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The Antiquities Act— Setting Basic Preservation Policies

On June 8, 1906, 90 years ago, President Theodore Roosevelt signed into law the Antiquities Act. This law was intended to protect archeological sites on the public lands of the United States as resources of significance and value to every American. The goal was to preserve historic, scientific, commemorative, and cultural values embodied in archeological sites for present and future generations of Americans. As one means of commemorating the anniversary of this important statute, this article describes three important functions that the Act served and continues to serve.

First, the Antiquities Act established basic public policies concerning archeological resources in the United States. These policies have been extended to cover other kinds of historic properties as well. As we celebrate not only the 90th anniversary of the Antiquities Act, but also the 30th anniversary of the National Historic Preservation Act, it is appropriate to note the common policy links between these two crucial preservation statutes and with other important statutes.

The Antiquities Act also provided the President with the means of setting aside particularly important places for special preservation, commemoration, and interpretation. This function has been used by Presidents throughout the 20th century to establish national monuments preserving nationally important archeological, historic, and natural areas. Finally, the Antiquities Act

established the requirement of professionalism and a scientific approach for any excavation, removal, and other investigations of archeological resources on public lands. By so doing, the government of the United States endorsed the young discipline of archeology and the careful examination and recording of archeological sites that its leaders were then working to establish as a basis for their practice. This professional and scientific approach to archeological resources is now accepted widely as the appropriate treatment for archeological resources, but in 1906 it was only beginning.

Historical Background

Enactment of the Antiquities Act required 25 years of effort by individuals and organizations concerned about the preservation of American archeological sites. Interest in the archeological remains of the United States grew throughout the 19th century. As the final quarter of the 1800s began, much of the interest in American archeological sites was focused on the Southwest. Some of the interested parties were those who plundered the prehistoric ruins, removing ancient artifacts for personal use or commercial sale. At some ancient sites, building stone and roof beams were removed for contemporary uses. Others, some of them investigators from museums or archeological organizations, wanted to examine and study ancient sites, as well as make collections for their institutions and the public they served.

Investigators who began to visit and report on the condition of prominent ruins noted the destruction that was occurring. Adolph Bandelier's 1881 report on the looting and destruction of the ruins and archeological deposits at the site of Pecos in New Mexico was used during discussions and debate in the United States Senate when the issue of government action to protect archeological sites was raised (Lee 1970:7-12). Such descriptions impelled the early advocates of government action to protect the archeological sites. One notable success along the path to the Antiquities Act was the setting aside of Casa Grande Ruin as the first national archeological reservation in 1892.

During the 1890s major public exhibitions, the World's Columbian Exposition in Chicago and the Louisiana Purchase Exposition in St. Louis, exposed more of the American public to United States antiquities. Municipal and university museums in large cities throughout the country featured American Indian antiquities in their displays. Investigators of the Southwestern ruins and archeological sites in other parts of the country and hemisphere published popular accounts of the sites and their exploits. The growing popular appeal of American archeology was accompanied

*Photos by the
author.*

*Hovenweep
Castle,
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by a commercial demand for authentic prehistoric antiquities. Unsystematic removal of artifacts from archeological sites for private use expanded, especially in the increasingly accessible Southwest.

The legislative and political history of the Antiquities Act shows that the issue was first raised in the U.S. Senate by Senator George F. Hoar of Massachusetts in 1882 (Lee 1970). At that time and subsequently, debates between those who favored conservation or preservation and those who favored commercial uses of public lands laced the issue. Interestingly, objections to conservation and preservation did not include statements that such efforts were unnecessary. It was acknowledged generally that looting and vandalism were occurring and descriptions of such activities were found with increasing frequency. Detractors of the effort to provide protection and preservation first argued that the government couldn't possibly protect all of these resources. Some already were alarmed by the creation of federal forest reserves, which by 1901 totaled 46 million acres. These objected to creating another means by which the President could set aside large areas of the public domain for conservation or preservation, further reducing the public land available for a wide range of economic activity. Eventually, the public sentiment to remedy the increasing destruction of archeological sites in the Southwest and the wholesale removal of artifacts that was occurring overcame these objections. Efforts to protect specific archeological sites, such as Mesa Verde and Chaco Canyon, became more frequent and widespread. Finally, these efforts culminated in the Antiquities Act.

The Antiquities Act and Later Historic Preservation Statutes

The Antiquities Act is recognized widely as the first general statute addressing archeological and historic preservation needs in the United States (e.g., D.Fowler 1986:140-143; J. M. Fowler 1974:1473-1474); Lee 1970:1; and, McGimsey 1972:111). The increased role of the federal government envisioned by the Antiquities Act is characteristic of laws and programs established around the turn of the 20th century through the influence of the Progressive Movement. Progressive politicians asserted new ways of looking after the public good within a federal system staffed by professional civil servants able to provide technical assistance to the public and for public resources.

The Antiquities Act established basic public policies for archeological preservation that would, during the course of the 20th century, expand to include other types of historic properties and cultural resources. During this century, the application of these policies also would grow to encompass archeological and historic resources beyond

those found on the federal and Indian lands covered.

Enactment of the Antiquities Act recognized that archeological sites and artifacts recovered from them are most valuable as sources of historic and scientific information about the past and as commemorative places. Careful archeological excavation, analysis, and interpretation reveal ancient events and long term cultural, economic, and social developments. Archeological remains tell stories of people and places not mentioned in historical documents. The general policy embodied in the Act recognized that it is improper and wasteful to dig archeological sites for the few commercially valuable artifacts they might contain. The information gained from proper archeological study provides the major public benefit derived from archeological sites and objects, a benefit that must be shared through schools, parks, museums, public programs, books, articles, videos, and other means of interpretation.

Through the Antiquities Act, Americans accepted that archeological resources are mainly valuable as sources of information about the past. Relatively few archeological remains have any inherent monetary value. Retrieval of artifacts that do have such monetary value for commercial purposes is not the primary benefit to be derived from archeological investigation. Rather, the information gained from the careful investigation and analysis of archeological sites was most properly shared, along with the artifacts removed, as public resources. Archeological resources, at least those on public land, were to be considered as common resources in which all Americans share and about which all should be concerned.

Defining archeological resources as noncommercial is the most basic public policy established by the Antiquities Act. According to the Antiquities Act, archeological sites are most valuable for the information they contain or their commemorative associations, not as commercial resources like timber or minerals that have primarily monetary value. The second aspect of national preservation policy initiated by the Antiquities Act is nearly as fundamental. By placing special requirements on who may excavate or remove archeological remains, how the excavation or removal will be accomplished, and what will happen to the objects excavated or removed, the statute acknowledges that archeological sites have a sufficiently important public value to be dealt with in a special way. They merit special consideration and protection. That is, like clean water and air, the preservation of these kinds of resources and learning from the information they contain contribute to the public good.

These basic policies of the Antiquities Act regarding protection and preservation of archeological resources apply on lands owned or controlled by the United States government. During the 20th century, these policies of noncommercial and public values have been extended to additional types of historic properties and cultural resources and to non-federal land in certain circumstances. The broadening of application of the policies came in two increments. Nearly 30 years after the Antiquities Act, the Historic Sites Act of 1935 asserted concerns of the national government and a responsibility for recognizing and providing technical assistance to historic American sites, buildings, objects, and antiquities of national significance, no matter where they were located within the United States. In testifying on the bill that served as the basis for the Historic Sites Act, Secretary of the Interior Harold L. Ickes noted that the Antiquities Act provided protection for archeological and historic resources on publicly-owned land, but that

...we have never faced squarely the whole great problem of a definite governmental policy for the preservation of historic sites and buildings of transcendent national significance...the need for governmental action along these lines is urgent and immediate...(Ickes 1935:4).

This first expansion of coverage extended to additional kinds of historic properties if they were nationally significant, whether or not they were on land owned or controlled by the United States.. government.

The policy expressed in the 1935 statute follows from the noncommercial and public value policies established by the Antiquities Act. Section 1 of the 1935 law states

...That is hereby declared that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States.

A more direct commitment to a policy asserting the noncommercial and public value of these resources would be hard to construct.

The second expansion of the basic policy of the Antiquities Act came 60 years later in the National Historic Preservation Act of 1966. The National Historic Preservation Act is a very broadly written statute, and has been expanded in many ways through substantial amendments in 1980 and 1992. It embraces a wider range of historic property types than both the Antiquities Act and the Historic Sites Act. It is more inclusive as well in providing consideration to historic properties that are of local or state significance, a much

wider context than the national significance focused on by the Historic Sites Act.

Like the Antiquities Act and the Historic Sites Act, the National Historic Preservation Act adheres to the public policy that historic properties have a value to all of the public. Section 1 (a) (4) states that

...the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, education, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans.

The noncommercial value of historic properties also is recognized and the need to raise its importance in decision-making about the way in which these resources are treated is recognized in the purposed of the statute, as described in Section 1 (a) (5),

...in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation.

Like the earlier statutes, the National Historic Preservation Act has as a central policy focus the public and noncommercial values of historic properties. The ways in which historic properties are treated is of public concern.

The policy espoused by the National Historic Preservation Act calls for the incorporation of consideration for historic properties within the context of our modern development and economy. In fact, many examples exist of the preservation of historic properties leading to economic, as well as aesthetic, associative, and historic benefits. This is especially so regarding historic structures successfully rehabilitated for modern commercial uses. The preservation of such historic properties may have an additional economic benefit to enhance the likelihood of their preservation within the context of modern economic conditions.

The National Historic Preservation Act has broader application than either of the earlier laws. The extent to which it applies varies with the extent of federal involvement. Determination of treatment varies according to ownership of specific resources and whether or not there is any federal involvement in an undertaking that may affect specific resources.

Preserving National Monuments

Prior to the Antiquities Act, specific areas had been set aside as parks or reserves; for example, Hot Springs, Arkansas (1832), Yellowstone National Park (1872) and Casa Grande Ruin,

Arizona (1892). However, each of these parks or reserves required an act of Congress as well as Presidential approval. The Antiquities Act made the establishment of national monuments administrative actions that were quicker and far more easy to execute.

Section 2 of the statute gives the President the authority to set aside for protection "...historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States..." These protected areas were then designated as "national monuments" and the federal agencies assigned to oversee them were required to afford proper care and management of the resources. This section of the statute provided an additional tool for Progressive politicians and their supporters to determine the uses of public lands and resources in the rational, conservation-oriented manner they favored (see Rothman 1989:52-71).

Teddy Roosevelt, between 1906 and 1909, proclaimed the national monuments of El Morro, Montezuma's Castle, Chaco Canyon, Gila Cliff Dwellings, Tonto, Tumacacori, Devil's Tower, Petrified Forest, Lassen Peak, Cinder Cone, Muir Woods, Grand Canyon, Pinnacles, Jewel Cave, Natural Bridges, Lewis and Clark, and Olympic. Since then, this provision of the act has been used to protect dozens of archeological sites and other places of outstanding scientific or natural importance. Many of these national monuments are now units of our national park system or are specially cared for by other land managing agencies. Presidents Taft, Wilson, Harding, Coolidge, Franklin D. Roosevelt, Truman, Eisenhower, Kennedy, Johnson, and Carter all established national monuments by executive proclamation.

Support for Professional and Scientific Methods and Techniques

The final broad policy established by the Antiquities Act is that the investigation and removal of archeological resources must be conducted by appropriately qualified and trained experts using the best contemporary methods and techniques. Professional and scientific approaches in the examination and treatment of other kinds of cultural resources, including historic structures, museum objects, cultural landscapes, etc., are accepted and valued. The Antiquities Act established such approaches as a basic aspect of public policy in dealing with such resources.

The law prohibited individuals from digging haphazardly into ancient or historic sites, disturbing whatever caught their fancy, and removing artifacts for personal use or commerce. Section 3 of the Antiquities Act required that "...the examination of ruins, the excavation of archeological sites,

or the gathering of objects of antiquity..." on lands administered by the Departments of Interior, Agriculture, or War be carried out only after a permit to do so had been issued by the Secretary of the department responsible for the land in question. The permits were to be issued only to institutions "...properly qualified to conduct such examinations, excavations, or gatherings..." Any excavation, collection, or removal of artifacts and other kinds of archeological remains be directed by qualified specialists and use up-to-date archeological methods and techniques. Only organizations with appropriate expertise, equipment, commitment, and proper facilities to care for the recovered artifacts and information were permitted to undertake studies. By emphasizing these requirements, the federal government supported the professionalization of the young discipline of archeology. The careful excavation and removal of artifacts required by Antiquities Act permits were necessary for the development of typological and stratigraphic description and analysis that would become methodological and technical standards for professional archeology in the United States in the last decade of the 19th century and the first decades of the 20th century (Willey and Sabloff 1993:38-95).

Futhemore, the objective of these permitted activities was to be "...for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects." The act required that approved investigations would result in public education and benefit. As one means of ensuring these public benefits, Section 3 also required that the collections of materials from these investigations be placed in public museums for preservation and public benefit.

Conclusions

In the 90 years since the Antiquities Act became law, the means of preserving and interpreting America's archeology have expanded and improved, in particular through the Historic Sites Act and the National Historic Preservation Act. The enforcement and protection aspects of the Antiquities Act also have been improved upon. Although the Antiquities Act proved to be a means of overseeing and coordinating educational and scientific archeological investigations on federal and Indian lands, it did not effectively prevent or deter deliberate, criminal looting of archeological sites on those lands. Problematic for many years, this situation became critical in the 1970s when several attempts by federal land managing agencies and prosecutors in the southwest to convict looters using the Antiquities Act resulted in adverse court decisions. In two cases judges ruled

that the terms of the act were unconstitutionally vague and therefore unenforceable (Collins and Michel 1985). This situation led to a concerted effort by archeologists and preservationists, their allies in the law enforcement community and several essential supporters in Congress to strengthen the legal protection of archeological resources. The eventual outcome was a new statute, the Archaeological Resources Protection Act of 1979, rather than an amendment of the Antiquities Act.

The Antiquities Act is important for many reasons, both specific and general. Specifically, it asserted broad and general public interest in and control over archeological resources on federal and Indian lands. This assertion of public interest and concern continues to the present and is the basis for public agency efforts to protect archeological sites from looting and vandalism. The act also permitted the protection and preservation of specific areas important for their archeological, historical, and scientific resources. The act also stands as an important achievement in the progress of conservation and preservation efforts in the United States. Its passage involved a whole generation of dedicated effort by scholars, citizens, and members of Congress...More important, this generation, through its explorations, publications, exhibits, and other activities, awakened the American people to a lasting consciousness of the value of American antiquities, prehistoric and historic. This public understanding, achieved only after persistent effort in the face of much ignorance, vandalism, and indifference, was a necessary foundation for many subsequent conservation achievements. Among them were several of great importance to the future National Park Service, including the establishment of many national monuments, development of a substantial educational program for visitors, and eventually the execution of a far-reaching nationwide program to salvage irreplaceable archeological objects threatened with inundation or destruction by dams and other public works and their preservation for the American people (Lee 1970:86).

Many public agencies, such as the National Park Service, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, Forest Service, State Historic Preservation Officers, State Archeologists, universities, museums, Indian Tribes, and local governments, play important roles in contemporary archeological and historic preservation. State programs exist that provide models, such as the especially noteworthy public-private partnership between the Arkansas Archeological Survey and Arkansas Archeological Society. Private, professional, and advocacy organizations, such as the Society for American Archaeology, Society for Historical Archeology, the

Archeological Conservancy, the Archeological Institute of America, and the National Trust for Historic Preservation, also are important partners. Widespread support for archeological preservation and interpretation is essential for better understanding the depth and variety of American history and prehistory.

The world is more complicated than it was in 1906. There exist contemporary perspectives regarding the treatment of archeological resources that were not envisioned by the promoters and supporters of the Antiquities Act. Those of us who work at archeological protection, preservation, and interpretation seek to accomplish these goals and to develop consensus about appropriate treatments that take into account the multitude of perspectives. We also have recognized the legitimate claims to traditional uses of other kinds of cultural and natural resources and the value of ethnographic approaches to develop appropriate consultation and treatment in these contexts.

Indeed, these days, many more individuals and distinct groups have expressed opinions about archeological sites. Some have made claims of unique or sole authority regarding how archeological resources are to be treated. Worse, some individuals have taken actions to destroy sites for personal or commercial gain, thereby excluding the possibility of any public benefit deriving from the resources.

The goals of modern archeological protection, preservation, and interpretation must be accomplished while also taking account of a range of legitimate perspectives. The traditional uses and views of American Indians, Native Alaskans, Native Hawaiians and other Pacific Islanders, as well as other ethnic groups with close associations to particular archeological sites must be taken into account through appropriate consultation and treatment. We continue to reject, as the Antiquities Act did in 1906, those who pillage archeological sites for personal or commercial gain. Such behavior destroys the public benefit that can be derived from careful study of archeological sites and objects.

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In Defense of Digging Archeological Preservation as a Means, Not an End

Tonto National Monument, AZ.



The passage of the Antiquities Act was a critical early victory in the battle to save archeological sites in the U.S. from wasteful destruction, because it established a national policy to protect and regulate the use of such sites on the public lands. The battle still continues, and in fact, there will be no end to it, because authentic archeological sites of any particular period can only be protected or lost, not created anew. Site protection today has many more legal tools to work with than it did in 1906, but population growth and the increased pace of development mean that the threats to site survival are also more pervasive.

Passage of the National Historic Preservation Act (NHPA) in 1966 led to the development of a fairly comprehensive set of procedures for considering the effects of federal undertakings on archeological sites, of weighing the values embodied in these

sites against other socially desirable ends, and of protecting site integrity when feasible. Although cumbersome and faulty in some respects, these procedures have greatly increased our ability to protect sites from destruction due to federally-related economic development, and in our ability to study some of those that cannot be saved.

The inclusion of archeological sites in a larger historic preservation system has and will continue to have positive results, but I believe that there also are certain problems in the way that archeological preservation is currently being carried out in the U.S. These problems are rooted in the particular kind of social value that most archeological sites have, and in the way that archeological preservation programs have come to deal with this value.

I think that a starting point for federal archeological preservation programs is consideration of the primary social contribution of archeology, i.e., the production and dissemination of new information about the past based on the systematic study of the archeological record. Many archeological sites have associative or educational values in addition to or independent of their research value, but most sites in fact gain their primary social value because they have the potential to contribute new information about the past when subjected to archeological study. This, of course is a basic tenet of the Antiquities Act and is described in Section 3 of the statute. In order for an Antiquities Act permit to be granted, carefully conducted and recorded investigations, curation of the