech to the League of American Sportsmen in 1901, Lacey revealed the depth of his concerns about such waste and misuse of natural resources—about, as he put it, mankind's

24. The Bird & Game Act, ch. 553, 31 Stat. 187 (1900), is officially entitled "An Act to enlarge the powers of the Department of Agriculture, prohibit the transportation by interstate commerce of game killed in violation of local laws, and for other purposes." Lacey's involvement with this Act is discussed in Gallagher, *Citizen of the Nation*, *supra* note 19, at 10-13; and MICHAEL J. BEAN, *THE EVOLUTION OF NATIONAL WILDLIFE LAW 17-18*, 409-11 (rev. ed. 1983).

“omnidestructive” ways. If such destruction continues, he warned, the world would become “as worthless as a sucked orange.”²⁵

In the 1890s, Lacey supported the establishment of the only large national parks created during that decade. In 1890, the House passed the Sequoia and Yosemite bills without objection; and, in 1899, it passed the Washington National Park bill with Lacey’s clear support, including his amendment to change the park’s name to Mount Rainier. It was, however, the following year, 1900, that marked a turning point for the congressman regarding national parks. Backed by Interior Department officials, Lacey promoted his own national park proposals, beginning with the Petrified Forest in eastern Arizona Territory, with an extensive aggregation of fossilized prehistoric trees. The park was intended to cover 41,600 acres, more or less. In statements made both early and late in his Petrified Forest efforts, Lacey denounced “reckless tourists” who had used dynamite to blast out souvenirs of petrified wood, and condemned the “genius of greed” that would destroy the ancient forest whenever “some use can be found that will transform it into money.” He believed that “[n]othing short of permanent reservation by law will preserve [the forest] from destruction.”²⁶

Late in 1900, Lacey introduced another national park bill, this time seeking to preserve about 153,000 acres of the Pajarito Plateau, located west of Santa Fe, just beyond the Rio Grande. In this effort, he was again heavily

25. See Bird & Game Act, ch. 553, 31 Stat. 187 (1900); A.W. SCHORGER, *THE PASSENGER PIGEON: ITS NATURAL HISTORY AND EXTINCTION 199–205* (University of Oklahoma Press, 1973) (1955); Gallagher, *A Study in Organizational Politics*, *supra* note 19, at 76–81; RICHARD RHODES, JOHN JAMES AUDUBON: *THE MAKING OF AN AMERICAN* 111–13 (2004); CHRIS ELPHICK, JOHN B. DUNNING, JR. & DAVID ALLEN SIBLEY, *THE SIBLEY GUIDE TO BIRD LIFE AND BEHAVIOR* 324–25 (2001); PAUL EHRLICH ET AL., *THE BIRDER’S HANDBOOK: A FIELD GUIDE TO THE NATURAL HISTORY OF NORTH AMERICAN BIRDS* 273–75, 277 (1988). The “sucked orange” quote is from John F. Lacey, *Address to the League of American Sportsmen*, New York (1901) (Lacey-SHSI, Box 287-B).

26. 51 CONG. REC. 9072–73 (1889) (Sequoia National Park); 51 CONG. REC. 10,751–52 (1890) (Yosemite National Park); 55 CONG. REC. 2667 (1899) (Mount Rainier National Park). Lacey’s quotes are from John F. Lacey, *Preserving Petrified Forest* (1900), in *MEMORIAL VOLUME*, *supra* note 19, at 208, and John F. Lacey, *The Petrified Forest National Park of Arizona* (1906), in *MEMORIAL VOLUME*, *supra* note 19, at 204 [hereinafter Lacey, *Petrified Forest* (1906)]; see also GEORGE M. LUBICK, *PETRIFIED FOREST NATIONAL PARK: A WILDERNESS BOUND IN TIME* 47–55 (1966). In 1902, Lacey remarked in Congress that the proposed Petrified Forest National Park would cover an area of “about two townships,” which would be 46,080 acres. See 57 CONG. REC. 4050 (1902). However, the clearest indication of Lacey’s proposed Petrified Forest acreage is a 1906 Congressional Record listing of 65 sections (each section being 640 acres) to be included in the park, making a total of 41,600 acres. This is soon followed by a second listing of the same 65 sections. (Lacey’s statement – made just before the second listing of sections – that the park would cover 25,000 acres is inexplicable, unless he already had some idea of the size of the area that would eventually prove to include the most impressive petrified trees.) See 59 CONG. REC. 9553, 9559 (1906).

influenced by Interior officials, but also by the New Mexico-based archeologist Edgar Lee Hewett, whom he met in Washington sometime in 1900. Hewett had an intense interest in preserving the vast array of archeological sites on the Pajarito, and he had begun building alliances with educators, anthropologists, and Washington bureaucrats and politicians, among them Lacey. Still a college president and teacher, Hewett was soon to become a full-time archeologist and would prove a crucial ally in Lacey's antiquities legislation efforts, which helped make the New Mexican a major figure in the fermenting Southwestern archeological world. When introducing his Pajarito bill, Lacey quoted a statement of Hewett's that urged protection of the plateau's archeological sites and asserted that the "wanton vandalism" that had occurred there in recent months surpassed any previous such destruction in the region. Although neither the Pajarito Plateau nor the Petrified Forest proposals made any headway in Congress, officials in the Interior Department used their land withdrawal strategy to provide temporary protection for both areas.²⁷

Already by the end of the nineteenth century the federal government had made its first truly substantial commitments to historic preservation through legislation on Casa Grande and the Civil War battlefield parks. Lacey had no chance to vote on the 1889 Act that granted the president proclamation authority over Casa Grande, as his first session in Congress came after the Act had been signed into law. Yet Lacey, an ardent supporter of veterans' causes, was in Congress when each of the first five national battlefield park proposals came to a vote during the 1890s. Having risen during the Civil War to the rank of brevet-major in the army (for the rest of his life he was known as "Major Lacey," a rank also noted on his gravestone), he later became a charter member of the local Iowa chapter of the Grand Army of the Republic, the largest and most powerful Union veterans' organization. The Grand Army's membership reached more than 400,000 by 1890 and greatly influenced the agenda of the Republican Party. Republican presidents from Ulysses S. Grant through William McKinley were members of the Grand Army, as were many older members of Congress from the northern states, Lacey included. The organization promoted pensions and other concerns of Union army veterans that Lacey supported. In 1880, the Grand Army gained dominance within the Gettysburg Battlefield Memorial Association, which oversaw the battlefield before it became a federally administered national military park. Under the leadership of the Grand Army of the Republic, Gettysburg Battlefield

27. Attempts to preserve the archeology of the Pajarito Plateau are discussed in HAL ROTHMAN, *BANDELIER NATIONAL MONUMENT: AN ADMINISTRATIVE HISTORY passim* (1988); Thompson, *supra* note 15, at 278-86; and Lee, *supra* note 7, at 245.

became extensively developed and monumented, thereby setting the standard for treatment of the early national battlefield parks.²⁸

Records are inadequate to state definitively that Lacey actually voted for all of the five Civil War military parks created in the 1890s. However, his support is clear regarding Vicksburg, and nearly so with Chickamauga-Chattanooga. And it is strongly inferred from his ties to the Grand Army, his conservation and preservation efforts during that decade, and his interest in the battlefields as expressed in his speeches. Almost all of the battlefield legislation was passed with no record of votes made by individual members of the House of Representatives. Even in the one instance when an actual count was recorded—for the 1890 House vote on the Chickamauga and Chattanooga battlefield park—the final tally was “ayes 120, noes 8,” but no list of each congressman’s vote was provided. (The fact that Chickamauga was a Confederate victory and Chattanooga a Union victory meant that the bill gained strong support in Congress from both Southerners and Northerners.) It is difficult to conceive that Congressman Lacey, a conservationist and Civil War veteran dedicated to supporting his fellow veterans, would have been among the eight individuals who voted against preserving the battlefield. For the 1899 House vote on Vicksburg National Military Park, the record states only that “in the opinion of the Chair, two-thirds having voted in the affirmative, the rules were suspended and the bill was passed.” Records of votes on other battlefield parks provide even less detail. However, Lacey’s support for legislation establishing the Vicksburg battlefield park is strongly suggested by at least four resolutions he presented to the House Military Affairs Committee on behalf of his constituents for passage of the Vicksburg bill. And, on at least one occasion before the House, in 1898, he petitioned the same committee for Iowa troop positions to be marked at Gettysburg Battlefield.²⁹

28. The 51st Congress had opened with a special Senate session on March 4, 1889, to confirm new presidential appointees—two days after outgoing President Grover Cleveland had signed the Casa Grande proclamation authority into law. Lacey’s initial congressional session—and thus his first chance to vote—was the first *regular* session of the 51st Congress, which did not begin until early December 1889. See also Gallagher, *A Study in Organizational Politics*, *supra* note 19, *passim*; Grand Army of the Republic, Post No. 10, Iowa, Record of Enlistments (handwritten list of charter members) (Lacey-SHSL, Box 285); James A Devitt, *In Memory of Major John F. Lacey*, in MEMORIAL VOLUME, *supra* note 19, at 4; G. KURT PIEHLER, REMEMBERING WAR THE AMERICAN WAY 57–60 (1995); WALLACE EVAN DAVIES, PATRIOTISM ON PARADE: THE STORY OF VETERANS’ AND HEREDITARY ORGANIZATIONS IN AMERICA 33–36, 139–55, 189–248 (1955); Sellars, *supra* note 3, at 37, 45.

29. For House votes on Chickamauga and Chattanooga, see 51 CONG. REC. 5394 (1890); on Vicksburg, see 55 CONG. REC. 1518 (1899). Lacey’s resolutions supporting a national military park at Vicksburg are found in 54 CONG. REC. 3001 (1896); 54 CONG. REC. 5091 (1896); 55 CONG. REC. 154 (1897); 55 CON. REC. 146 (1897). His resolution for “marking the position

Lacey's dedication to the battlefield parks was evident in an 1895 address to Iowa veterans (given a few months after Gettysburg National Military Park had been established), when he stated that the battlefield parks "will teach while time lasts," with each generation passing this legacy down to the next generation. In a comment that resonates with early twenty-first century preservation rhetoric, Lacey added that in "commemorating the past, we are guarding safely the heritage of the future." Speaking in 1906, the congressman asserted that the same "public sentiment" and "spirit" that preserved the country's national parks had brought about the preservation and memorialization of the battlefields. And in an address given at Shiloh National Military Park in April 1912, on the fiftieth anniversary of the battle, and entitled "Why Do We Create Battlefield Parks and Erect Monuments Thereon?," the former congressman proudly claimed that, as at Shiloh (by then encompassing well more than 3,000 acres), it took *Americans* to make "a memorial or monument of [a] battlefield itself." Having visited famous historic sites during his extensive travels in America and abroad, Lacey stated his conviction that "places where great issues have been fought out are worthy of special commemoration."³⁰ Lacey's support for the military parks and the Antiquities Act (as well as the support given by many of his congressional colleagues and other allies) reflects the political and intellectual connections between federal preservation of the Civil War battlefields in the East and South and antiquities in the Southwest.

Building on his experiences with an array of conservation and preservation causes, Lacey entered the struggle for antiquities preservation. Although his April 1900 antiquities bill died in Congress, he expressed his

of the regular troops at Gettysburg" is found in 55 CONG. REC. 2572 (1898). The author wishes to thank Mrs. Patricia Pierce Patterson of Oskaloosa, Iowa, who searched the local newspapers for information on Lacey's voting record regarding the creation of the early Civil War battlefields.

30. See John F. Lacey, *At Northwest Iowa Veteran Reunion*, in MEMORIAL VOLUME, *supra* note 19, at 242 (including the "teach" and "heritage" quotes); see also John F. Lacey, *Speech on National Parks*, *supra* note 22, at 4 (including the "public sentiment" and "spirit" quotes); John F. Lacey, *Why Do We Create Battlefield Parks and Erect Monuments Thereon?*, in MEMORIAL VOLUME, *supra* note 19, at 247-55 (quotes are found on 250-54). Shiloh acreage is given in TIMOTHY B. SMITH, *THIS GREAT BATTLEFIELD OF SHILOH: HISTORY, MEMORY, AND THE ESTABLISHMENT OF A CIVIL WAR NATIONAL MILITARY PARK* 52 (2004). In his talks, Lacey regularly emphasized heroism, sacrifice, and post-war reconciliation among former North-South adversaries, which suggests his reasons for commemorating the battlefields. In 1899, for example, he spoke fondly of a visit to Chickamauga, where, "amid the battle monuments of that heroic field," he had found former veterans of the Confederate and United States armies mingling together on "friendly terms," as if they had fought on the same side. John F. Lacey, *Memorial Day*, in MEMORIAL VOLUME, *supra* note 19, at 258. In the House of Representatives, battlefield parks fell under the Committee on Military Affairs, of which Lacey was not a member.

continuing interest in antiquities by accepting Edgar Hewett's invitation in the summer of 1902 to visit the archeological sites on northern New Mexico's Pajarito Plateau. Lacey recalled that Hewett urged him to "see for myself the necessity and propriety of the enactment of a law to protect and preserve the ancient aboriginal ruins of the Southwest." An inveterate tourist, Lacey especially valued the educational aspects of travel, and he wrote home detailed accounts of his visit to the Pajarito, including line drawings of particular features that interested him. In an account of his trip to the Pajarito written much later, Lacey recalled how his experiences, in effect, strengthened his resolve to gain statutory protection for ancient sites and for "scenic and scientific" places such as Petrified Forest and Mount Olympus (the latter in the state of Washington). Certainly, his growing friendship with Hewett greatly benefited their common cause of antiquities protection. Meanwhile, Lacey backed two other national park proposals, Crater Lake and Wind Cave, which were established in 1902 and 1903 respectively.³¹

Then, early in 1904, Lacey reintroduced his broad antiquities bill from 1900, again with backing from the Interior Department. His was one of several antiquities proposals made in the early part of that year. As before, Lacey's bill was comprehensive, calling for presidential proclamations to create protected areas related to human and natural history, and for the accommodation of tourism and a "service" to administer these reserves. It gained little support compared to that given to a similar, but less expansive bill sponsored by Senator Henry Cabot Lodge of Massachusetts and Congressman William Rodenberg of Illinois. Well-organized supporters, including nationally known anthropologists and educators, pushed the Lodge-Rodenberg proposal further toward passage than any previous antiquities bill.³²

Edgar Lee Hewett's role in promoting antiquities legislation increased significantly during the politicking over the Lodge-Rodenberg proposal. In September 1904, responding to a request from the Department of the Interior, the New Mexico archeologist prepared a study of "all the districts of the Southwest that are rich in prehistoric remains" – the most informative overview of Southwestern archeological areas to reach Interior officials and Congress during the entire antiquities legislative drive. These

31. Conard, *supra* note 19, at 49 (including the "see for myself" quote); Lacey, *Pajarito*, *supra* note 22, at 210–19 (his statements about Hewett's invitation and on "scenic and scientific" are on 210); John F. Lacey, Poo-yea (Puye Mesa in New Mexico) (1902) (typescript, August 26, 1902 (Lacey-SHSI, Box 267). For Crater Lake and Wind Cave national parks, see Anonymous, Major John F. Lacey 5, 9 (typescript) (Lacey-SHSI, Box 267). Lacey's extensive travels are discussed in Devitt, *supra* note 28, at 9.

32. Lacey's 1904 bill is Preservation of Prehistoric Ruins on the Public Lands, 58 H.R. 13478, Comm. Pub. Lands, 58th Cong. 231–35 (1905); Lee, *supra* note 7.

places, Hewett wrote in his study, could become "a perpetual source of education and enjoyment" for American and foreign travelers. In a statement accompanying the overview, Hewett urged not just archeological preservation, but also general legislation providing for the creation and administration of reserves in areas that had abundant "historic and scientific interest and scenic beauty." The inclusion of the phrase "scenic beauty" (wording not unlike that in Lacey's 1900 and 1904 bills) suggests that Hewett may have been willing to accept a broader focus beyond antiquities preservation, and was perhaps open to accommodating tourism, as Lacey had twice officially proposed. In early 1905, support for the Lodge-Rodenburg proposal diminished partly because of the bill's potential to intensify bureaucratic rivalries over control of antiquities. With Hewett emerging as one of its most effective critics, the bill failed in Congress.³³

Frustrated by the lack of progress, the American Anthropological Association and the Archaeological Institute of America jointly appointed Hewett to chair a new committee created to promote antiquities legislation. Hewett responded with a revised and less complex antiquities bill, intended to reduce opposition from various interests. Lacey introduced it in early January 1906. Hewett's awareness of the concerns of the archeological profession for a law that would provide more effective bureaucratic control of archeological sites and research, combined with Lacey's adept congressional skills, helped assure the two professional associations and Congress that the bill properly addressed the protection and preservation issues at hand, and it was passed.

The wording of the bill was Hewett's, except for a few modifications, perhaps at least one by Lacey. There is some indication that the congressman may have insisted on including "scientific" interest as one of the characteristics for which public lands could be preserved under the Act in order to boost the chances that the Petrified Forest would be proclaimed a national monument, given that Lacey's quest to make that area a national park had failed. On June 8, 1906, President Theodore Roosevelt signed the antiquities bill into law, and it soon bore the honorary designation of the "Lacey Act." Shortly after passage of the Act, Lacey wrote to W.H. Holmes, then head of the Bureau of American Ethnology: "I appreciate your friendly statement in regard to my work for the Archeological Bill. I have no doubt this law can be so construed as to protect

33. See *Prehistoric Ruins on Public Lands*, H.R. 3704, Comm. Pub. Lands, 58th Cong. 2, 3 (1905); Squillace, *supra* note 15, at 479-80; ROTHMAN, *supra* note 9, at 43-45; Lee, *supra* note 7, at 235.

substantially all the important ruins yet remaining on the public lands in the Southwest." Indeed, it did much more than that.³⁴

Considering Lacey's many preservation and conservation interests, the bird and game law and the Antiquities Act are almost certainly his two most significant contributions, and both bear the "Lacey Act" designations. These twin designations pay tribute to the Iowa congressman for his foresighted leadership and his persistence in advancing the federal government's emerging efforts to preserve natural and historic features of special value to Americans, including the great archeological sites of the Southwest.

* * *

In the realm of historic and natural preservation on the nation's public lands, no law had ever approached the scope of the 1906 Antiquities Act. Much more broadly than with individual national park enabling legislation, the Act made explicit that preservation of historic, archeological, and other scientific sites on lands controlled by the federal government was indeed a federal responsibility. Somewhat analogous to the government's concern for protecting private interests on private property, the national government accepted its obligation to protect the broad public interest on public lands, in this instance at places containing important remnants of the American past and significant scientific areas. The Act also made it clear that, unlike the forest reserves, the primary value of such special places lay not in their commercial value—in economics, sustainable harvesting, and profits—but in their contribution to education and knowledge for the general public good through research conducted and information disseminated by scientific and educational institutions.³⁵

34. Hewett's activities are discussed in Thompson, *supra* note 15, at 297–300. The suggestion that Lacey may have inserted "scientific" in the bill is found in Conard, *supra* note 19, at 60–61, 63 n.29. See also Letter from John F. Lacey to W.H. Holmes (June 15, 1906) (NAA, Records of the Bureau of American Ethnology, Correspondence, Letters Received, 1888–1906). The Act's chief backing in the Senate came from Thomas MacDonald Patterson, of Colorado, whom Lacey had appealed to because Patterson's backing would signal Western accord. The evidence suggests that the Senator refrained from any aggressive support. Weixelman, *supra* note 1, at 241. For Patterson's political career and interests, see SYBIL DOWNING & ROBERT E. SMITH, *TOM PATTERSON: COLORADO CRUSADER FOR CHANGE* (1955).

35. Discussions of long-range policy implications of the Antiquities Act are found in Francis P. McManamon, *90 Years of Archeology and Historic Preservation*, 19 CRM: J. HERITAGE STEWARDSHIP 17, 18–22 (1996); Francis P. McManamon, *The Foundation for American Public Archaeology: Section 3 of the Antiquities Act of 1906*, in THE ANTIQUITIES ACT, *supra* note 15, at 153, 166–74; Jerry L. Rogers, *The Antiquities Act and Historic Preservation*, in THE ANTIQUITIES ACT, *supra* note 15, at 176–86; David Harmon et al., *The Antiquities Act: A Cornerstone of Archaeology, Historic Preservation, and Conservation*, in THE ANTIQUITIES ACT, *supra* note 15, at 267–85; Lee, *supra* note 7, at 240–41. See also Thompson, *supra* note 15, at 314–18; Weixelman, *supra* note 1, at 239–40; Squillace, *supra* note 15, at 487–89.

In what was from the first its most prominent section, the Act authorized the President to reserve special places located on lands controlled by the federal government: to "declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest." These places were to be designated "national monuments," a term Hewett devised, which distinguished them from national parks.³⁶ While it employed the same proclamation procedure that had been used to establish the Casa Grande Ruin Reservation, it gave the President far greater authority, moving from the one-site authority for Casa Grande to placing no limits on the number of sites presidents could set aside. It thus significantly advanced the preservation authority of the Executive Branch, from not only *managing* preserved places such as archeological sites, battlefields, and national parks, but also *establishing* areas to be preserved. The Act's inclusion of the phrase "scientific interest" opened the way for presidential proclamations that ultimately would set aside a huge array of scenic national monuments having important scientific values. (In 1978, the "scientific interest" wording of the Antiquities Act would help provide statutory authority for President Jimmy Carter to proclaim national monuments in Alaska that added more than 40 million acres to the national park system.)³⁷

The Act also mandated who could, and who could not, work with archeological sites on all federally owned or controlled lands. It authorized a formal permitting process to restrict research and examination of sites (which would include excavation and the collection of objects) to institutions deemed "properly qualified." Investigations were to be permitted only for the purposes of benefiting "reputable museums, universities, colleges, or other recognized scientific or educational institutions," with the intent of "increasing the knowledge of such objects." The objects were to receive "permanent preservation in public museums." In contrast, the law criminalized the disturbance of sites on federally controlled lands without an official permit and provided penalties and fines for violators.

Soon after passage of the Act, President Theodore Roosevelt began to proclaim national monuments, with many of the early ones converted from withdrawals made by the General Land Office. Some of the monuments protected scientifically important natural areas, such as Devils Tower in Wyoming (America's first national monument), Petrified Forest

36. Squillace, *supra* note 15, at 483; Weixelman, *supra* note 1, at 239-40.

37. Discussions of President Carter's Alaska proclamations are found in Cecil D. Andrus & John C. Freemuth, *President Carter's Coup: An Insider's View of the 1978 Alaska Monument Designations*, in *THE ANTIQUITIES ACT*, *supra* note 15, at 93-105; Squillace, *supra* note 15, at 502-07.

in Arizona Territory, Natural Bridges in Utah, and Muir Woods in California. (Muir Woods was created from lands donated to the federal government by William Kent, a wealthy Californian destined to enter Congress and play a major role in creating the National Park Service.)

Early historical and archeological monuments included El Morro and Chaco Canyon in New Mexico Territory and Montezuma Castle and Tumacacori (an old Spanish mission and associated Indian sites) in Arizona Territory. Despite the overwhelming emphasis on archeological areas during the legislative campaign, the larger portion of these early national monuments was set aside for natural, or "scientific," importance. And, most of these early monuments were rather small—but not all of them. Chaco Canyon, for example, was 10,643 acres, while the Petrified Forest National Monument was initially proclaimed at 60,776 acres.³⁸

Both of these monuments touched on the important question of *size*—the congressional intent regarding the areal extent of individual national monuments. In fact, the final wording of the Antiquities Act had been intended to alleviate concerns (mainly from Western politicians, a number of whom sat on Lacey's public lands committee) that presidents might proclaim too many national monuments too great in size. In light of past experience with the forest reserves, critics of the Antiquities Act believed that the monuments could take even more of the public domain out of the reach of private ownership or use. In the Act's language, the use of the word "objects" in indicating what might be declared a national monument ("objects of historic or scientific interest") did not mean something very small like an Indian pot or other hand-held item. Instead, the term "national monuments" is variously characterized in the Act as "landmarks," "structures," and "parcels of land"—all indicating something far larger than a hand-held object.

From the very beginning, *size*—the extent of lands to be set aside—was an issue that antiquities advocates had to confront. During the legislative campaign, the proposed size limit crept up from 320 acres, to 640 acres, to the final wording—which Hewett purposely made vague—that the monuments would be "confined to the smallest area compatible with proper care and management of the objects to be protected...." An open discussion about size occurred on June 5, 1906, just before the bill passed the House of Representatives. Congressman John Stephens of Texas, apprehensive that too much public land would be, as he stated, "locked up"

38. Quotes are from the Antiquities Act, ch. 3060, 34 Stat. 225 (1906). Proclamation dates and acreage for all national monuments (accurate as of September 2005) are listed in *THE ANTIQUITIES ACT*, *supra* note 15, at 288–97. For acreage data on Chaco and Petrified Forest national monuments, see *id.* at 288. Lists of national monuments and all other units of the national park system are found in *NAT'L PARK SERV.*, *supra* note 4, *passim*.

by the act, asked Lacey if the antiquities bill would, like the Forest Reserves Act, keep large tracts of public land under permanent federal control. Essentially avoiding the heart of the question, Lacey replied, "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..."³⁹

No evidence has been found to indicate that Lacey, the leading congressional proponent of the Antiquities Act, protested the size of any of the large, early national monuments. Instead, using as an example the congressman's Petrified Forest National Park proposals, he had sought to preserve an area just over two-thirds the size of what Theodore Roosevelt would proclaim for Petrified Forest National Monument in December 1906. After the Antiquities Act had passed, but before the President signed this proclamation in December, Lacey reiterated his intent to establish a national park at Petrified Forest, a goal he had "endeavored for six years" to attain, and which he was sure Roosevelt would sign. He recounted his efforts to gain majority support through three consecutive Congresses and lamented the crippling indifference of the Senate Committee on the Public Lands. Then, several months after passage of the Antiquities Act, President Roosevelt proclaimed not only Chaco Canyon with more than 10,000 acres, but also Petrified Forest National Monument—the first federal paleontological preserve—with 60,776 acres, later reduced to 25,625 following a closer survey of fossilized trees in the area. Surely even Roosevelt's *initial* and extensive Petrified Forest proclamation was satisfactory to Congressman Lacey, who had sought to create a national park of about 41,600 acres, approximately two thirds as large.

As for Roosevelt, he had few, if any, misgivings about size. In early 1908, he proclaimed the huge, 808,120-acre Grand Canyon National Monument. Then, in May 1909 he proclaimed the 629,200-acre Mount Olympus National Monument in Washington state. These early and vast proclamations set a precedent (upheld in 1920 by the U.S. Supreme Court in a Grand Canyon case) that would influence future presidents' willingness to create extensive national monuments. Furthermore, in 1916, a portion of the Pajarito Plateau would be proclaimed by President Woodrow Wilson as Bandelier National Monument, at more than 23,000 acres. Earlier, Congressman Lacey's park proposals for a Pajarito National Park had sought to

39. The Act's quotes are found in Antiquities Act, ch. 3060, 34 Stat. 225 (1906); the Lacey-Stephens debate is found in 59 CONG. REC. 7888 (1906). See also Lee, *supra* note 7, at 226, 228, 235, 240-41; Thompson, *supra* note 15, at 303, 305; Weixelman, *supra* note 1, at 239; Frank Norris, *The Antiquities Act and the Acreage Debate*, 23 GEORGE WRIGHT F. 6, 8 (2006).

set aside a much larger area (approximately 153,000 acres), another indication of his willingness to preserve very large tracts of land.⁴⁰

Confronted by the rising Progressive movement in Iowa, Lacey suffered defeat in the November 1906 congressional race. With his local constituency, other issues trumped conservation. During the ensuing years, Lacey continued to lobby sportsmen's organizations and his contacts in Congress to enact a migratory bird protection law. Also, as evidence of his genuine personal interest in Southwest archeology, in the summer of 1911 the former congressman returned to New Mexico's Pajarito Plateau to attend an archeological field school conducted by his friend, Edgar Lee Hewett.⁴¹ Just over two years later, in late September 1913, Lacey died suddenly at his home in Oskaloosa, Iowa.

In the early 1970s, former National Park Service director Horace M. Albright recalled his appreciation – and that of his predecessor Stephen T. Mather – for “the significance and importance of the Lacey Antiquities Act” and its enrichment of the national park system. Albright added that Lacey “was far ahead of his time in demanding protection for prehistoric sites and artifacts on the public domain.”⁴² Today, Lacey's name is best known by the individuals, organizations, and bureaucracies that oversee the nation's bird and game laws. Yet his legacy also includes the statutory authority for enormous increases to the national park system and the protection and preservation of significant places on other lands under federal control. In addition, he helped lay the groundwork for the nationwide development and perpetuation of historical, archeological, and scientific education and

40. For discussions of the size question, see Norris, *supra* note 39, at 6–16; Squillace, *supra* note 15, at 484–93; Righter, *supra* note 10, at 283–86; Lacey, *Petrified Forest (1906)*, *supra* note 26, at 203 (including quote), 205–06; THE ANTIQUITIES ACT, *supra* note 15, at 288–89. In 1938, Mount Olympus National Monument would be renamed and re-designated Olympic National Park. Bandelier National Monument was named in honor of archeologist Adolph Bandelier, who had sounded the early alert that Pecos and other Southwestern archeological sites were being destroyed and needed protection. The monument was administered by the U.S. Forest Service until transferred to the National Park Service in 1932. The Grand Canyon Supreme Court case, *Cameron v. United States*, 252 U.S. 450 (1920), is discussed in Squillace, *supra* note 15, at 486 n.70.

41. Gallagher, *A Study in Organizational Politics*, *supra* note 19, at 95–97; Pammel, *supra* note 22, at 41–42; Lacey, *Pajarito*, *supra* note 22, at 210–19. Horace Albright's reflections on Lacey and the “Lacey Antiquities Act” are found in HORACE M. ALBRIGHT, *ORIGINS OF NATIONAL PARK SERVICE ADMINISTRATION OF HISTORIC SITES* 5 (1971). Six months before Lacey's death, the Migratory Bird Act of 1913, which Lacey had strongly supported, was signed into law. Considered constitutionally weak, it was replaced by the Migratory Bird Treaty Act of 1918. BEAN, *supra* note 24, at 19–21.

42. ALBRIGHT, *supra* note 41, at 5. Referring to the “Lacey acts,” Albright made similarly laudatory remarks about the former congressman in a 1974 address. See Horace M. Albright, *The Paradox in Resource Conservation*, in THE ELEVENTH COSMOS CLUB AWARD: HORACE MARDEN ALBRIGHT 7–9 (1974).

research programs. Despite this, John F. Lacey has remained unheralded by, and in fact virtually anonymous to, both the National Park Service and the public at large.

MESA VERDE NATIONAL PARK

In February 1901, during the very early stages of the legislative drive for the Antiquities Act, a bill was introduced to create a Colorado Cliff Dwellings National Park (later changed to Mesa Verde). The bill failed, and for the next several years proposals for broad antiquities protection and a Mesa Verde park followed more or less parallel tracks, with repeated failures in Congress. In 1906, however, in a sudden burst of legislative energy, both bills were passed and signed into law by Theodore Roosevelt—the Antiquities Act in early June, followed by the Mesa Verde statute on June 29.⁴³ Backed by Colorado politicians and determined, politically enterprising women's organizations, Mesa Verde became the first area to be designated a "national park" because of its archeological values. (Indeed, it remains the only "national park" established solely for archeological significance.)

Curiously, these two major preservation laws contained significant redundancies. To be sure, the Antiquities Act included the all-important presidential proclamation authority to create national monuments, whereas the Mesa Verde Act created a single archeological national park. However, in two other key sections, the Mesa Verde statute virtually replicated the antiquities law. In one of those sections, the Mesa Verde Act provided for research and education through a federal permitting process to allow universities, museums, and other educational institutions to conduct research in the national park. In another section, it outlawed vandalism and looting in the park. Approved only three weeks earlier, similar mandates in the Antiquities Act had applied to *all* lands controlled by the federal government, and thus to the lands that would soon be included in Mesa Verde National Park. The Mesa Verde Act's redundant sections seem mainly to have reaffirmed and strengthened sections of the Antiquities Act within the new park. The final wording of both acts reflected close philosophical and policy ties, with clear and specific mandates for preservation, research, and education.⁴⁴

43. The Mesa Verde Act's authorized punishments for vandalism were greater than those of the Antiquities Act. Antiquities Act, ch. 3060, 34 Stat. 225 (1906); An Act creating Mesa Verde National Park, ch. 3607, 34 Stat. 616 (1906); see also TOLSON, *supra* note 5, at 125-27; SMITH, *supra* note 11, at 45-53, 57, 61-66; LSE, *supra* note 15, at 164-66.

44. Antiquities Act, ch. 3060, 34 Stat. 225 (1906); An Act creating Mesa Verde National Park, ch. 3607, 34 Stat. 616 (1906).

Yet the Interior Department's newly arrived supervisors of Mesa Verde quickly and aggressively sought to accommodate public use of the park, thereby beginning a significant transition away from the Antiquities Act's dominant concerns for archeological preservation, research, and education. In contrast to the infrequent reference to tourism as a rationale for the Antiquities Act, Mesa Verde's emerging public appeal had been a principal factor in the park's establishment. Even as early as 1889, a suggestion was made that Cliff Palace be "converted into a museum and filled with relics of the lost people and become one of the attractions of southern Colorado." This never came to pass, but soon the ancient structures set in cliff-side alcoves were steadily attracting small numbers of visitors, and Mesa Verde's supporters more fully recognized the tourism potential.

In the mid-1890s, the Colorado Federation of Women's Clubs became intensely interested in preserving Mesa Verde's rich archeological heritage. Their plans for the park included development for tourism that was typical of the several large scenic national parks then in existence, including roads, trails, and hotels. Railroad companies also took interest, and communities near Mesa Verde vied to become the main tourist hub whenever the rush began. On the other hand, an impressive number of anthropologists from leading universities, museums, and associations lobbied for the preservation of Mesa Verde's ancient sites, just as many of them campaigned for passage of the Antiquities Act. Thus, unlike the lobbying for the Antiquities Act, strong support for Mesa Verde came from both preservation- and research-minded anthropologists and their allies, and from tourism proponents.⁴⁵

However, neighboring Indians, the Ute Mountain Ute tribe, had serious concerns of an altogether different sort when it was discovered that a number of the major cliff dwellings were not actually within the proposed boundaries of the new park, but on their tribal lands. In the spring of 1906, not long before the Act passed, Edgar Lee Hewett had participated in a survey of Mesa Verde sites. Hewett then suggested that a clause be added to the draft bill, which Congress and President Roosevelt soon approved. Intended to resolve the situation with the Ute lands, the clause allowed the Interior Department to administer "all prehistoric ruins that are situated within five miles of the boundaries...on Indian lands and not on lands alienated by patent from the ownership of the United States." The Utes responded that they had preserved the sites simply by leaving them alone, but their concerns were overridden by Interior officials and other national park proponents. In 1911, Interior Department representatives pushed

45. SMITH, *supra* note 11, at 36-68 (quote at 44); Mrs. W.S. Peabody, *Hundreds of Thousands of Dollars*, MOD. WORLD MAG., Oct 1907, at 159-60; H.R. Doc. No. 4944, at 1-8 (1906).

through a land-swap agreement with the Utes that confirmed the major sites to be within expanded park boundaries. In 1913, President Taft signed an Act to that effect.⁴⁶

Even though interest in the tourist trade was an important factor in the legislative drive, the wording of the 1906 Mesa Verde Act contained no clear indication that tourism was intended for the new park. The statute termed Mesa Verde a "public reservation" and a "public park," but went no further. It contained none of the specific language regarding on-site public enjoyment typical of earlier national park enabling legislation, beginning with Yellowstone in 1872 and including parks created just before Mesa Verde. For instance, laws creating Crater Lake and Wind Cave national parks, in 1902 and 1903 respectively, spoke directly to the matter of the "accommodation of visitors" and elaborated on what that might include.⁴⁷

The absence of specific congressional authority for tourism accommodations in Mesa Verde did not go unnoticed. The first superintendent reported that the Act creating the park was "defective" and lacked any provision for the park to provide for the "entertainment and accommodation of tourists." His remarks were echoed by the Interior Department and by members of Congress. A special "Memorandum" at the end of a House bill to correct this problem confirmed that "no authority" existed to provide for the "accommodation and comfort of visitors to the park." Nevertheless, preparations for public access and enjoyment at Mesa Verde continued essentially as if there were no deficiency. The

46. Even after the 1911 agreement was reached, it turned out that the Balcony House site was still outside the new park boundaries marked by the U.S. Geological Survey. The government then adjusted the boundaries to correct this mistake, apparently without consulting with the Utes. An Act creating Mesa Verde National Park, ch. 3607, 34 Stat. 616 (1906); see also TOLSON, *supra* note 5, at 126-27. An excellent, detailed account of the land swap is found in Bruce J. Noble, Jr., *A Legacy of Distrust: The Ute Mountain Utes and the Boundaries of Mesa Verde National Park*, COLO. HERITAGE, Summer 1995, at 32-42. (This article has no citations, but Mr. Noble has been kind enough to share his documentation with this author.) See also SMITH, *supra* note 11, at 62-63, 66; Weixelman, *supra* note 1, at 241; An Act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirteenth, nineteen hundred and fourteen, ch. 4, art. II, 38 Stat. 77, 82 (1913). For broader discussions of the fate of Indians living on lands chosen by the federal government to be national parks, see ROBERT H. KELLER & MICHAEL F. TUREK, *AMERICAN INDIANS AND NATIONAL PARKS* 34-38 (1998); MARK DAVID SPENCE, *DISPOSSESSING THE WILDERNESS: INDIAN REMOVAL AND THE MAKING OF NATIONAL PARKS* (1999); PHILIP BURNHAM, *INDIAN COUNTRY, GOD'S COUNTRY: NATIVE AMERICANS AND THE NATIONAL PARKS* (2000).

47. See Act creating Mesa Verde National Park, ch. 3607, 34 Stat. 616 (1906). The "accommodation" quote is in both the Crater Lake Act, ch. 820, 32 Stat. 202 (1902); and the Wind Cave Act, ch. 63, 32 Stat. 765 (1903); see also TOLSON, *supra* note 5, at 125-27, 111-12, 123-24.

superintendent and his staff, with approval of the Interior Department, let contracts for surveying and constructing a road to the mesa top. The park hired rangers to protect the archeological sites and guide visitors through them, and initiated restoration and stabilization work on the ancient structures to better interpret them to the public.⁴⁸

The interest in tourism to the park was closely tied to educating the public about archeology. This was particularly apparent when in May 1908 archeologist Jesse Walter Fewkes began his work at Mesa Verde, on assignment from the Smithsonian Institution and having already done stabilization projects at Casa Grande. Similar to his efforts at Casa Grande, Fewkes excavated, stabilized, and repaired portions of Mesa Verde's Spruce Tree House, which, with a campground nearby, was usually the first of the famous sites that visitors encountered. In the introduction to his report entitled "Educational Ideals" (included in the superintendent's report to Washington), Fewkes discussed his restoration work and stated that the "impressions which a visitor obtains from [the site] are lasting, and...must be of great aid in the interpretation" of other sites that would be encountered in Mesa Verde. Overall, he sought to make Spruce Tree House "more attractive to visitors and to increase its educational value." Seemingly unaffected by any deficiency regarding on-site public use in the 1906 legislation, Fewkes planned a similar project to help visitors understand Cliff Palace.⁴⁹

On June 25, 1910, Congress finally corrected the statute's deficiency with a brief clause in a general appropriations act. It stated merely that "leases and permits" may be granted "for the use of the land or development of the resources," provided that such "leases or grants" not "exclude the public from free or convenient access" to the ruins. For the superintendent and everyone else, this seems to have put the issue at rest. With statutory authorization, progress on tourism accommodations in the

48. REPORT OF THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1906, at 219 (1906) (providing the "defective" and "entertainment" quotes). *See also* To Amend an act entitled "An act creating the Mesa Verde National Park, H.R. Doc. No. 19861, Comm. Pub. Lands, 60th Cong. (1908) (including "no authority" quote); REPORTS OF THE SUPERINTENDENT OF THE MESA VERDE NATIONAL PARK AND J. WALTER FEWKES, IN CHARGE OF EXCAVATION AND REPAIR OF RUINS, TO THE SECRETARY OF THE INTERIOR, 1908, at 6-9, 15-18 (1908).

49. *See* CLEMENSEN, *supra* note 9, at 52-56; ROTHMAN, *supra* note 9, at 109; REPORTS OF THE SUPERINTENDENT OF THE MESA VERDE NATIONAL PARK AND J. WALTER FEWKES, *supra* note 48, at 15-17 (quotes at 15); JONATHON C. HORN & SUSAN M. CHANDLER, HISTORY OF RUINS STABILIZATION AT CLIFF PALACE AND SPRUCE TREE HOUSE, MESA VERDE NATIONAL PARK 1-10 (1989); ROTHMAN, *supra* note 9, at 109.

national park, involving roads, campgrounds, and archeological site restoration, continued apace.⁵⁰

The 1910 law confirmed Mesa Verde as a park in transition, moving from a congressional mandate much like the Antiquities Act, with preserved sites intended to be researched and protected, to also include the more typical national park concept that embraced both preservation and public use. Similar to the Antiquities Act, educational activities would serve the public good, first via research, then through museums and universities. But at Mesa Verde, education would also be *on-site*—in a national park setting near the ancient dwellings themselves. In such regards, Mesa Verde's legislation reflected the broader "double mandate" for preservation coupled with public use and enjoyment that Congress had declared for the earlier national parks. Its legislation thus foreshadowed the double mandate that Congress would employ when creating the National Park Service in 1916.

Colorado supporters had long lobbied to establish Mesa Verde as a national park, a designation that would give it high status and that had a proven record for attracting tourists, which could enhance the whole state's reputation as a travel destination. The designation "national monument" had not been used before passage of the Antiquities Act, so that it had no cachet, whereas the term "national park" had earned distinction in association with increasingly popular attractions such as Yellowstone and Yosemite.

Likely, supporters of both the antiquities and Mesa Verde bills could not have been absolutely certain which, if either, of the bills would become law. Thus, the proposal for a national park at Mesa Verde at least offered the possibility of protecting this famous archeological area should the broader antiquities legislative proposal fail in Congress. On the other hand, if the Mesa Verde bill had failed, and with portions of the area already withdrawn by the Department of the Interior, an excellent chance existed that with passage of the Antiquities Act President Roosevelt would have proclaimed Mesa Verde a national monument in order to preserve it permanently. It seems clear that proponents of both the Antiquities and Mesa Verde bills sought to maximize the chances that Mesa Verde would receive full federal protection.

50. REPORT OF THE SUPERINTENDENT OF MESA VERDE, 1910, at 13 (1910); An Act making appropriations to supply deficiencies in appropriations for the fiscal year nineteen hundred and ten, and for other purposes, ch. 385, 36 Stat. 774, 796 (1910); see also TOLSON, *supra* note 5, at 127; RICARDO TORRES-REYES, MESA VERDE NATIONAL PARK: AN ADMINISTRATIVE HISTORY, 1906-1970, at 13-17 (1970).

HISTORIC PRESERVATION AND THE 1916 NATIONAL PARK SERVICE ACT

It took a natural resource issue of epic proportions – the proposal to dam Yosemite National Park’s magnificent Hetch Hetchy Valley – to spark what would become a prolonged campaign to establish a central federal office to administer the national parks. In 1910, deeply disturbed by the Hetch Hetchy dam proposal, J. Horace McFarland, a widely influential horticulturalist and conservationist based in Harrisburg, Pennsylvania, who had previously lobbied for creation of a national parks bureau, began a more determined campaign for unified and efficient oversight of the parks that could defend them against dams and other adverse intrusions. The effort that McFarland initiated would culminate on August 25, 1916, when President Woodrow Wilson signed the National Park Service Act (sometimes referred to as the Park Service’s “Organic Act”), officially creating the new bureau.

Before the National Park Service was established, the emerging national park system had no truly coordinated administration. McFarland was correct: The system existed only under a haphazard arrangement (“mixed up and inefficient management,” as one high-level critic put it). As detailed in a later hearing before the House Committee on the Public Lands, park superintendents reported to the “Miscellaneous Section” of the Interior Department’s Office of the Chief Clerk, in Washington, which lacked the staffing and expertise to provide effective supervision and coordination of the parks. When President Wilson signed the Organic Act in 1916, the clerk’s office had responsibility for 14 national parks, of which only Mesa Verde had been set aside for significance in human history. The office also oversaw about 20 national monuments, plus the Casa Grande Ruin Reservation (which would remain under Interior’s General Land Office until 1918) and the Hot Springs Reservation in Arkansas, established in 1832 to protect natural spring waters for their medicinal purposes. Indicating yet further complications, McFarland expressed frustration that federally preserved areas were managed by three different departments – Interior, War, and Agriculture – with no uniform rules for managing the areas. This was true for historic and archeological, as well as scenic, national monuments such as Grand Canyon and Mount Olympus, both of which were then on U.S. Forest Service lands.⁵¹

51. Letter from J. Horace McFarland to Stephen T. Mather (Nov. 22, 1926) (NPS-HC); Frederick Law Olmsted, note to files, Nov. 20, 1910 (NPS-HC); Letter from Frederick Law Olmsted to John C. Olmsted (Dec.19, 1910) (NPS-HC) (including the “inefficient” quote); Letter from Frederick Law Olmsted to the Appalachian Mountain Club, Boston (Jan. 12, 1912) (NPS-HC); Letter from J. Horace McFarland to James Sturgis Pray (Feb. 19, 1915) (Ernest

Studies of the legislative history of the National Park Service Act have paid little attention to historic preservation matters; instead, they have focused mainly on efforts to establish a federal bureau that would provide efficient and coordinated management to preserve the scenic national parks and make them more accessible for public use and enjoyment.⁵² Yet, broad historical and archeological issues were present from early in the legislative drive to create a national parks central office. At stake in the legislative campaign was the difficult question of bureaucratic control of historic sites: Should the proposed parks bureau have jurisdiction not only over the existing parks and monuments under the Interior Department, but also over the War Department's battlefield parks, national monuments, and other historic sites, as well as those national monuments, including archeological areas, controlled by the Agriculture Department's Forest Service? Moreover, leading proponents insisted that a national parks act contain a fundamental "statement of purpose" as a central mandate for managing the national park system. Yet during the legislative campaign, even with these important issues at hand, historic preservation played a generally marginal role, always eclipsed by the compelling interest in the large, scenic national parks.

Horace McFarland's quest to establish a national parks bureau gained early support, and his influence reached to the highest levels. In December 1910, Secretary of the Interior Richard A. Ballinger, persuaded

Morrison, ASLA-LC, Box 10); ERNEST MORRISON, J. HORACE MCFARLAND: A THORN FOR BEAUTY 166-67, 170-71, 173-75 (1995); RUNTE, *supra* note 5, at 80, 97-98. The number of parks and monuments is found in NAT'L PARK SERV., *supra* note 4, at 18-19. For discussions of the Office of the Chief Clerk and its national park duties, see National Park Service, H.R. 104, Comm. Pub. Lands, 63rd Cong. 9-20, 69-76 (1914). In addition to overseeing national parks and monuments, the many and diverse responsibilities of the Miscellaneous Section included oversight of the territories, eleemosynary institutions, the United States Capitol building and grounds, construction work in the Interior Department, and even "miscellaneous" projects. See Hearing on H.R. 434 & H.R. 8668 Before the Subcommittee on the Public Lands, 64th Cong., 1st Sess. 25-27 (Apr. 5 & 6, 1916).

52. The official title of the National Park Service Act, ch. 408, 39 Stat. 535 (1916), is "An Act to Establish a National Park Service, and For Other Purposes." See also TOLSON, *supra* note 5, at 9-11. Extended discussions of the National Park Service Act's legislative history are found in Winks, *supra* note 17; RUNTE, *supra* note 5, at 82-105; ROBERT W. RIGHTER, THE BATTLE OVER HETCH HETCHY: AMERICA'S MOST CONTROVERSIAL DAM AND THE BIRTH OF MODERN ENVIRONMENTALISM (2005); and SELLARS, *supra* note 5, at 28-46. Winks discusses historic preservation policy and practice in the parks but in his discussion of the Organic Act's legislative history pays little attention to historic preservation concerns. See Winks, *supra* note 17, at 583-611. Righter's THE BATTLE OVER HETCH HETCHY discusses the National Park Service Act as part of the legacy of the Hetch Hetchy dam controversy. Runte's *National Parks*, *supra* note 5, and Sellars' *Preserving Nature*, *supra* note 5, focus on the central role of the large natural parks in the Act's legislative history and its wording.

by McFarland, endorsed a new bureau, stating that the parks needed to be "opened up for the convenience and comfort of tourists and campers and for the careful preservation of their natural features." McFarland also anticipated presidential support, and in a December 1911 address, incorporated two months later in a special message to Congress, President William Howard Taft urged that "proper management" be given the national parks. Both of Taft's statements were aimed almost entirely at the large scenic parks.⁵³

In the fall of 1910, McFarland recruited from the private sector a particularly influential supporter, his friend, the talented Frederick Law Olmsted, Jr., widely considered to be the nation's leading landscape architect. In Congress, Senator Reed Smoot of Utah and congressmen John Raker and William Kent of California provided critical support for creating an office to run the national parks. This small group was later joined by Stephen T. Mather, a wealthy, retired borax mining executive who had become a passionate champion of the parks. Mather brought in a publicist, Robert Sterling Yard, and a young assistant, Horace Albright, who had been working on national park matters for the Department of the Interior since arriving in Washington in 1913 and had completed studies at the Georgetown University Law School. All of these enthusiastic advocates sought a continued alliance with Secretary of the Interior Franklin K. Lane, who entered office under President Wilson in 1913 intent upon establishing a central office for the national parks. Along with McFarland and Olmsted, this highly influential group comprised the chief "founders" of the National Park Service. With support from many others, they provided the stimulus, influence, leadership, and persistence to carry the day politically. Mather, appointed as Secretary Lane's top assistant for national parks, would spearhead the legislative campaign. Among the founders, Horace Albright appears to have had the strongest personal interest in American history.⁵⁴

In marked contrast to the earlier Antiquities Act legislative drive, backed mainly by prominent educators and anthropologists, the efforts to establish a national parks bureau enjoyed especially close ties to the tourism industry, including major railroad companies, the American Automobile

53. Ballinger's quote is found in REPORTS OF THE DEPARTMENT OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1910, at 57 (1911). President Taft's special message to Congress, February 2, 1912, is reprinted in J. Horace McFarland, *Are National Parks Worthwhile?*, 11 AM. CIVIC ASS'N, Dec. 1912, at 16-18. See also Letter from Richard A. Ballinger to Frank Pierce (Aug. 25, 1910) (RG79, Entry 6); Letter from J. Horace McFarland to Frederick Law Olmsted (Oct. 13, 1910) (JHMCF); Morrison, *J. Horace McFarland*, *supra* note 51, at 180-81.

54. Mather would become the National Park Service's first director, with Albright as, in effect, his deputy. Upon Mather's retirement in 1929, Albright would succeed him as director. HORACE M. ALBRIGHT, AS TOLD TO ROBERT CAHN, BIRTH OF THE NATIONAL PARK SERVICE 4, 12, 15-18, 34-35 (1985); Winks, *supra* note 17, at 583-84; SELLARS, *supra* note 5, at 29-32, 42-43.

Association, and state automobile associations. The founders drew support from such business oriented groups, which were focused overwhelmingly on the need for a new office to provide improved, efficient management of the scenic national parks and ensure public access and enjoyment. This direct link between the tourism industry and national parks reflected economic and utilitarian motives that were intertwined with an altruistic sense of serving the greater public good – a link that had existed from the beginning of the movement for large, scenic parks. As the archetypical example, the Northern Pacific Railroad Company was the principal lobbyist for the Yellowstone legislation of 1872. It then helped develop the park for tourism (for the “benefit and enjoyment of the people,” as stated in the 1872 Act), from which the company hoped to profit.⁵⁵

Tourism proponents found strength in numbers at the three national park conferences held during the legislative campaign. For the first conference, held in Yellowstone in 1911, the list of attendees indicates that general tourism advocates together with concessionaires already doing business in the parks had more delegates at the meeting than did the Department of the Interior, including those from its Washington office and the national parks. Tourism and the scenic national parks dominated the agenda of the first conference. National monuments were discussed; but, as the head of the General Land Office noted, the majority of the monuments were natural, rather than historical, and they seemed to be smaller versions of national parks. Of all the areas set aside because of human history, only Mesa Verde got much attention, which tended to be perfunctory. Similar to the 1911 meeting, attendees at subsequent park conferences in 1912 and 1915 placed great emphasis on the scenic national parks and on public use and enjoyment.⁵⁶

As passage of the National Park Service Act grew nearer, the early large national parks had proven that they could attract the touring public, who were enticed in part by the promotional efforts of railroads, automobile associations, and local tourism backers. And with the campaign

55. RUNTE, *supra* note 5, at 44–45; SELLARS, *supra* note 5, at 8–11, 19–20, 88–90. In the big national parks, cooperation between the federal government and private enterprise seemed very much a “pragmatic alliance,” as historian Alfred Runte described it. The “alliance” quote is found in ALFRED RUNTE, *TRAINS OF DISCOVERY: WESTERN RAILROADS AND THE NATIONAL PARKS 1* (rev. ed. 1990), which is also remarkable for its superb illustrations of early national park travel posters; for the Yellowstone quote, see *An Act to set apart a certain Tract of Land lying near the Head-waters of the Yellowstone River as a public Park*, ch. 24, 17 Stat. 32 (1872); see also TOLSON, *supra* note 5, at 26.

56. NAT'L PARK CONFERENCE, 1ST, YELLOWSTONE NATIONAL PARK, WYO., SEPT. 11–12, 1911, PROCEEDINGS, at iii–iv, 1–2, 80–101, 171–74 (1912); NAT'L PARK SERVICE CONFERENCE, 2ND, YOSEMITE NATIONAL PARK, CAL., OCT. 14–16, 1912, PROCEEDINGS 5–7, 85–86 (1913); NAT'L PARK CONFERENCE, 3RD, BERKELEY, CAL., MAR. 11–13, 1915, PROCEEDINGS 4–5, 208–25 (1915).

intensifying, nationwide publicity on the parks increased, boosted by the tourism industry, major coverage in the *National Geographic* and *Saturday Evening Post*, and the publicity efforts of Robert Sterling Yard, Mather's publicist.⁵⁷ Even with nationwide attention to the parks, proponents remained vigilant and were determined to ensure that the national park concept succeed.

It comes, then, as no surprise that, like the national park conferences, the congressional hearings on the proposed new bureau held in 1912, 1914, and 1916 reflected the dominant interest in continuing the development of the large national parks for tourism – while also revealing a general lack of interest in the lesser known historic and archeological areas, with the exception of Mesa Verde. Repeatedly these hearings focused on the pragmatic necessities for effective management of individual parks, plus a central office for coordinated oversight of an expanding system of parks. Specific topics of discussion included roads; bridges; automobile traffic; trails; campgrounds; park entrance fees; concessionaires; hotels; sanitation; sewage treatment; livestock grazing; the need for engineers and “landscape engineers” (landscape architects) in parks; the need for foresters to protect park scenery from devastating fires; the importance of coordination among parks; and funding, salaries, and positions for the new bureau.⁵⁸

Meanwhile, following J. Horace McFarland's initial maneuvers in 1910, Reed Smoot, chair of the Senate Committee on Public Lands, introduced a bill in January 1911, and another the following December, for establishing a national parks bureau. Significantly, Smoot's December bill called for the new bureau to have extensive historic preservation responsibilities. The following year, John Raker, a freshman congressman, introduced a parks bureau bill similar to Smoot's. The Smoot and Raker bills both provided that the new service would control not only the national parks and monuments under the Department of the Interior, but also those lands “reserved or acquired by the United States because of their historical associations.” This provision contained no exceptions.⁵⁹

This broad “historical associations” mandate would have handed the new bureau a far-flung domain of historic and archeological sites. Not

57. SELLARS, *supra* note 5, at 28–29, 36–37, 41–42; ALBRIGHT & CAHN, *supra* note 54, at 38.

58. See, e.g., Hearing on H.R. 22995 Before the Committee on the Public Lands, 62nd Cong., 2d Sess. 5–22 (Apr. 24, 1912); Hearing on H.R. 104 Before the Committee on the Public Lands, 63rd Cong. 2d Sess. 9–20, *passim* (Apr. 29, 1914); Hearing on H.R. 434 & H.R. 8668 Before the Committee on the Public Lands, 64th Cong., 1st Sess. 15–25, 3870, *passim* (Apr. 5 & Apr. 6, 1916).

59. To Establish a Bureau of National Parks, and For Other Purposes, Smoot bill: S. 9969, 61st Congress, 3rd session, January 9, 1911. For the Raker bill, see Establishment of a National Park Service, H.R. 22995, Comm. Pub. Lands, 62nd Cong. (1912) (emphasis added).

only would the bureau administer Mesa Verde and the national monuments already under the Interior Department, but also the War Department's military parks, national monuments, and other historic sites, plus the Agriculture Department's archeological national monuments managed by the U.S. Forest Service. Although McFarland seems not to have been concerned about historic areas, the "historical associations" wording was much in line with his efforts to consolidate federal park and monument management nationwide. And repeatedly through the end of 1915, Smoot and Raker kept their "historical associations" wording intact. It appears in bills they introduced in December 1915, as late as about eight months before passage of the National Park Service Act.⁶⁰

In the meantime, Horace Albright, since moving to Washington in 1913, had broadened his interest in American history to include the places where history occurred. He often spent his personal time exploring sites in and near the nation's capital, including Civil War battlefields and fortifications. In late 1915, farther afield on his first visit to Chickamauga and Chattanooga National Military Park, Albright was deeply impressed by this War Department site, as well as by the analysis of the battles given by two Confederate veterans who guided him around the park. These experiences raised his awareness of the fate of sites where significant human events had played out, particularly the battlefield parks.

Immediately after leaving Chattanooga, Albright wrote to Stephen Mather asking, "Why should a military department be in charge of lands which are predominantly an attraction for all people?" He added that he had "real determination to plunge into this thing with the War Department...." What is more, his epiphany fit perfectly with the broad "historical associations" proposal still included in the Smoot and Raker bills. Years later, Albright would recall his visit to Chickamauga and Chattanooga, stating that he "never forgot that day," and he was "sure that it marked the germination" of his idea that "battlefields and other historic places" should come under control of the proposed National Park Service.⁶¹

By early 1916, however, this possibility lay out of reach. Albright was keenly aware of the bills before Congress, as creation of a national parks bureau was then his overriding concern. And the pending legislation

60. Smoot Bill, S-9969; Establishment of a National Park Service, H.R. 22995, Comm. Pub. Lands, 62nd Cong. (1912); Morrison, *supra* note 51, at 175-79; for subsequent "historical associations" wording, see, for example, To Establish a National Park Service, and For Other Purposes, S. 826, Comm. Pub. Lands, 63rd Cong. (1913) and National Park Service, H.R. 104, Comm. Pub. Lands, 63rd Cong. (1914); and To Establish a National Park Service, and For Other Purposes, S. 38, Comm. Pub. Lands, 64th Cong. (1916) and National Park Service, H.R. 434 & H.R. 8668, Comm. Pub. Lands, 64th Cong. (1916).

61. HORACE M. ALBRIGHT & MARIAN ALBRIGHT SCHENCK, CREATING THE NATIONAL PARK SERVICE: THE MISSING YEARS 117 (1999) (including the "real determination" quote).

had brought him in steady contact with members of Congress, one of whom, William Kent, hosted frequent meetings (in his red-brick Washington mansion at F and 18th streets) with the founders and other key strategists for the proposed service. Surely with Albright almost always in attendance, the implications of the broad “historical associations” responsibilities included in the bills was a topic of discussion. Yet the founders included powerful, influential advocates in and outside Congress who had spent much time and energy promoting the creation of a new bureau dedicated to managing and protecting the large, scenic national parks. Even Mather, Albright’s close friend and mentor, seems not to have had a particularly strong interest in the battlefield parks, national monuments, and other historic places. Albright would come to refer to the national monuments as “orphan monuments,” which, like the battlefield parks, received insufficient attention and interest in his opinion.⁶² Only in his mid-twenties and a newcomer to Washington politics, Albright lacked the status and political contacts — and thus the persuasive power — that most of the other founders enjoyed. Whatever arguments in support of broad historic preservation responsibilities that he (and perhaps others) may have made failed to convince.

Indeed, throughout the legislative campaign there were many voices urging protection of the large, scenic parks, but no truly influential advocates repeatedly and emphatically speaking out for historical parks and monuments. It is significant that while McFarland, Olmsted, Smoot, and Raker had been involved with the drafts that included the “historical associations” wording, none of these founders provided much support for historical parks and monuments, either rhetorically in congressional hearings, at conferences, or in written correspondence. And in the political give-and-take as passage of the National Park Service Act approached, the Smoot-Raker “historical associations” mandate providing that the new bureau control the broadest possible array of federally protected historic sites had become a kind of pawn. It could be traded off if necessary to achieve passage of the bill.

In fact, a complete turn-about occurred: The final wording of the 1916 National Park Service Act did not include the all-inclusive “historical associations” mandate, and the Act changed nothing regarding existing bureaucratic territory. The National Park Service would manage only those

62. ALBRIGHT & CAHN, *supra* note 54, at 35–36; ALBRIGHT & SCHENCK, *supra* note 61, at 51, 125–26; Morrison, *supra* note 51, at 186; see ALBRIGHT, *supra* note 41, at 4, for his comments on Mather’s early attitudes toward historic and archeological sites. Ironically, Kent’s Washington home had earlier served as a meeting place for leading proponents of the Hetch Hetchy dam proposal. Kent, like Congressman Raker, supported damming the Hetch Hetchy, then led in the efforts to create the National Park Service. RIGHTER, *supra* note 52, at 194; SELLARS, *supra* note 5, at 42–43.

historical and archeological national monuments, plus Mesa Verde—the very responsibility previously carried out by the Office of the Chief Clerk within the Department of the Interior.⁶³ Maintaining the territorial status quo that left the monuments and other historic sites under separate departments seems to have resulted from compromises made with the intent of deflecting existing or potential opposition to creating a national parks bureau that might be given control of special places that the War and Agriculture departments did not want to lose.

The War Department, especially with its widely known Civil War military parks, was in a strong position to discourage any challenge to its jurisdiction over historic sites. It also controlled two small national monuments: Big Hole Battlefield in southwestern Montana, the site of an 1877 conflict between the United States Army and the Nez Perce Indians; and a one-acre memorial to the Portuguese explorer Juan Rodriguez Cabrillo on the hills above the San Diego harbor. In addition, the Department also oversaw sites in the District of Columbia (such as the Washington Monument) plus the Statue of Liberty located on the grounds of Fort Wood in the New York harbor and, in Montana, the National Cemetery of Custer's Battlefield Reservation—surely a site guaranteed to be non-negotiable.⁶⁴

Although the passing of time, the death of many Civil War veterans, and the ongoing war in Europe had somewhat diminished the War Department's concern for the battlefield parks, it nevertheless used Chickamauga-Chattanooga (and later Gettysburg) for military purposes. As far back as the spring and summer of 1898, during the short-lived Spanish-American War, approximately 72,000 troops spent time at Chickamauga battlefield park, where they encamped and held field exercises and maneuvers. Military use of Chickamauga declined after the war with Spain; but, in 1902 Congress authorized a permanent facility, Fort Oglethorpe, on adjacent lands, plus a small portion within the park. The outbreak of World War I in Europe in the summer of 1914 brought about a gradual increase in military use of the park. In 1916, the year the National Park Service Act passed and the year before America entered World War I, the fort and the

63. An Act to Establish a National Park Service, and For Other Purposes, ch. 408, 39 Stat. 535 (1916); see also TOLSON, *supra* note 5, at 9-11. The National Park Service Act and many other important acts and documents related to national parks and monuments are included in LARY M. DILSAVER, *AMERICA'S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENTS* (1994), for the National Park Service Act, see *id.* at 46-47.

64. In July 1916, just before the National Park Service came into being, the Abraham Lincoln birthplace in Kentucky was established as a preserved site under War Department administration—too late to play a role in the give and take over bureaucratic territory. See NAT'L PARK SERV., *supra* note 4, at 40-42.

park were also being used as a convalescence facility for wounded and sick from the ongoing conflict along the U.S.-Mexican border.

At Gettysburg, military use of the battlefield park focused on strategic and tactical studies, which slowly built up after the war began in Europe—and while Congress was still considering bills for the possible transference of all federal historic sites to the proposed National Park Service. (Not until 1917 did the Army establish training encampments, which ultimately led to the formal designation of Camp Colt at Gettysburg in March 1918.)⁶⁵ In most respects, the War Department seems not to have felt threatened by the “historical associations” wording of the Park Service bill. The war in Europe and military activities at the two most visited Civil War battlefield parks provided substantial reason for leaving the Department’s historic areas alone.

Nevertheless, the War Department seems to have decided not to let the matter rest. In July 1915, it issued Bulletin No. 27, which proclaimed as “national monuments” a huge number of sites that the Department itself administered, including historic forts, national cemeteries, and even individual memorials commemorating events or heroes. The Department specifically—indeed, blatantly—based its actions on the Antiquities Act’s proclamation authority and inserted the complete text of the Act in the Bulletin. Included on its list of “national monuments” were Fort Wood (location of the Statue of Liberty), several other active military installations, the Arlington National Cemetery, the National Cemetery of Custer’s Battlefield Reservation, additional national cemeteries such as those adjacent to the battlefield parks, a few Confederate cemeteries under the Department’s control, and ancient Indian mounds in Shiloh National Military Park. Overall, the list included more than sixty entries, some containing multiple components. According to Bulletin No. 27, management of these monuments would continue to be handled by military personnel, “without extra expense.”⁶⁶ The Antiquities Act of course provided no authority whatsoever for the War Department to declare national monuments, as that power was vested only in the President—a detail that seems not to have fazed the upper army echelons.

This extraordinary move may have come as an effort to ensure that bureaucratic jurisdiction over historic sites controlled by the Department

65. See PAIGE & GREENE, *supra* note 3, at 56, 171–90; HARLAN D. UNRAU, ADMINISTRATIVE HISTORY: GETTYSBURG NATIONAL MILITARY PARK AND GETTYSBURG NATIONAL CEMETERY 116–19 (1991); RONALD F. LEE, THE ORIGIN AND EVOLUTION OF THE NATIONAL MILITARY PARK IDEA 45–46 (1973); SMITH, *supra* note 30, at 122.

66. Press Release, War Department, Bulletin No. 27, July 17, 1915, General Orders and Bulletins, War Department 1915 (1915) (“expense” quote at 12). Bulletin No. 27 even included in its list an American military cemetery in Mexico City dating from the Mexican War, *see id.* at 5. See also Lee, *supra* note 7, at 259.

would continue—at least there is unusual evidence suggesting this possibility. As it happened, the Army Chief of Staff, General Hugh L. Scott, signed Bulletin No. 27 only four months after a chance meeting with Stephen Mather, Horace Albright, and a group of top park supporters in March 1915 onboard a train heading to California for the third national parks conference. Albright recalled that he invited General Scott to join them in the posh railroad car Mather had obtained for the trip. The group held almost continuous discussions on park issues, and Mather “took advantage of the opportunity to talk with the general about national park problems.”

Albright stated further that they discussed the army’s continued involvement in Yellowstone, where troops had been stationed since the mid-1880s to protect against the poaching of wild animals and other kinds of vandalism. It thus seems quite plausible that other topics involving parks and the military would have arisen, given that the language of the bills before Congress would transfer the battlefields away from the War Department if the “historical associations” mandate survived. The issuance of Bulletin No. 27 in July 1915, four months after the meeting on board the train, suggests that while enjoying the camaraderie and park discussions General Scott may have become more fully alerted to the possibility that the War Department could soon lose its historic sites. The outside chance that Scott intended instead to identify sites that he was willing to see Congress or the President (via a national monument proclamation) take away from the War Department is negated by the fact that some of the individual sites included on the list were located on active military posts, such as Fort Oglethorpe and the Presidio of Monterey.⁶⁷ The fortuitous meeting with General Scott occurred before Albright’s first visit to Chickamauga in December 1915 that would heighten his interest in the battlefields.

The “historical associations” mandate disappeared from the National Park Service bills before Congress in early 1916. In part, this resulted from a shift of congressional strategy in which Senator Smoot and Congressman Raker, having led the fight unsuccessfully, asked Congressman William Kent to lead the legislative efforts. In January 1916, Kent introduced the first of several National Park Service proposals that he would submit that year, and he had removed the “historical associations” clause. As planned, Smoot and Raker actively supported Kent’s efforts, yet

67. See ALBRIGHT & SCHENCK, *supra* note 61, at 44–45; ALBRIGHT & CAHN, *supra* note 54, at 22–23. In addition to Yellowstone, U.S. Army troops had been stationed in Sequoia and Yosemite national parks, but army officials needed the troops for other purposes and transferred them out in 1914. See H. DUANE HAMPTON, HOW THE U.S. CAVALRY SAVED OUR NATIONAL PARKS 81–182 (1971); SELLARS, *supra* note 5, at 24–48. For Fort Oglethorpe and the Presidio, see War Department, Bulletin No. 27, *supra* note 66, at 2–3.

Raker continued to introduce his own bills. Perhaps seeking to make amends for his exceptionally controversial role in promoting the Act authorizing the Hetch Hetchy dam—known informally as the “Raker Act”—the California congressman in an April 1916 hearing on his national parks bill passionately spoke out that “my whole soul is wrapped up in this legislation.”⁶⁸

Beyond Kent’s January 1916 bill, another indication of compromise came that same month when Kent cautioned the American Civic Association (of which McFarland was president) that to gain passage it might even be necessary “to considerably change” the bill, including abandoning the idea of a new bureau—perhaps essentially to accomplish efficient oversight of the national parks by expanding the authority and capability of Interior’s Office of the Chief Clerk. Similarly, Horace Albright recalled a general sense of the necessity to “strike out items that seemed potentially troublesome.”⁶⁹ Kent, Albright, and others thus recognized that compromises might have to be made—and, indeed, some of them would affect the status of historic preservation in the final Act.

Although abandoning the “historical associations” clause, which had been in place since Smoot’s December 1911 proposal, William Kent’s January 1916 bill would still have *all national monuments* come under the National Park Service. It would leave the War Department in full control of its historic battlefields and other sites, but the Department would lose control of its two monuments, Big Hole and Cabrillo.⁷⁰ Yet, removal of the “historical associations” wording amounted to a substantial change, given the breadth of commitment to historic preservation that the language of the earlier bills would have mandated for the Park Service, and given Albright’s desire to gain control of the Civil War battlefields. By the wording of Kent’s bill, the battlefield parks, with their high public visibility, had moved beyond reach of the proposed National Park Service.

Evidence suggests that a compromise was indeed seen as a temporary expedient to gain passage of the legislation, as once the National

68. Congressman Kent introduced two National Park Service bills on January 11, 1916, the first, H.R. 8661, being slightly revised to become National Park Service, H.R. 8668, Comm. Pub. Lands, 64th Cong. 25 (1916). Congressman Raker bore political burdens because of an adversarial relationship he had with the Speaker of the House of Representatives, but also because of his persistent support for damming the Hetch Hetchy Valley—a bitterly opposed pursuit. Thus, Kent’s leadership seemed a better choice. Raker’s quote is found in *To Establish a National Park Service, and For Other Purposes*, H.R. 434 & 8668, Comm. Pub. Lands, 64th Cong. 25 120 (1916). See also RIGHTER, *supra* note 52, at 194.

69. Letter from Richard B. Watrous to William Kent (Jan. 4, 1916) (JHMcF); Letter from William Kent to R.B. Watrous (Jan. 17, 1916) (JHMcF); ALBRIGHT & SCHENCK, *supra* note 61, at 126; ALBRIGHT & CAHN, *supra* note 54, at 22–23.

70. National Park Service, H.R. 8668, Comm. Pub. Lands, 64th Cong. 25 (1916).

Park Service came into being it quickly and openly stated its interest in the battlefield parks and other historic sites. In June 1917, Horace Albright, top assistant for the newly appointed director, Stephen Mather (who was ill at the time), completed the Service's first annual report. In it, Albright argued that the Park Service should have control of the battlefields and other sites under the War Department "in order that the administration and promotion of all of these reservations may be conducted according to a uniform policy."⁷¹ Bringing this out in a public document, and so very shortly after the Service was firmly established (it had not even gotten its first appropriation and formally opened an office until mid-April 1917), strongly indicates that Albright, and perhaps others, never really abandoned the idea of controlling the battlefield parks. Their chief goal had been to establish the National Park Service, and a struggle over the battlefields might have blocked that.

* * *

At first, U.S. Forest Service spokesmen bluntly opposed even the basic idea of creating a national parks office. Gifford Pinchot, first chief of the Forest Service, from 1905 to 1910, who still maintained his influence and high-level connections, fully recognized a huge and threatening territorial issue: the prospect of a new, rival land management bureau that could gain control of some of the Forest Service's most prized scenic landscapes—a threat not without substance. Early in the legislative drive, Pinchot argued to Horace McFarland that the national parks must be "handled by the Forest Service, where all the principles of good administration undeniably demand they should go." Emphasizing the parks as playgrounds, he stressed the similarities more than the differences between national parks and national forests, contending that creating a parks bureau would mean "needless duplication of effort" and "would not...be wise." McFarland, who had fractious disagreements with Pinchot, replied bluntly to the former chief forester, accusing him of being "an unsafe man in regard to national parks in general."⁷²

71. REPORTS OF THE DEPARTMENT OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1917, at 76-77 (1918). National Park Service proponents made compromises in other areas. For instance, in addition to cutting the proposed budget for the new bureau and allowing pipelines and similar developments in three national parks in California, the final Act allowed livestock grazing, with certain restrictions, in all parks and monuments except Yellowstone. See An Act to Establish a National Park Service, and For Other Purposes, ch. 408, 39 Stat. 535 (1916); ALBRIGHT & CAHN, *supra* note 54, at 36-39, 41; ALBRIGHT & SCHENCK, *supra* note 61, at 128-29, 256; SELLARS, *supra* note 5, at 44-45.

72. Letter from Gifford Pinchot to J. Horace McFarland (Mar. 4, 1911) (JHMcf); Letter from Gifford Pinchot to Frederick Law Olmsted (Dec. 26, 1912) (NPS-HC); Letter from Horace McFarland to Gifford Pinchot (Mar. 24, 1911) (JHMcf). On Pinchot, see also RICHTER, *supra* note 52, at 194-95.

Upon taking office in 1910, Henry S. Graves, Pinchot's successor as head of the Forest Service, took a similarly hard line against creating a national parks bureau. And he too tangled with Horace McFarland, who lectured him on the differences between the national park system and the national forest system: The former was the "nation's playground" and the latter the "nation's woodlot." The new chief forester later accepted the idea of a National Park Service; nevertheless, he fought with determination to retain full authority over the Forest Service's national monuments. But still, as was the case with the War Department, in Kent's January 1916 bill the Forest Service would lose control of its national monuments. Graves was more likely concerned about the natural, or "scientific," monuments, given that by early 1916 they outnumbered the archeological monuments by eight to four and collectively were much larger in size. In the latter half of March 1916, Graves wrote separate letters to Kent and McFarland confirming that he supported having a "separate organization." He even added that Grand Canyon National Monument—the largest and most well-known of all the monuments—should become a national park, to be "handled together with the other National Parks." But, he told Horace McFarland that the Forest Service's other national monuments should *not* be placed under the proposed parks office. Playing his trump card, Graves revealed to McFarland that both he and the Secretary of Agriculture had discussed this matter directly with Congressman Kent. Subsequently, in hearings held before the House Committee on the Public Lands, the committee chairman revealed that he had been astonished to read an Agriculture Department report on Kent's bill indicating the Department's "quite strenuous objection" over losing national monuments. This, he feared, could create a "stumbling block" for the bill.⁷³

Kent was hearing from others besides Graves. Writing to the Secretary of Agriculture, the congressman noted that he had received "a number of letters" from the Agriculture Department, including from the Forest Service itself, that "superficially, at least, appear to be hostile." Without admonishing the Secretary, Kent let it be known that he had revised his national park bill so that the Forest Service would retain control of its existing national monuments. His revision soon appeared in a new draft of the bill; and, indeed, the final wording of the National Park Service Act, approved August 25, 1916, left both the agriculture and war

73. Letter from H.S. Graves to William Kent (Mar. 17, 1916) (JHMcf); Letter from H.S. Graves to Horace McFarland (Mar. 30, 1916) (JHMcf); Hearings on National Park Service, H.R. 434 & 8668, Comm. Pub. Lands, 64th Cong. 1, 25, 10 (1916) (jurisdictional issues involving both the War Department and the Department of Agriculture were discussed further, at 11–15, without resolution). See also Winks, *supra* note 17, at 591; the number of Forest Service national monuments is found in NAT'L PARK SERV., *supra* note 4, at 42–43.

departments in full control of national monuments on their lands. The National Park Service would administer only those monuments that were under the Department of the Interior.⁷⁴

Looking back, had the all-inclusive “historical associations” wording been retained in the National Park Service Act, it would have bequeathed the Service at birth an extensive domain of historic sites, a fledgling bureaucratic empire stretching from coast to coast and including the well-known Civil War battlefield parks in the more populous and politically influential East. Especially with the battlefields, such an array of sites had the potential to bestow the Service’s incipient historic preservation program with a stronger presence within the early organizational structure of the new bureau – and thus perhaps a greater political heft and status with which to promote historic preservation policies and goals and to articulate a vision for future directions in historic preservation. That could come later, but for the time being, the newly created Park Service had responsibility for nearly a dozen historical and archeological national monuments, plus Mesa Verde National Park.

Theoretically at least, all of these areas were available for professional research and analysis, but the monuments themselves had received minimal congressional funding for management and protection. As an Interior Department report noted a year before the National Park Service Act was passed (it repeated verbatim what had been said in earlier reports), the very limited supervision of the archeological sites was “wholly inadequate and has not prevented vandalism, unauthorized exploitation or spoliation of relics found in those prehistoric ruins, whose preservation is contemplated” by the 1906 Antiquities Act. (Somewhat of an exception to this criticism resulted from the determined protection – and education – efforts by Casa Grande’s custodian Frank “Boss” Pinkley, who would become Interior’s most influential manager of its Southwestern archeological areas.) In any event, none of the archeological monuments had much potential to attract large numbers of visitors any time soon – a factor that surely dampened congressional interest.⁷⁵ Only Mesa Verde

74. Letter from H.S. Graves to William Kent (Mar. 17, 1916) (FLO-LC); Letter from H.S. Graves to J. Horace McFarland (Mar. 30, 1916) (FLO-LC); Letter from William Kent to The Secretary of Agriculture (Apr. 7, 1916) (FLO-LC); An Act to Establish a National Park Service, and For Other Purposes, ch. 408, 39 Stat. 535 (1916). Because of the wording in the National Park Service Act, it was determined that the Casa Grande Ruins Reservation should remain under the jurisdiction of the General Land Office. In 1918, the reservation would be transferred to the Park Service and re-designated a national monument. Rothman, *supra* note 9, at 109.

75. REPORTS OF THE DEPARTMENT OF THE INTERIOR, FOR THE FISCAL YEAR ENDED JUNE 30, 1915, at 125–26 (1916) (including the “wholly inadequate” quote); Rothman, *supra* note 9, at 108–16.

National Park had truly widespread name recognition, and the research and development underway there was, in effect, aimed at making it a showcase archeological park.

* * *

Significantly, the wording of the 1916 National Park Service Act makes it clear that the Department of the Interior's national monuments, both historical and natural, had come under new, additional mandates. The 1916 Act mentions "monuments" no less than ten times, in eight of which the word monuments is coupled directly with national parks. Collectively, then, monuments and parks were made subject to the same mandates in regard to, for instance, the disposition of diseased timber; the destruction of animals and plants "detrimental to the use" of the areas; and the allowance of livestock grazing "within any national park, monument, or reservation," except for Yellowstone, but in all cases only when grazing "is not detrimental to the primary purpose" for which an area was established. In addition, the Act called for the granting of "privileges, leases, and permits for the...accommodation of visitors in the various parks, monuments, or other reservations." It imposed restrictions on the leases to protect important features and to ensure public access.⁷⁶

In this manner, the National Park Service Act of 1916 modified and expanded the Antiquities Act mandates, which included establishing national monuments and permitting "recognized scientific and educational institutions" to conduct professional research on federal lands. To this, the National Park Service Act added the mandate to leave the national monuments—and parks—"unimpaired for the enjoyment of future generations," a mandate for the monuments that had not been specifically stated in the Antiquities Act. The 1916 Act's authorization for a variety of tourism development and resource management activities within the national monuments was chiefly aimed at enhancing public use and enjoyment. This Act did not alter the authorization and facilitation of professional research in the monuments. But it did specifically authorize public use and enjoyment to take place *on site* in the monuments, a mandate that differed from the Antiquities Act's emphasis on education through universities and museums. Thus, like the national parks, the national monuments would themselves become outdoor education centers.

Indeed, these statutory modifications amounted to a significant shift for national monuments, one that would become increasingly apparent through the decades. Accommodating tourism by developing the monuments with roads, trails, museums, and other facilities to enable the public to visit them satisfactorily would become a driving force in their

76. See An Act to Establish a National Park Service, and For Other Purposes, ch. 408, 39 Stat. 535 (1916); see also TOLSON, *supra* note 5, at 9-11.

management. Over time, tourism and public use needs would contend with archeological matters for management's support, and very often prevail.

Horace Albright's observation that national monuments were like orphans provided one indication of their lesser status in the minds of national park leadership and the American public. Yet, statutorily at least, with the Antiquities Act's research mandates and the Organic Act's emphasis on public use and enjoyment, the national monuments under the National Park Service were authorized to provide not only scientific research opportunities for museums and universities, but to become tourist attractions whenever the demand – and the funding – would arise.

HISTORIC PRESERVATION AND THE NATIONAL PARK SERVICE STATEMENT OF PURPOSE

From very early in the legislative campaign for creating a national parks bureau, leading advocates believed that Congress must include in the act a declaration of fundamental doctrine by which the parks and monuments would be managed. They sought, as Frederick Law Olmsted, Jr., put it, a "legal safeguard" to ensure that managers through the years would adhere to the parks' "primary purpose." In Horace McFarland's words, they needed a "Gibraltar," a statement of true principles and purposes. McFarland believed that such a statement was "extremely important" and that even the new bureau itself needed a clear understanding of the "true and high function" of the parks.⁷⁷

During the campaign, the statement of purpose went through several versions, in which concern for historic preservation was marginal. The first version came as early as December 1910, in a draft bill prepared mainly by McFarland and Olmsted, on behalf of the American Civic Association and in cooperation with the Interior Department. It declared that the parks and monuments must not be used "in any way detrimental or contrary to the purpose for which dedicated or created by Congress." This version died quickly, as Olmsted had concerns about its lack of specificity and clarity necessary for a fundamental statement of purpose. Later that December, the Association submitted a second draft statement written by Olmsted, stating that the parks and monuments were for

77. Letter from Frederick Law Olmsted to the President and Council of the Appalachian Mountain Club (Jan. 19, 1912) (NPS-HC); Letter from J. Horace McFarland to Walter L. Fisher (Jan. 2, 1912) (JHMcF). A discussion of the statement of purpose as it pertains to natural parks and natural resources is found in SELLARS, *supra* note 5, at 38–46. A discussion of Olmsted's statement of fundamental purpose is found in Winks, *supra* note 17, at 596–99. For Olmsted's suggested criteria regarding allowing park intrusions, or impairments, written in the 1930s, see *id.* at 599.

promoting public recreation and public health through the use and enjoyment by the people of the said parks, monuments, and reservations,...and of the natural scenery and objects of scenic and historic interest preserved therein....⁷⁸

Senator Reed Smoot's January 1911 bill included a variation of the "recreation and public health" wording. But before his bill was introduced, Olmsted had reworded the phrase "objects of scenic and historic interest" – which identified the intended focus of public use and enjoyment. Instead, he inserted a statement that the public should use and enjoy "*the natural scenery and objects of interest,*" the exact phrase that appeared in Smoot's initial bill.

The reason for Olmsted's change of wording, including omitting the reference to "historic," is not clear. However, as a landscape architect exceptionally familiar with parks in general, Olmsted knew what attracted people to the national parks. His career was mainly dedicated to designing and preserving beautiful landscapes, and "scenery" was the single park characteristic that Olmsted insisted be protected by the statement of purpose. His newly altered phrase clearly made "natural scenery" the central concern, followed by the very much nonspecific "objects of interest."⁷⁹

With the emphasis on natural scenery and public recreation and health, the statement of purpose to govern management of the national park system was clearly focused on the large, spectacular parks, in line with the dominant thrust of the legislative drive. Conversely, given the complete absence in the statement of purpose of any expression of substantive concern for historic sites following removal of "historic interest" from the wording, it seems quite clear that the statement of purpose that appeared in both Senator Smoot's and Congressman Raker's early bills reflected little, if any, concern for archeological and historic resources.

For five years, Olmsted's "natural scenery and objects of interest" clause was included in the statement of purpose for the proposed national parks bureau, along with the commitment to "promoting public recreation

78. PROCEEDINGS OF THE NATIONAL PARK CONFERENCE, JAN. 2-6, 1917, at 104-05 (1917); Letter from Frank Pierce, Acting Secretary of the Interior, to Frederick Law Olmsted (Dec. 27, 1910) (NPS-HC); Letter from Frederick Law Olmsted to John C. Olmsted (Dec. 19, 1910) (NPS-HC); Letter from J. Horace McFarland to H.S. Graves (Feb. 21, 1911) (JHMcf); Letter from Frederick Law Olmsted to Frank Pierce (Dec. 31, 1910) (including Olmsted's second draft of the statement of purpose) (emphasis added) (NPS-HC).

79. Letter from J. Horace McFarland to Walter L Fisher (Dec. 19, 1911) (JHMcf); Letter from J. Horace McFarland to Walter L. Fisher (Jan. 2, 1912) (JHMcf); Letter from Frederick Law Olmsted to Frank Pierce (Dec. 31, 1910) (NPS-HC); Letter from J. Horace McFarland to Henry S. Graves (Feb. 21, 1911) (JHMcf). Smoot Bill, S. 9996 (emphasis added).

and public health." It lasted until William Kent placed a revised bill before Congress in January 1916. Even though Olmsted's wording had omitted direct reference to historical parks and monuments, Horace McFarland wrote enthusiastically about the statement of purpose, "Here is, for the first time, a declaration of the real purpose of a National Park ... [I]t is of extreme importance that such purpose be declared in unmistakable terms, as here declared." It is also worth noting that, although the "natural scenery and objects of interest" clause – *without* the earlier reference to objects of "historic interest" – remained in the bills for five years, it was oddly juxtaposed with the still-included "historical associations" mandate, which would have given the new bureau oversight of the broadest possible array of federal historical parks and monuments.⁸⁰ But within the statement of purpose itself – the central, controlling mandate to be given the National Park Service by Congress – there seemed to be no interest in including specific reference to history during this five-year span of time.

With a presidential election due in late 1916 and a horrific war in Europe threatening to entangle the United States, proponents of legislation for a national parks bureau had begun to feel an increasing sense of urgency to get an act passed before the national political situation might change. In a renewed effort in mid-October 1915, the American Civic Association asked Olmsted to review a revised draft of the legislative proposal and "offer any changes" or criticism that he believed necessary. Olmsted's response, in early November, included a complete revision of the statement of purpose, in which he reinserted a reference to "historical objects" (soon changed to "historic objects"). In the bills introduced beginning in 1916, the revised statement gave "historic objects" representation alongside scenery, natural objects, and "wild life." Yet, ironically, these bills no longer contained the "historical associations" mandate that would have transferred all historic and archeological sites from the War Department and Forest Service to the National Park Service. Olmsted's new draft of the statement proved so acceptable to the American Civic Association and members of Congress that it would undergo only slight changes before the bill was passed. The final wording of the statement of purpose, as it appeared in the August 1916 Organic Act, read:

the fundamental purpose of the said parks, monuments, and reservations...is to conserve the scenery and the natural and

80. Letter from McFarland to Graves, *supra* note 78. Examples of early and late bills containing the "historical associations" wording include Establishment of a National Park Service, H.R. 22995, Comm. on Public Lands, 62nd Cong. 1 (1912), introduced by Congressman Raker, Apr. 8, 1912, and To Establish a National Park Service, and For Other Purposes, S. 38, Comm. Pub. Lands, 64th Cong. (1915), introduced by Senator Smoot, Dec. 7, 1915.

historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.⁸¹

Although the newly created National Park Service did not gain all of the historic areas that it might otherwise have, it was given a mandate that included historic and archeological sites—through the repeated inclusion of “monuments” in the Act and the phrase “historic objects.”

It had been the threat of congressional approval of the Hetch Hetchy dam that sparked the final campaign to establish an office to oversee the parks. And the threat aroused the determination of McFarland, Olmsted, and others to protect the parks with an overriding statement of purpose—the National Park Service’s governing preservation mandate, which in the final wording embraced places important in human history.

PRESENT AT THE CREATION: AN AMBIGUOUS MANDATE, PLUS PARK EDUCATIONAL PROGRAMS

The statement of purpose, with its mandate to leave the parks and monuments “unimpaired for the enjoyment of future generations,” would prove critically important. Indeed, the word “unimpaired” provided the Act’s only real standard by which the Park Service itself, as well as its supporters and critics, could judge the actions of park management through the decades. It was, on the face of it and as often interpreted, a high standard; and it applied not just to the scenic national parks and monuments, but also to historic areas, including Mesa Verde and the other archeological and historic sites administered by the National Park Service.

Significantly, however, the full wording of the unimpairment phrase constitutes a vital ambiguity that is essential to understanding the Organic Act *and* the management practices and policies of the National Park Service since its founding in 1916. This ambiguity is evident in the difference between, on the one hand, leaving the parks and monuments “unimpaired,” and on the other hand, leaving them “unimpaired *for the enjoyment of future generations.*” The complete phrase (surely the most frequently quoted words in the Act) concludes by modifying what is meant by the otherwise emphatic “unimpaired.” The phrase itself does not define what managerial measures, if any, should be taken to enhance public enjoyment while maintaining the areas in an unimpaired condition; and the

81. Letter from Richard B. Watrous to Frederick Law Olmsted (Oct. 19, 1915) (NPS-HC); Letter from Frederick Law Olmsted to Richard B. Watrous (Nov. 1, 1915) (NPS-HC); An Act to Establish a National Park Service, and For Other Purposes, ch. 408, 39 Stat. 535 (1916) (emphasis added); see also TOLSON, *supra* note 5, at 9-11.

full wording of the mandate to leave the parks and monuments "unimpaired for the enjoyment of future generations" implies a degree of managerial latitude. (Such latitude has certainly proved to be the case with National Park Service policy and practice up to the present in both historical and natural parks.) Similarly, the wording that immediately precedes the unimpairment phrase in the statement of purpose ("to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same...") also suggests a duality of purpose, as well as managerial flexibility, through the use of "to conserve" (arguably a less stringent mandate than to leave "unimpaired"), coupled with "enjoyment."

Regarding public use and enjoyment, the Act contains other provisions that clearly indicate that "unimpaired" parks did not necessarily mean pristine parks: For instance, the statute's allowance of development for "accommodation of visitors" in the parks, the cutting and selling of timber when necessary to fight "attacks of insects or disease," and the "destruction of such animals...and plant life as may be detrimental to the use" of the areas all implicitly permit varying degrees of park manipulation and impairment. Over time, the many different management actions that for one reason or another would be selected as being appropriate for providing for public enjoyment while leaving the parks unimpaired would prove to be a persistent source of debate and contention inside the National Park Service itself and among a growing number of public voices.⁸²

The ambiguity in the 1916 Act prompted Horace Albright's comment the following year: "The devil of the thing is the conflicting principles in our organic act. How can we interpret the unrestricted use of the parks for the public and still retain them totally intact for the future?" In fact, the 1916 Act's provisions allowing park development for public use and enjoyment came at a time when intrusions on sites and landscapes had already substantially impacted historic and natural areas in the national park system. For instance, at Mesa Verde the road into the heart of the park continued under construction, and trails and roads near the major archeological sites had begun so that park visitors could get to—and in and around—the more well-known cliff dwellings. Other preparations for visitor enjoyment included stabilization and restoration work on Spruce Tree House and additional sites in Mesa Verde, altering, for better or for worse, the pre-park conditions of these ancient structures and associated features. Among the natural parks, Yellowstone, for example, had

82. 39 Stat. 535 (1916); see also TOLSON, *supra* note 5, at 10. For a discussion of the unimpairment clause as it applies specifically to natural resources, see Robert B. Keiter, *Preserving Nature in the National Parks: Law, Policy, and Science in a Dynamic Environment*, 74 DENV. U. L. REV. 649-95, see especially 650-57, 675-80 (1997); SELLARS, *supra* note 5, at 38-46.

experienced village-like development and construction of several hundred miles of roads; and the Yosemite Valley had been extensively and somewhat randomly developed to accommodate tourism. This was true even though legislation for each of these parks mandated the park's "retention in [its] natural condition" – essentially synonymous to leaving them "unimpaired."⁸³

In the realm of publicly managed parks and monuments – historical and natural – preservation has generally gone hand in hand with tourism. Particularly given the National Park Service Act's mandates, sites in the park system were intended for people to enjoy, understand, and commemorate not just by supporting their preservation, but also by *going there*. Thus, a perpetual tension has existed between leaving the parks and monuments "unimpaired" (which implies minimal manipulation and intrusion) versus developing them for public use and enjoyment (which often involves extensive manipulation and intrusion). Significantly, the latter, more tourism-oriented and manipulative option has usually been accepted as a necessity if the public is to visit and enjoy sites and thus continue to give potent political support for the national park and monument idea. This assumption would become an enduring, underlying aspect of National Park Service management, and the policies and practices stemming from that assumption would be contested again and again – thereby perpetuating the tension that lies at the heart of the statement of purpose.

The statement of purpose with its mandate to leave the parks and monuments "unimpaired for the enjoyment of future generations" arose from deliberations that stretched over six years (1910 to 1916) and remained closely focused on the large natural parks with no substantive analysis of the statement's application to places preserved for their significance in human history. In its final form, the mandate also applied to the historic and archeological areas under the National Park Service; and already the ongoing projects at Mesa Verde and the efforts of custodian Frank Pinkley at Casa Grande – all intended mainly to enhance public enjoyment – suggested strong parallels with the management practices underway in the large natural parks.⁸⁴

83. Albright & Schenck, *supra* note 61, at 239. See also *id.* at 276, 289 for Albright's reflections on the "paradox" in the Organic Act; Runte, *supra* note 5, at 35–44, 83–99; SELLARS, *supra* note 5, at 16–27; 17 Stat. 32, see also TOLSON, *supra* note 5, at 26; 26 Stat. 650, see also TOLSON, *supra* note 5, at 65.

84. In its management of the *large natural parks*, the National Park Service would interpret the Organic Act's mandate to leave the parks "unimpaired for the enjoyment of future generations" chiefly in terms of leaving park *scenery* unimpaired rather than striving to leave the parks' biological resources and ecological systems in an unimpaired condition. This interpretation was much in accord with the legislative history of the National Park Service

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Long after passage of the Organic Act, Horace Albright recalled that the "belief in 1916 was that education and passive enjoyment were the foremost reasons for the parks." In this regard, it is important to point out that public use and enjoyment in the early parks and monuments clearly involved educational, or interpretative, activities—they were in fact present as a significant management concern well before the creation of the National Park Service. Educational activities had been (and would remain) closely interconnected with historic preservation and frequently had a strong bearing on preservation goals and practices. For example, as Smithsonian archeologist Jesse Walter Fewkes discussed in his 1908 report entitled "Educational Ideal," education was a primary objective when he excavated, stabilized, and repaired portions of Mesa Verde's Spruce Tree House. Parts of Spruce Tree House had collapsed, and some intensive pot hunting had already occurred there. Fewkes' determination to ensure that his work would "aid in the interpretation" of the site was aimed at helping visitors understand not only that particular cliff dwelling, but also other, similar sites in the park. His project included the excavation of 114 habitation and storage rooms and eight kivas. Fewkes asserted that his plan at Spruce Tree House was to *repair*, rather than to *restore*, the latter of which would have required "theoretical questions"—in effect, a best guess at how the site would have appeared in ancient times. Altogether though, his efforts to enhance the potential of Spruce Tree House for public enjoyment

Act. (Yet it should be noted that the 1916 Act was passed the year *after* the Ecological Society of America had been established, which reflected the increasing influence of ecological thinking among natural scientists—but *not* among Park Service founders.) And the interpretation focused on scenic preservation fit well the Service's determination to maintain the beauty and majesty of the parks by, for instance, fighting forest fires that would darken park landscapes and eliminating certain native predators—wolves, mountain lions, and other species that killed and fed upon the charismatic native fauna such as antelope, elk, and bison, which graced park landscapes. By such means the Service sought to ensure public enjoyment of the parks, which could help increase public visits and thus increase public support for the national park concept. With the rising influence of the Park Service's wildlife biologists, first in the early 1930s, and then again in the 1960s and beyond, the Service began a shift toward a broader interpretation of its mandate for unimpairment. In effect, the biologists held that the unimpairment mandate applied to much more than the biological and scenic superstars; rather the mandate applied to each park's natural systems, including all native species. Over time this perspective moved park management toward a genuine concern for park ecological systems while not abandoning its long-time commitment to public enjoyment. For an elaboration on this discussion of natural resources management policy in the parks, see SELLARS, *supra* note 5, at 45–50, 69–148, & *passim*.

brought about extensive alterations to a site that had already been greatly impacted by time and vandals.⁸⁵

Museums reflected another early educational interest at the archeological reserves. By at least 1905, Casa Grande custodian Frank Pinkley began to display objects found on site to help explain the area's ancient history, thus initiating limited museum activity there. Yet the artifacts from Casa Grande projects undertaken by Jesse Walter Fewkes at intervals from 1906 to 1908 were to be shipped back to the Smithsonian Institution for professional care, as intended by the site's General Land Office overseers. The shipment took place despite Pinkley's strong interest in retaining these larger collections in the reserve and building a museum to enhance public understanding of Casa Grande. He was allowed to keep only a small number of objects for display and received no funds for a museum.

At Mesa Verde, objects deemed most valuable from Fewkes' Spruce Tree House excavations beginning in 1908 were also shipped to the Smithsonian, although many others were stored in the park. Interest in a park museum arose early, but not until about 1914 did a new superintendent initiate an earnest campaign for a museum to exhibit Mesa Verde artifacts – an effort that would not succeed until after the National Park Service came into existence. These incipient museum efforts were augmented by other educational activities, particularly guided tours to interpret sites to the public, with Custodian Pinkley himself giving tours at Casa Grande and park rangers guiding visitors in Mesa Verde beginning in 1908. Similarly, prior to the establishment of the National Park Service, managers in both Yosemite and Yellowstone had created small, museum-type displays for visitors, and in Yellowstone a move began in 1915 to establish a permanent museum. Well before that, in the late nineteenth century, Yellowstone concessionaires had begun offering guided tours to explain the park's geysers and other natural features. By 1914 the Interior Department's Office of the Chief Clerk began publishing educational booklets to inform visitors of the natural features in Yosemite, Sequoia, Glacier, Mount Rainier, and Yellowstone.⁸⁶

85. ALBRIGHT & SCHENCK, *supra* note 61, at 127; REPORTS OF THE SUPERINTENDENT OF THE MESA VERDE NATIONAL PARK AND J. WALTER FEWKES, *supra* note 48, at 8–9, 15–18; *see also* Jesse Walter Fewkes, *Antiquities of Mesa Verde National Park: Spruce-Tree House*, BULLETIN 41 (Bureau of Am. Ethnology) (Smithsonian Inst. 1909).

86. CLEMENSEN, *supra* note 9, at 51–56; RALPH H. LEWIS, MUSEUM CURATORSHIP IN THE NATIONAL PARK SERVICE, 1904–1982, at 1–3, 9–10, 12–17 (1993); REPORTS OF THE SUPERINTENDENT OF THE MESA VERDE NATIONAL PARK AND J. WALTER FEWKES, *supra* note 48, at 7; BARRY MACKINTOSH, INTERPRETATION IN THE NATIONAL PARK SERVICE: A HISTORICAL PERSPECTIVE 2–5 (1986). *See also* C. Frank Brockman, *Park Naturalists and the Evolution of National Park Service Interpretation Through World War II*, 22 J. FOREST HIST. 24–27 (1978).

Education also appeared in early legislation. Authorizing the protection of federally controlled archeological and scientific sites and presidential proclamations of especially important places as national monuments, the Antiquities Act of 1906 was centered squarely on research on public lands for purposes of public education. Provisions in the Mesa Verde acts of 1906 and 1910 reaffirmed the Antiquities Act's education-oriented sections and also created the national park with the authority to provide for public use.⁸⁷ The park road to the top of the mesa, the ranger guides, plus Fewkes' work helped make it possible for the public to visit and learn about the ancient cliff dwellings and the people who built and lived in them.

Although education is clearly a chief concern of the 1906 Antiquities Act and Mesa Verde acts, the 1916 National Park Service Act does not specifically authorize education—the word is nowhere to be found in the statute. And education *per se* received very little attention in congressional hearings; instead, ensuring public use and enjoyment was repeatedly put forth as a prime rationale for creating the Park Service. Of the 1916 Act's various provisions, the public enjoyment mandate makes the closest connection to education. In truth, the Organic Act would have to be very narrowly construed in order to not include education, given its provisions for the Park Service to “promote and regulate the use” of parks and monuments and to provide for the “accommodation of visitors,” with one of the fundamental purposes being the public's “enjoyment” of these places. This seems particularly true given that a tradition of educational work in both archeological and natural areas had been established before the 1916 Act was approved, and the fact that those national monuments that the Act

Regarding the importance of education in early historical parks, it is worth noting again how impressed Horace Albright was with the tour he took in late 1915 at the War Department's Chickamauga and Chattanooga National Military Park. Albright, then deeply involved in promoting establishment of the National Park Service, had spent the day at the park with a battlefield guidebook in hand (“the most complete guidebook I ever had”) and was also shown around by two guides, both Confederate veterans. He remembered his tour as a “fascinating experience,” and recalled the veterans as being “very knowledgeable,” having “put in long years of fighting.” By the time of Albright's 1915 visit, Chickamauga-Chattanooga was one of the most extensively memorialized battlefields in the country, if not the world. The battlefield's many monuments, placed so as to mark important aspects of the battles, were augmented by hundreds of sturdy metal tablets informing visitors in detail about the course of the battles. Albright's experiences at the battlefield convinced him that the National Park Service should (as he stated in a letter to Mather written immediately after his visit) control all of the places the federal government wants “to preserve and protect for the education, interest and enjoyment of the population.” ALBRIGHT & SCHENCK, *supra* note 61, at 117; Sellars, *supra* note 3, at 31, 42–44.

87. Harmon et al., *supra* note 35, at 6; McManamon, *supra* note 35; 34 Stat. 225; 34 Stat. 616; 36 Stat. 796.

placed under Park Service administration still carried the Antiquities Act's very clearly education-oriented mandates. Moreover, the Antiquities Act's research and education mandates—which were to involve museums, universities, and other “scientific or educational institutions—applied to *all* federally controlled lands, including the national parks.⁸⁸ Given the thrust of the Antiquities Act toward increasing public knowledge of science and human history, the demonstrated concerns for public education in early parks and monuments (including Mesa Verde), and the legislative history leading up to the 1916 mandate to promote public use and enjoyment *on-site* in the preserved areas, the fledgling National Park Service clearly had educational responsibilities.

* * *

In 1906, not long after the Antiquities Act had been signed, Congressman John Lacey reflected on federally preserved parks and historic places, stating that they represented an “enlightened method of reservation” that would protect them from “speculative management”—in effect protect them from the uncertainties of the market economy. Lacey wanted special places such as the Grand Canyon and the big trees of California to remain the “property of the Republic,” to be “permanently protected from all mutilation.”⁸⁹ Indeed, the major elements of his comprehensive antiquities protection bill of April 1900, drafted at his request by Department of the Interior officials, had to a considerable degree been realized through passage of the Antiquities Act of 1906, the creation of national monuments and more national parks, and ultimately the establishment of a “service”—the National Park Service—to manage these preserved areas.

When President Wilson signed the National Park Service Act in late August 1916, the War Department and the Forest Service administered a total of 16 historic and archeological sites, while the Park Service was given control over only nine of such sites.⁹⁰ Thus, the Service controlled only about a third of the federally designated historic places, and the national government's historic preservation responsibilities remained divided among three departments, the kind of situation that had frustrated Horace McFarland from the beginning.

88. 34 Stat. 225; 39 Stat. 535.

89. John F. Lacey, Speech on National Parks, *supra* note 22.

90. These figures include the Lincoln Memorial; by 1916 the War Department's administrators were already underway with site preparation for the memorial. They also include Papago Saguaro National Monument, in Arizona, which was proclaimed for both natural and archeological features. From 1916 until Congress abolished the monument in 1930, Papago Saguaro was under the National Park Service. NAT'L PARK SERV., *supra* note 4, at 19, 40–43.

Of the Park Service historic sites, nearly all were in the Southwest and were related to American Indian history – for instance, Mesa Verde and the archeological monuments such as Chaco Canyon and Gran Quivira in New Mexico. Several of the monuments (Gran Quivira for example) also included significant remains of Spanish missions. In addition to Spanish activity in the Southwest, the National Park Service in August 1916 had only two sites that emphasized the history of other European Americans in this country: Sitka National Monument in Alaska Territory, involving a Russian-American colony and Alaska native people; and El Morro in New Mexico, which featured inscriptions carved in rock by Indians, as well as by European Americans of different generations and national origins.

There is no indication that without the concern for improved protection of the high-profile scenic national parks any campaign to create a national office to oversee the historic and archeological areas alone would have taken place by August 1916, or perhaps for many years thereafter. Establishing an office for coordinated administration of places reflecting the historic American past had to be addressed within the context of determining how best to set up a bureau to provide effective management of the large, scenic national parks. The National Park Service's historic preservation mandate was conceived and would, in time, come to be more fully realized within this context.

ABBREVIATIONS FOR SOURCE MATERIALS

ASLA-LC: Papers of the American Society of Landscape Architects, Library of Congress

FLO-LC: Papers of Frederick Law Olmsted, Jr., Library of Congress

JHMcF: Papers of J. Horace McFarland, Pennsylvania State Archives, Harrisburg

Kent: Papers of William Kent, Manuscript and Archives, Yale University Library

Lacey-SHSI: John F. Lacey Papers, State Historical Society of Iowa, Des Moines

MVNP: Mesa Verde National Park Files

NAA: National Anthropological Archives, Smithsonian Institution

NPS-HC: National Park Service History Collection, Harpers Ferry

NPS-W-H: National Park Service, Washington Office, History Files

NPS-W-A: National Park Service, Washington Office, Archeological

Files

RG79: Record Group 79, Records of the National Park Service, National Archives