

Protecting the Past:
The Fight to Save America's Archaeological Resources

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“There is no space in the United States that is not ancestral land.”

-Dr. Cinder Miller, Gray and Pape Heritage Management¹

The heritage of the Native Americans predates not only the exploration, colonization, and establishment of the United States but also written history itself. As the only truly indigenous people of this country, the remnants of their daily lives -- centuries-old pots, structures, and weapons that they created -- serve as the sole narrative of our earliest American history. Over time, these relics have gained increasing importance, not only to the native peoples for whom they represent a personal connection to the past, but to the United States government, historians, archaeologists, and indeed, the general public. Consequently, attempts at responsible management of these archaeological resources have resulted in a cycle of conflicts and compromises that have spanned the ages and are still at work today. The story of these conflicts and compromises in American archaeological resource management has become in itself an important chapter in the history of this great nation.

Since the establishment of the United States in 1776, the status of the hundreds of Native American nations within this country's ever-expanding boundaries has vacillated wildly. In the Constitution, the Founding Fathers granted Congress the power to regulate commerce “with foreign nations, and among the states, and with the Indian tribes”, marking Indians as a people separate from the citizens of the United States². Indeed, by acknowledging Congress' right to negotiate with Native Americans, the Founding Fathers classified them as the equivalent of a foreign nation³. As Americans spread west in the early 1800's, attitudes toward Native American sovereignty changed. In the landmark 1832 case *Worcester vs Georgia*, Chief Justice John Marshall indicated that Indian nations were “distinct political communities”, but only with

authority “guaranteed by the United States”⁴. To Marshall, Indian homelands remained a concern between two independent nations, with the United States as the superior power⁵. Marshall’s rulings did not stand long. In 1871, Congress declared that no Indian nation should be considered a formal political entity, abruptly silencing any debate of broken treaties with Native Americans. In a further effort to disrupt Native American homelands, Congress passed the Dawes Act in 1887, which divided tribal lands into allotments and relegated natives to the laws of the state in which they resided. Under the Dawes Act, the United States placed land allotted to native nations “in trust” for 25 years, an underhanded ploy to confiscate the land with a final purpose of moving more settlers into Indian Territories. As a result, the United States government infiltrated Indian land holdings, granting only citizenship and poor tracts of land in exchange for millions of square miles of agriculturally and archaeologically rich native land⁷.

The Dawes Act resulted in unforeseen consequences for the U.S. government. By supplanting Native Americans as the owner of tribal homelands, the government had unwittingly designated itself as the protector of over 90 million acres of land⁸. White settlers, encountering these deserted tribal communities, began to sneak onto federal land and take indigenous artifacts for themselves. Yet no native nations remained to defend this property. Thus, federal officials were forced to both clash and compromise with archaeologists pledging to save our last prehistoric vestiges, states eager to humble Congressional power, and unscrupulous members of the American public in an effort to secure our nation’s heritage.

The period of 1880-1910 amplified public interest in Native American history and archaeology. Public events such as the World’s Columbian Exposition in 1893 and the Louisiana Purchase Exposition in 1904 brought both archaeology and Native American artifacts to the forefront and created an outcry for antiquities, no matter the provenance⁹. To fill the demand for

authentic artifacts, “pothunters,” amateur excavators who wantonly dug for ancient relics to sell, became increasingly prominent in the American Southwest¹⁰. These individuals, often local citizens, snuck onto federal lands, stealing precious artifacts of significance. In some small Western towns, pothunting became an integral part of local culture. Most diggers displayed their ill-gotten gains openly, for many small settlements did not consider pothunting a crime¹¹.

The damage that resulted from reckless pothunting excavations was indisputable. In his influential work *Circular Relating to the Historic and Prehistoric Ruins of the Southwest and their Preservation*, New Mexico archaeologist Dr. Edgar Allen Hewett found that over half of the districts of the Four Corners Region of the American west had been negatively impacted by settlers, even the “protected” Mesa Verde District. In some remote sites, images of jaguars were “much disfigured, especially the heads”, destroyed by local shepherds¹². This destruction enraged government archaeologists, who often excavated at the same sites¹³. Archaeologists viewed sites as a “vast treasury of information” that could only be evaluated by viewing artifacts in context¹⁴. From their perspective, when sites were disturbed, if an “[artifact] is moved, altered, taken, or destroyed, the larger picture becomes unrecoverable”¹⁵. The conflict over pothunting demanded a compromise regarding the exact role of the United States government in protecting archaeological resources.

Native Americans were obviously most affected by these uncontrolled excavations and pothunting raids. To many Native Americans, the objects stolen were “central to [their] cultural belief system and way of life” and were an irreplaceable ancestral inheritance¹⁶. Even seemingly ordinary objects held a special meaning based on their associated religious and cultural context and in some cases were considered sacred by tribal custom and law. Pothunting also destroyed the historical tradition of Native American communities. Without artifacts for display, local

museums could not engage in meaningful cultural dialogues with the public¹⁷. Incomplete artifact collections meant incomplete history for Native American peoples; if archaeological material had continued to disappear, their heritage would have disappeared with it. Federal archaeologists were keenly aware of the distress of Native American groups and local communities. As most of these native homelands were located on what was now federal land, it was these archaeological experts who first brought the issue of pothunting to the government's attention. As Dr. Edgar Hewett wrote, "there is a need for general legislation authorizing the creation of national parks... for the excavation of prehistoric ruins" on federal land¹⁸.

The first attempt at compromise, the Antiquities Act of 1906, was signed into law by President Theodore Roosevelt on June 8, 1906¹⁹. The legislation, the United States' first national historic preservation policy, authorized the president to "declare by public proclamation historic landmarks, historic and prehistoric structures, and *other objects of historic or scientific interest* ... to be national monuments"²⁰. The Antiquities Act also granted broad powers to the President, as it became the first US law to give protection to a general kind of resource²¹.

From the beginning, the Antiquities Act served as a compromise between two strongly differing views on the role of federal government. Many professional archaeologists preferred to place all lands held by the federal government in trust; these "general bill" proponents especially feared future encroachments of local settlers on government lands. Alternatively, states' rights advocates and the general public vehemently opposed any expansion of government control. The Antiquities Act elegantly compromised these two approaches. By increasing the scope of national control over archaeological remains, the Antiquities Act appeased those who demanded a strong federal presence. Yet the Act restricted the creation of national parks, leaving most artifacts in remote regions only indirectly protected²². This reaffirmation of the federal

government's power was critical to the United States' policy on archaeological management. Without a consensus on federal authority, states could have easily superseded Congressional legislation, stopping vital protections in their tracks.

The Antiquities Act also addressed key concerns about the role of archaeologists in managing artifacts on government land. Many members of the archaeological community, led by Massachusetts anthropologist/archaeologist Frederic Putnam, vehemently protested government-run excavations and instead favored contracts to qualified archaeologists for localized expeditions. They especially feared the rise of amateur archaeologists, who might snatch away excavation licenses from professionals²³. The Antiquities Act addressed these concerns, allowing the federal government to award contracts only “to institutions which they may deem properly qualified” to handle artifacts with care²⁴. By specifying that only “institutions” could conduct excavations, the federal government tied the proper excavation of prehistoric sites to the collegiate sphere, preventing amateurs from combing over sites²⁵. The finite amount of space in museum storage further limited the amount of material excavation, re-emphasizing the need for conserving excavated material²⁶. Thus, the Antiquities Act balanced the needs of the general public and career archaeologists by defining both the role of federal government and then the goals of excavations on public land.

Unfortunately, the Antiquities Act left numerous unsettled conflicts in its wake. The law applied protections only to a “prehistoric ruin or monument, or any object of antiquity”, leaving the meaning of “antiquity” up to interpretation²⁷. The Act also failed to identify the federal officers in charge of excavations. As a result, supervision of sites was relatively non-existent until the 1930's. In one national park, the Navajo National Monument, federal contractors neglected to build proper roads until after 1960²⁸. Even the most optimistic of government

inquiries noted the need for more resources. In 1931, 25 years after the implementation of the Act, the Department of the Interior concluded that “The National Park Service ... has accomplished outstanding public educational work in the protection and preservation of the national parks... but these patrolled areas constitute but a very minor portion ... of your department²⁹.” Under such weak layers of supervision, the Antiquities Act neglected to “effectively prevent or deter deliberate criminal looting of archaeological sites” as it originally intended³⁰.

The Antiquities Act, although noble in premise, failed to solve the conflict between individual citizens and federal agents over Native American artifacts. In impoverished communities, the sale of ancestral objects had become an increasingly necessary source of income in a cash economy. With prices as high as \$600 for a single relic, pothunting ingrained itself as a source of income, and locals flagrantly disobeyed the federal laws³¹. Enforcement was so sporadic that as of 1931 “not a single pothunter had been convicted” under the Antiquities Act³².

Likewise, individual states attempted to challenge the extensive nature of the Antiquities Act. In 1943, Wyoming legislators disputed the size of the newly created Jackson Hole National Monument, claiming the 221,000 acres of protected land far exceeded what was “necessary” to protect the resources there. Although the suit failed to change the ruling in the courts, the attack continued to drive a wedge between state governments and Washington. In the landmark 1943 case *State of Wyoming v. Charles J. Smith*, Wyoming again tried to question the legal bounds of national monuments. While this attack was also dismissed, the court cited certain factors that determined a national park, thus placing federal power under closer regulation³³. As *State of Wyoming v. Charles J. Smith* and the Jackson Hole Controversy proved, states rights advocates

would never accept the expansive definition of national parks and “objects of antiquity” that the Antiquities Act provided. Even more ominously, the general public became more outspoken against archaeological restrictions. As the conflict dragged on between the government and local populations, a new compromise became necessary to address their grievances.

The Archaeological Resources Protection Act of 1979, or ARPA, attempted to definitively resolve the conflict surrounding the Antiquities Act. It primarily served to clarify the term “archaeological resource”, dictating that applicable material included “remains of past human life or activities which are of archaeological interest”³⁴. ARPA also explicitly specified seven categories of artifacts, preemptively silencing attempts to stir conflicts between states and Washington. Having learned from the failures of the Antiquities Act, the Archaeological Resources Protection Act finally articulated the responsible government agencies: the Secretaries of the Interior, Agriculture, and Army³⁵. This new national system, although still weaker than the highly federalized policies of European countries such as Greece, solidified a markedly American style of archaeological protection³⁶. ARPA finally negotiated a return to the initial concept of the Antiquities Act, a steady control over archaeological artifacts on federal and Indian lands³⁷.

In addition to compromising with state governments, The Archaeological Resources Protection Act attempted to appease local individuals and prevent further conflict. First, ARPA stipulated that respective government bodies “foster and improve the communication, cooperation, and exchange of information” between federal and individual citizens to improve the public record. Thus, federal authorities calmed wide-spread fears of government overreach, and officials could interact with the public without demanding the return of lawfully-owned artifacts. In another attempt to pacify the public, Section 7 of the act provided that “no penalty

shall be assessed... for the removal of arrowheads located on the surface of the ground”, encouraging locals to choose less valuable “souvenirs”³⁸. These new guidelines permitted a wider dialogue between the government and the people affected by archaeological sites, signaling a more collaborative attitude in archaeological protection. Moreover, the same precepts of interaction with the public and native nations manifested themselves in later legislation, especially Section 106 of the National Historic Preservation Act of 1966³⁹. This continued dialogue between native nations, individual citizens and the government will define the next chapter of American history.

Despite strong enforcement of local, state, and federal laws, the scourge of pothunting continued to scar the southwestern United States. In a series of 1986 raids, the Federal Bureau of Investigation confiscated over 250 stolen artifacts, primarily from dealers who dared to have detailed evidence of their work. Even more grievously, in the late 1980’s amateur archaeologist Jack Harelson unearthed over 2,000 Native American grave goods, including intact burial pots and the oldest pair of shoes found in North America, only to store them in his home and garden⁴⁰. Unfortunately, these are just case studies – the true extent of pothunting has yet to be fully realized. Only resolute enforcement of our current protective laws will help to finally end pothunting in the United States.

The Antiquities Act and the Archaeological Resources Protection Act are critical to the strong protection of Native American antiquities today. By navigating the conflict between historical preservation and the general public, the Antiquities Act shone forth as a compromise between the interests of the two parties. When new conflicts arose concerning vague language in the act, the United States government again proved its willingness to strike a balance between preserving our nation’s heritage and protecting the rights of individuals. The strength of

archaeological resource protection lies not in the high-handed role of government, but the agreement between the federal government and its constituents.

The status of archaeological preservation has vastly changed from the founding of the United States in the 1790s. The Antiquities Act and the ARPA have forged a new age of protection and awareness. In 1996, the Society for American Archaeology chose “stewardship” as the first principle of ethical archaeology⁴¹. Through the extended cycle of conflict and compromise, the United States has prepared itself to face the challenges of protecting the country’s historical record now and for many generations into the future.

Endnotes

¹ Cinder Miller, 27 November 2017, Cincinnati, Transcript, n.p.

² “Constitution of the United States,” Article 1, Section 8, Clause 3.

³ Helen H. Jackson, A Century of Dishonor: A Sketch of the United State Government’s Dealings With Some of the Indian Tribes (Boston: Little, Brown and Company, 1909), 14.

⁴ Worcester v. Georgia, 31 U.S. 515 <https://supreme.justia.com/cases/federal/us/31/515/case.html>, Internet, Accessed 29 December 2017, n.p.

⁵ N Bruce Duthu, American Indians and the Law (London: Penguin Books, 2009), 10.

⁶ Helen H. Jackson, A Century of Dishonor: A Sketch of the United State Government’s Dealings With Some of the Indian Tribes, 24, 27.

⁷ An Act to Provide for the Allotment of Lands in Severalty to Indians on the Various Reservations, and to Extend the Protection of the Laws of the United States and the Territories over the Indians,]. <https://ourdocuments.gov/document.data/pdf/doc.050.pdf> . Internet, Accessed 22 December 2017, n.p.

⁸ Alvin M Josephy, The Indian Heritage of America (New York: Bantam Books, 1968), 350.

⁹ David Harmon et al, The Antiquities Act: A Century of American Archaeology, Historical Preservation, and Nature Conservation (Tucson: University of Arizona Press, 2006), 154.

¹⁰ National Park Service, Antiquities Act of 1906, Available at www.nps.gov/archaeology/tools/laws/contact.htm, Internet, Accessed 22 December 2017, n.p.

¹¹ Craig L. Childs, Finders Keepers: A Tale of Archaeological Plunder and Obsession (New York: Little, Brown, and Company, 2010), 80-81.

¹² Edgar Allen Hewett, Circular Relating to Historic and Prehistoric Ruins of the Southwest and Their Preservation (Washington: U.S. G.P.O., 1904), 5-10.

¹³ Craig L. Childs, Finders Keepers: A Tale of Archaeological Plunder and Obsession, 34.

¹⁴ David Harmon et al, The Antiquities Act: A Century of American Archaeology, Historical Preservation, and Nature Conservation, 44-45.

¹⁵ Craig L. Childs, Finders Keepers: A Tale of Archaeological Plunder and Obsession, 134-135.

¹⁶ Kurt Riley, Written Testimony of Governor Kurt Riley Before the Senate Committee on Indian Affairs (Albuquerque: Pueblo of Acoma Office of the Governor, 2016), <https://www.indian.senate.gov/sites/default/files/upload/10.18.16%20Governor%20Kurt%20Riley%20Testimony.pdf>, Internet, Accessed 14 January 2018, 1-3.

¹⁷ Ainsley Cameron, 7 December 2017, Cincinnati, Transcript, n.p.

¹⁸ Edgar Allen Hewett, Circular Relating to Historic and Prehistoric Ruins of the Southwest and Their Preservation, 12.

¹⁹ David Harmon et al, The Antiquities Act: A Century of American Archaeology, Historical Preservation, and Nature Conservation, 2.

²⁰ An Act for the Preservation of American Antiquities, 16 U.S.C. 431-433., <https://www.nps.gov/history/local-law/anti1906.htm>, Internet, Accessed 12 December 2017, n.p.

²¹ National Park Service, Antiquities Act of 1906, n.p.

²² David Harmon et al, The Antiquities Act: A Century of American Archaeology, Historical Preservation, and Nature Conservation, 35, 41.

²³ Ibid., 42.

²⁴ Ibid., 160.

²⁵ An Act for the Preservation of American Antiquities, n.p.

²⁶ Ainsley Cameron, Transcript, n.p.

²⁷ An Act for the Preservation of American Antiquities, n.p.

²⁸ David Harmon et al, The Antiquities Act: A Century of American Archaeology, Historical Preservation, and Nature Conservation, 74, 75.

²⁹ Department of the Interior. Annual Report of the Secretary of the Interior for the Fiscal Year 1931 (Washington: U.S. G.P.O., 1931), <https://babel.hathitrust.org/cgi/pt?id=uc1.32106020212004;view=1up;seq=1305>, Internet, Accessed 14 January 2018, 19.

³⁰ National Park Service, Antiquities Act of 1906, n.p.

³¹ Craig L. Childs, Finders Keepers: A Tale of Archaeological Plunder and Obsession, 75-76.

³² Department of the Interior. Annual Report of the Secretary of the Interior for the Fiscal Year, 17.

³³ Craig L. Childs, Finders Keepers: A Tale of Archaeological Plunder and Obsession, 81.

³⁴ Archaeological Resource Protection Act of 1979, 16 U.S.C. 470aa-470mm, <https://www.law.cornell.edu/uscode/text/16/chapter-18>, Internet, Accessed 12 December 2017, n.p.

³⁵ Archaeological Resource Protection Act of 1979, n.p.

³⁶ Cinder Miller, Transcript, n.p.

³⁷ National Park Service, Antiquities Act of 1906, n.p.

³⁸ Archaeological Resource Protection Act of 1979, n.p.

³⁹ Cinder Miller, Transcript, n.p.

⁴⁰ Craig L. Childs, Finders Keepers: A Tale of Archaeological Plunder and Obsession, 23-24.

⁴¹ Society for American Archaeology, The Seven Principles for Teaching Archaeology, www.saa.org/AbouttheSociety/EducationandOutreach/Principles/tabid/1524/Default.aspx, Internet, Accessed 15 January 2018, n.p.

Annotated Bibliography

Primary Sources

An Act for the Preservation of American Antiquities, 16 U.S.C. 431-433. [text online]. Available at <https://www.nps.gov/history/local-law/anti1906.htm>; Internet; Accessed 12 December 2017.

The Act for Preservation of American Antiquities, or Antiquities Act of 1906, is a critical piece of protective legislation. It is also the first Act of Congress passed to protect a general class of resource. This source was critical to my examination of compromises within the field of Native American Archaeology.

An Act to Provide for the Allotment of Lands in Severalty to Indians on the Various Reservations, and to Extend the Protection of the Laws of the United States and the Territories over the Indians, 9 U.S.C. 331 (1887). [text online]. Available at <https://ourdocuments.gov/document.data/pdf/doc.050.pdf> . Internet; Accessed 22 December 2017.

This act, otherwise known as the Dawes Act, was designed to strip Native Americans of their land and give it to white settlers. I primarily used it to contextualize United States land policy before the first conflict arose.

Archaeological Resource Protection Act of 1979, 16 U.S.C. 470aa-470mm. [text online]. Available at <https://www.law.cornell.edu/uscode/text/16/chapter-18>; Internet; Accessed 12 December 2017.

This source was extremely valuable because it corrects the failures of the Antiquities Act. Several sections proved important in discussing how ideas on National Parks had changed since 1906.

Cameron, Ainsley. Curator of South Asian Art, Islamic Art and Antiquities, Cincinnati Art Museum. 7 December 2017. Cincinnati. Transcript.

Although this source focused on different time period, it was very helpful to discuss current museum practices and the current state of Antiquities in the United States. Her analysis of how Native Americans perceive their own history underlaid much of my paper.

Hewett, Edgar Allen. Circular Relating to Historic and Prehistoric Ruins of the Southwest and Their Preservation. Washington: U.S. G.P.O., 1904.

This is a report concerning the archaeology of New Mexico and Colorado. Most of the content was too general for use. However, Hewett does explain the material effects of pothunting well.

Interior, Department of. Annual Report of the Secretary of the Interior for the Fiscal Year 1931.

Washington: U.S. G.P.O., 1931. [database on-line]. Available at <https://babel.hathitrust.org/cgi/pt?id=uc1.32106020212004;view=1up;seq=1305>; Internet; Accessed 14 January 2018.

This source was valuable because it included a full report from the National Park Service Director. This document served to explain the problems that continued 25 years after the Antiquities Act of 1906.

Miller, Cinder. Vice President of Grey and Pape Cultural Resource Management. 27 November 2017. Cincinnati. Transcript.

This interview was important to understand the current state of Native American archaeology protection from an expert in the field. Some topics involved protections that remained outside the purview of the paper, but the on-topic information was important.

Riley, Kurt. Written Testimony of Governor Kurt Riley Before the Senate Committee on Indian Affairs. Albuquerque: Pueblo of Acoma Office of the Governor, 2016. [online]. Available at <https://www.indian.senate.gov/sites/default/files/upload/10.18.16%20Governor%20Kurt%20Riley%20Testimony.pdf>; Internet; Accessed 14 January 2018.

This source delivered a unique Native American outlook on their heritage. Native American sources are often absent from the written record, thus this defiant statement helped encapsulate hundreds of years of oral tradition.

Worcester v. Georgia, 31 U.S. 515 (1832). [database online]. Available from

<https://supreme.justia.com/cases/federal/us/31/515/case.html>; Internet; Accessed 29 December 2017.

This source aided greatly in contextualizing land policy before the 1870s. The background information proved irrelevant, but the conclusions were helpful in explaining John Marshall's opinion on Native Americans.

Secondary Sources

American Archaeology, Society For. The Seven Principles for Teaching Archaeology. [online].

Available at www.saa.org/AbouttheSociety/EducationandOutreach/Principles/tabid/1524/Default.aspx ; Internet; Accessed 15 January 2018.

This source highlighted 7 principles of current ethical archaeology. It was only helpful in discerning the values that archaeologists hold today.

Childs, Craig L. Finders Keepers: A Tale of Archaeological Plunder and Obsession. New York: Little, Brown, and Company, 2010.

This book was extraordinarily valuable to describing the undercover operations of most professional pothunters. I focused primarily on the author's firsthand observations of prehistoric ruins.

Harmon, David et al. The Antiquities Act: A Century of American Archaeology, Historical Preservation, and Nature Conservation. Tucson: University of Arizona Press, 2006.

This source contains a series of essays on the Antiquities Act. All of the essays detailed different aspects of the Act. Overall, this book was invaluable to one starting research into the Act.

Jackson, Helen H. A Century of Dishonor: A Sketch of the United State Government's Dealings With Some of the Indian Tribes. Boston: Little, Brown, and Company, 1909.

This book was written primarily about early interactions between the Founding Fathers and Eastern Woodlands nations. Surprisingly, it was much less useful than I initially imagined due to its limited geographic range.

Josephy, Alvin M. The Indian Heritage of America. New York: Bantam Books, 1968.

This book primarily contextualized the encroachment of white settlers by discussing the lifestyle of Native American nations before and during western migration. The subject of the source was tangential to my paper, but it provided much-needed background on native nations.

Duthu, N Bruce. *American Indians And the Law*. London: Penguin Books, 2009.

Although written primarily as a resource for law students, the applications of Marshall's *Worcester v Georgia* case were especially important. It also delves into United States land policy, which was critical background information.

National Park Service. *Antiquities Act of 1906*. National Park Service, within the U.S.

Department of the Interior. [database online]. Available at [www.nps.gov/archaeology/tools/laws /contact.htm](http://www.nps.gov/archaeology/tools/laws/contact.htm); Internet; Accessed 22 December 2017.

This source is a National Park Service analysis of the Antiquities Act. It was admirably unbiased and offered a fair estimate of the limits of the Act. Much of the analysis proved relevant.