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From 'Wonderful Grandeur' to 'Awful Things': What the Antiquities Act and National Monuments Reveal about the Statue Statutes and Confederate Monuments

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FROM 'WONDERFUL GRANDEUR' TO 'AWFUL THINGS':
WHAT THE ANTIQUITIES ACT AND NATIONAL
MONUMENTS REVEAL ABOUT THE STATUE
STATUTES AND CONFEDERATE MONUMENTS

Zachary Bray*

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* H. Wendell Cherry Associate Professor of Law, University of Kentucky College of Law. This Article has grown out of conversations associated with the Kentucky Law Journal's 2019 Symposium, and I am grateful to the other participants in that event and this issue: much of their work has guided my own for years, and all of their work will guide my own in the future. I would also like to thank Kyle Schroader, Summer Bablitz, Richie Simpson, Erica Ashton, Cameron Baskett, and all of the editors associated with the Symposium for their patient, tireless, and excellent work on both the Symposium event and this issue. I would also like to thank the University of Kentucky College of Law for supporting this research with a summer research grant. Last, I must thank my colleague and friend, Melynda Price, for several years of thought-provoking and work-inspiring conversations about these and other issues, and for everything that she did to make this Symposium possible. All remaining errors are, of course, my own.
INTRODUCTION

It may be easy, at least for people who do not live near Confederate monuments in public spaces, to assume that these monuments represent little more than links to a shameful and long-ago past. From this assumption one might then view these monuments as a sort of last stand; the atavistic echo of a country that was, but is no longer, cemented into the present by their monumental form though ultimately doomed to erode in the undefined future. But, unpleasant though it may be to consider or admit, the truth is that many remaining Confederate monuments embody aspects of their communities that remain vital into the present, and which they help to anchor and renew.

The monuments to former Confederates along Monument Avenue in Richmond, Virginia, provide one of the clearest examples of this truth. Running through a historic part of Richmond that was for many years the city's ceremonial parade route, Monument Avenue is one of only two National Historic Landmark districts within the city. It is significant for its landscaping and the nearby architecture, as an example of city planning, and most notably for the many monuments that mark its major intersections, including a recent monument to tennis hero Arthur Ashe, another monument to oceanographer Matthew Fontaine Maury, and many more monuments to former Confederate generals and politicians. As the preceding sources make clear, Monument Avenue is an important part of Richmond's history and identity as well as a focus for tourism. It has also been a repeated site of protests and civic deliberation about whether, why, and how its Confederate monuments should be removed or retained.

As used in this Article, the term "monument" refers to any specific physical landmark, object, or place, whether built or natural, which is set aside from ordinary use for special attention, regard, or study, and which tends toward at least some limited display or special communal use. For more detail on this and other definitions of the term, legal and non-legal, see, for example, Zachary Bray, We Are All Growing Old Together: Making Sense of America's Monument-Protection Laws, 62 WM. & MARY L. REV. (forthcoming 2020) (manuscript at 14–17) (on file with author and law review).

See Mark Holmberg, Why Monument Avenue Is Safe as Other Cities Remove Civil War Statues, WTVR.COM (Apr. 28, 2017, 1:08 AM), https://wtvr.com/2017/04/28/why-monument-avenue-is-safe-as-other-cities-remove-civil-war-statues/ (arguing that the monuments to former Confederates on Monument Avenue are unlikely to be removed because they "are a rock-solid part of Richmond's $1.7 billion dollar tourism industry").

Monument Avenue Historic District, NPS, nps.gov/nr/travel/Richmond/monumentavenue.html; see also Historic Sites: Monument Avenue, VIRGINIA, virginia.org/listings/HistoricSites/MonumentAvenue [https://perma.cc/K64J-BBTZ] (describing Monument Avenue as "[o]ne of America's most beautiful boulevards" where "[t]urn-of-the-century mansions face historic monuments of Civil War heroes and other famous Richmonders").


Monument Avenue Historic District, supra note 4.

Richmond’s Monument Avenue is surely one of the easiest places to see the enduring and, to many, troubling vitality of Confederate monuments in public spaces. But there are many other examples of this trend beyond the Confederacy’s former capital. For example, following the removal and relocation elsewhere in Kentucky of a Confederate monument that long stood near the University of Louisville, much attention in that city has turned to the continued presence of a monument to John Breckinridge Castleman—a monument that has been associated for many years with the Louisville neighborhood in which it stands. Although he is little known outside of Louisville, Castleman was a noted equestrian in a city that has long drawn much of its identity as well as its appeal to tourists from its association with horses. He was also a general in the United States Army and a civic leader who, some have argued, was instrumental in developing Louisville’s remarkable system of civic parks. Finally, Castleman was also a Confederate military leader in Kentucky during the Civil War, and although the monument of Castleman on his horse shows him in civilian clothes rather than a military uniform, one side of the nearby memorial plaque that commemorates his military service gives pride of place to his leadership in the Confederacy.
As the stories of the Castleman monument and Monument Avenue help to illustrate, at the local level, arguments in favor of retaining Confederate monuments often boil down to two main points that are tied into the alleged purpose and present value of contested Confederate monuments. First, monument defenders frequently invoke the alleged beauty of the monuments at issue—or, at least, the beauty of their surroundings—in order to support arguments that the monuments’ purpose was relatively benign, or at least not entirely racist. The alleged beauty of Confederate monuments is also used to support a closely related set of arguments that retaining the monuments in more or less their original condition has some enduring present value. And second, monument defenders argue that retaining the monuments represents an important link with the past—a link that is frequently couched in terms of a vaguely defined or undefined sense of “heritage”—which should not be severed, even if the past ensnared in these monumental forms is unworthy of celebration.

Similar sentiments are often invoked by those who defend the continued public presence of Confederate monuments or Confederate imagery at a national level. For example, shortly after the 2017 violence arising out of the racist demonstrations in Charlottesville, Virginia, President Trump noted on Twitter that “the beauty that is being taken out of our cities, towns and parks will be greatly missed” and that it was “sad to see the history and culture of our great country being ripped apart with the removal of our beautiful statues and monuments.” Still more recently, former South Carolina Governor and then Ambassador to the United Nations Nikki Haley claimed that public displays of the Confederate flag had long represented “service, sacrifice[,] and heritage” before being hijacked by recent violent events.

These views are out of step with the conclusions drawn by many artists,
historians, and legal academics who have rejected these and other similar claims of merit associated with most Confederate monuments in public places. For example, contrary to President Trump’s views, many art historians and critics have concluded that there are very few Confederate monuments of any significant aesthetic value. In part this is because of the nature of their construction: many Confederate monuments were essentially mass-produced, with little connection to their ostensible subjects and, often, even less deliberation about their physical setting.

Historians have been similarly scathing about the gauzy invocation of an unspecified “heritage,” “sacrifice,” or “service” that is often invoked to defend the retention of monuments. Contrary to such claims, most historians argue that the record is quite clear about what most Confederate monuments were meant to celebrate: as the American Historical Association recently concluded, most of these monuments were created to support the initiation or retention of legal segregation, and for the most part these monuments were designed and sited to intimidate African Americans and reinforce their political disenfranchisement after Reconstruction.

Of course, recognizing the poverty and ultimate incoherence of arguments in favor of most Confederate monuments in public places is nothing new in American life. For example, almost ninety years ago W.E.B. Du Bois pointed out that it strained the limits of human credulity and “ingenuity” to see Confederate monuments dedicated

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20 See Bray, supra note 9, at 15–16 (gathering samples of academic criticism of Confederate monuments in public places from across academic disciplines); see also Sanford Levinson, Written in Stone: Public Monuments in Changing Societies 96–97 (2d ed. 2018) (gathering legal and non-legal sources and concluding that “decent people should, I think, be repelled by a political system that leads to” many recent and contemporary displays of Confederate imagery).


23 See Associated Press, Connecticut Was Home to Leading Manufacturer of Civil War Monuments, NEW HAVEN REG. (Apr. 18, 2015, 12:58 PM), https://www.nhregister.com/connecticut/article/Connecticut-was-home-to-leading-manufacturer-of-11355708.php [https://perma.cc/D3AH-CGBW]. As the sources cited above make clear, the Castleman monument and the Monument Avenue monuments are exceptions that prove the rule—they were not mass-produced, and there are some who continue to defend their aesthetic value. See sources cited supra notes 3–17.

For a thoughtful exploration of under-examined potential legal issues related to the site-specificity, or lack thereof, for these mass-produced monuments, see Brian Frye, Moral Rights & Confederate Monuments, FAC. LOUNGE (Aug. 21, 2017, 12:18 AM), https://www.thefacultylounge.org/2017/08/moral-rights-confederate-statutes.html [https://perma.cc/Y3B3-J92T].

24 See supra notes 17–19 and accompanying text.

to the “Fight[ ] for Liberty,” when the “plain truth” of these monuments is that they commemorate the struggle "to Perpetuate Human Slavery."26

But while their views are out of step with the conclusions of many professional historians and other experts, President Trump and then Ambassador Haley’s conclusions about the positive value of at least some Confederate imagery and public monuments are broadly shared by many—and not just in Kentucky and Virginia. In recent years, polls and surveys have repeatedly shown that retaining monuments to the Confederacy and specific Confederate figures in public spaces still attracts substantial support from Americans across the country.27 Support for these monuments is not uniform across the country: in some areas, local majorities strongly oppose keeping and strongly support removing local monuments.28

More specifically, in relatively large and diverse cities and in university towns, opposition to Confederate monuments is relatively strong; however, in rural, exurban, and some suburban areas, support for keeping Confederate monuments tends to be higher.29 This strong geographic split in opinions on Confederate monuments makes sense if it is understood as part of a larger cultural divide in America between rural and urban places.30 One reason why Confederate monument conflicts have become so heated and prominent in recent years is because they are almost uniquely effective in evoking this larger divide.31

The conflict over Confederate monuments in public spaces is, therefore, part of a larger trend in American life. And in addition to the clash between these values in the public square, conflicts over all sorts of monuments in America have become particularly fraught in recent years because of the framework of legal protections for American monuments that has grown up in the last century. For much of the

26 W.E.B. Du Bois, Postscript, 40 CRISIS 278, 279 (1931) (condemning the rash of Confederate monuments that had spread across the country as “awful things” intertwined with the emergence of Jim Crow and the “extraordinary” “custom of murder”).


29 Bray, supra note 9, at 5–6.

30 Id. at 5–7.

31 Id.
country's history, American attitudes about monuments were generally skeptical, and, as a result, American laws about protecting monuments were much less robust than they are today. But in the last century or so—in roughly the time that the statues examined in this article have grown up—American landscapes and cityscapes have filled up with a variety of monuments, and the American lawscape has grown heavy with a number of statutes that seek to protect these new monuments.

In the menagerie of American monument-protection laws, one species of legislation is particularly important for understanding conflicts over Confederate monuments: namely, the statutes passed in several states in order to protect already-existing Confederate monuments from removal or alteration. Following Richard Schragger's work discussing the attacks in Charlottesville, these laws will be referred to here as "statue statutes." Many of the statue statutes are of relatively recent vintage, but the original statue statute dates back to the beginning of the 20th century—a time when American attitudes towards monuments in general were changing, and a time when other monument-protection laws were also emerging. Discerning the intent behind both the statue statutes and the monuments they seek to protect is of more than academic interest—litigation over efforts to remove or alter Confederate monuments in states with such statutes often hinges on these issues.

The pending litigation at the heart of the recent violent conflict in Charlottesville provides an excellent example of the importance of such questions of intent to contemporary legal conflicts over Confederate monuments. Although these issues may be revisited or reframed on appeal, in this litigation the Virginia circuit court's orders granting the plaintiff monument defenders' motions for summary judgment were necessarily based on that court's conclusions about the purpose of both the monuments at issue and the legislative intent behind the relevant statute.

More specifically, the Virginia court's decision in favor of the Charlottesville monuments' defenders was based in large part on its holding that the primary purpose of the monuments at issue was to honor the Civil War military service of the

32 See Bray, supra note 2, at 14–15, 17–19 (discussing the dearth of monuments in America and the skepticism about American monuments that emerged during the Revolution and persisted through much of the nineteenth century).
33 Id. at 14, 26–27.
34 Statue statutes have been enacted in the following eight states: Virginia, Tennessee, Alabama, Georgia, North Carolina, Mississippi, Kentucky, and South Carolina, and they have been considered in several other states. See Bray, supra note 9, at 20–44 (discussing each in detail). Of course, as the example of Monument Avenue—which is a National Historic Landmark—shows, other laws can protect Confederate monuments. For a broader discussion of the relationship between statue statutes and the National Historic Preservation Act, see Bray, supra note 2, at 32–48.
36 Bray, supra note 9, at 27–44 (discussing the relatively recent statue statutes in detail).
37 The first version of what this Article refers to as Virginia's statue statute dates back to 1904. Act of Feb. 19, 1904, ch. 29, 1904 Va. Acts 62. The current version of Virginia's statute—much amended since 1904—is codified at VA. CODE ANN. § 15.2-1812 (2019). In addition to this "general" statute statute, which purports to protect all Confederate monuments throughout the state, Virginia's legislature passed some earlier legislation specifically authorizing and, at times, protecting specific Confederate monuments throughout the state. See generally Va. Op. Att'y Gen. No. 17-032 (Aug. 25, 2017) (discussing same). For more detail on the evolution and recent state of Virginia's state laws protecting Confederate monuments, see Bray, supra note 9, at 23–27.
38 Bray, supra note 2, at 17–26.
monuments’ subjects, rather than the narratives of white supremacy and the myth of the Lost Cause identified by many experts. Similarly, the court’s ruling in favor of the plaintiff monument defenders was driven by its conclusion that the racist intent identified by the defendants and so many historians should not be attributed to the Virginia statue statute. In other words, the most significant pending litigation over the statue statutes to date has boiled down to the basic questions represented in the broader public debate about these monuments: what, exactly, are the statue statutes supposed to protect, what were the monuments they protect supposed to memorialize, and what have these monuments come to commemorate today?

Recent litigation over a Confederate monument in Birmingham, Alabama provides another good example of the importance in recent monument litigation of basic questions about the alleged purpose behind Confederate monuments and the intent behind the statue statutes that protect these monuments. As in the Charlottesville litigation, in the Birmingham litigation the Alabama circuit court’s ruling also was based on that court’s conclusions about the purpose of both the monuments at issue and the legislative intent behind the relevant statute—although, unlike the Virginia court, the Alabama circuit court ruled in favor of the city and against the Birmingham monument’s defenders.

More specifically, citing the Supreme Court’s reasoning in Pleasant Grove City v. Summum, the Alabama circuit court noted that the messaging and purpose behind a monument “may change over time,” and that in the case of the monument at issue in Birmingham, an overwhelming majority of the city’s residents are presently “repulsed” by the monument’s association with “racially-motivated violence” and “white supremacy.” In addition, the circuit court noted that the Alabama statute at

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39 See Letter Ruling from Richard E. Moore, Judge, Sixteenth Judicial Court, Commonwealth of Virginia, to Counsel in Payne v. City of Charlottesville 4-5 (Apr. 25, 2019) [hereinafter Payne Letter Ruling] (rejecting defendants’ argument that the statues were designed to reinforce the post-war “Lost Cause” narrative or notions of white supremacy, and concluding instead that the monuments were primarily designed to “honor[] these two men as generals in the Civil War and the battles they fought in”).

40 See supra notes 24-26 and accompanying text; see also Richard Schragger, Opinion, It’s the City’s Right to Remove Confederate Monuments, RICH. TIMES-DISPATCH (Mar. 3, 2019), https://www.richmond.com/opinion/columnists/richard-schragger-column-it-s-the-city-s-right-to/article_81c15f53-1805-59d6-91ff-c4816fe1c5e6.html [https://perma.cc/C4G9-LKJX] (referring to an “eye-opening” brief filed by the Charlottesville City Council in Payne v. City of Charlottesville that “catalogs in detail how the Lee and Jackson statues are not war memorials at all, but rather monuments to white supremacy”).

41 See Payne Letter Ruling, supra note 39, at 4–5; see also Shannon Van Sant, Judge Blocks Removal of Confederate Statue That Sparked Charlottesville Protest, NPR (Sept. 14, 2019, 6:40 PM), https://www.npr.org/2019/09/14/760876494/judge-blocks-removal-of-confederate-statue-that-sparked-charlottesville-protest [https://perma.cc/4A2J-WG3J] (quoting the judge’s bench ruling that “I don’t think I can infer that [the Virginia statue statute] was intended to be racist,” because even though racism was “[c]ertainly” part of the original drafters’ mindset, “we should not judge the current law by that intent”).


44 Order on Cross Motions for Summary Judgment, supra note 42, at 3, 5–6 (quoting Pleasant Grove City, 555 U.S. at 477).
issue was not an anodyne defense of military heritage but rather an impermissible attempt to “force[e] the City to speak in favor of the Confederacy and its values,” which violated protections for local government’s speech.\footnote{Id. at 6–7.}

On appeal, the Supreme Court of Alabama reversed the circuit court’s decision, upholding Alabama’s statue statute against Birmingham’s constitutional challenge, and remanding to the circuit court with instructions to impose a fine upon Birmingham for covering up the monument at issue with a plywood screen.\footnote{State v. City of Birmingham, No. 1180342, 2019 Ala. LEXIS 132, at *3, 37–38 (Ala. Nov. 27, 2019).} The Supreme Court of Alabama spent little time analyzing the messaging associated with the monument at issue because it rejected the reasoning of the circuit court, based on \textit{Pleasant Grove} and related cases, that Birmingham’s local government had expressive rights that could be violated by the statue statute.\footnote{See \textit{id.} at *15–30 (concluding that the Alabama circuit court erred in holding that Birmingham had rights to free speech, equal protection, and due process as against the state of Alabama that could be infringed by the statue statute).} But even though the Supreme Court of Alabama specifically rejected the arguments about local government speech rights advanced by Birmingham and adopted by the Alabama circuit court, it was still forced to analyze whether the city’s actions changed the meaning associated with the monument and whether the original and altered meanings were intended to be protected by the statue statute.\footnote{For reviews of the free speech, equal protection, and due process arguments raised in this litigation and elsewhere, as well as a review of other constitutional arguments that have been made or might be made against statue statutes, see generally Bray, supra note 9, at 17–20, and Alexander Tsesis, \textit{The Problem of Confederate Symbols: A Thirteenth Amendment Approach}, 75 \textit{TEMP. L. REV.} 539 (2002).}

\begin{itemize}
  \item In sum, the central issues for the courts in both the Birmingham litigation and the Charlottesville litigation have boiled down to the basic questions represented in the broader public debate about these monuments: what, exactly, are the statue statutes supposed to protect, what were the monuments they protect supposed to memorialize, and what do these monuments commemorate today? On the one hand, in the courts as well as in the popular press, monument defenders argue that the statue statutes and the monuments they protect are motivated by respect for a sense of vaguely defined heritage and civic beautification and for military service to a country that no longer exists and was at war with their own.\footnote{See \textit{City of Birmingham}, 2019 Ala. LEXIS 132, at *4–5 (reviewing the statue statute in detail and concluding that the monument as screened by plywood “memorializes nothing” rather than the historical “military service” to the Confederacy that is both protected by the statute statute and which the Alabama Supreme Court identified as the monument’s intended purpose).}
  \item On the other hand, monument critics argue that most Confederate monuments were designed to perpetuate a legacy of discrimination and violence, and that the statue statutes that protect these monuments are infected with the same contagion.\footnote{See supra notes 15–19, 27–28 and accompanying text.} But while monument critics may have the weight of non-legal expertise on their side, to date they have made relatively little headway in swaying public opinion, and as the examples above show the results of recent litigation have been uneven at best.\footnote{But see Sons of Confederate Veterans v. City of Memphis, No. M2018-01096-COA-R3-CV, 2019 WL 2355332, at *9 (Tenn. Ct. App. June 4, 2019).}
\end{itemize}
Other work has argued that our contemporary debates about American monuments and American monument law has been fractured in problematic ways, with too little attention paid to common themes and arguments that recur across different types of monuments and monument-protection laws. This tunnel vision is part of the problem with the current debate about the statue statutes that protect Confederate monuments in public spaces. Because these monuments and the laws that protect them are so often considered in isolation, and because the debate about them so frequently evokes a wider clash of fundamental values embedded in American law and public life, debates over recent Confederate monument controversies have changed few minds—notwithstanding the overwhelmingly one-sided nature of the historical record about both monuments and statutes alike.

Opponents of the continued presence of Confederate monuments in public spaces are right to point out the legacy of discrimination and violence that so many of these monuments embody, and President Trump, former Ambassador Haley, and the state and local supporters of many such monuments are wrong to minimize or ignore this association. These are the most important facts about both Confederate monuments and the statutes that protect them, and any argument against either the monuments themselves or the statue statutes ought to reckon with their central importance. But these arguments have not, to date, won the day. Perhaps, as some have suggested, this is because neither President Trump nor his supporters nor many defenders of Confederate monuments and the statue statutes that protect them are professional historians, whereas the argument against these monuments and statutes depends too much on expert opinion. Or perhaps it is because once one has committed to defending the statue statutes or the Confederate monuments they protect, then it becomes too difficult—too dissonant—to easily accept the racially discriminatory and exclusionary messages historically associated with these laws and memorials. Whatever the reasons, it behooves opponents of Confederate monuments and the statue statutes that protect them to look for new arguments—not to replace the central arguments outlined above; for that would be offensive and obscure important truths—but to supplement them. To that end, it may be easier to convince people that the statue statutes are inadequate compared to other monument-protection laws, and that the monuments they seek to safeguard are undeserving of protection, when both are compared to other American monuments

(approving the City of Memphis's attempts to remove Confederate monuments as consistent with the state's statue statute). For a longer discussion of the Memphis monuments, the Tennessee statue statute, and the related litigation referred to here, see, for example, Bray, supra note 9, at 22–23, 27–31, 45–46, 50, and Bray, supra note 2, at 29–32, 47.

See Bray, supra note 2, at 12–14 (arguing that American monument laws and scholarship about American monument laws have too often been considered in isolation). But see generally Levinson, supra note 20 (providing a comprehensive and magisterial review of monument law and monument conflicts across various legal cultures).

See supra notes 26–30 and accompanying text.

See supra notes 25–26, 40–42, 44 and accompanying text.

See supra notes 15–19, 27–28 and accompanying text.

See Ingraham, supra note 27.

See Bray, supra note 2, at 59–60 (concluding that these facts about the statue statutes and the monuments they protect are "not easy for everyone to accept," regardless of their truth).
and American monument-protection laws.

The federal Antiquities Act of 1906, and the national monuments that it protects, provide a useful ground for comparison. The Antiquities Act is no stranger to controversy—the statute and the national monuments it protects have been subjected to extended scrutiny and criticism almost since the Act’s inception. Criticism of the Antiquities Act has endured into the present, as some recently proclaimed national monuments have produced intense national controversies, with local opposition nearly as intense as that created by some Confederate monuments protected by statue statutes. But while the Antiquities Act has some immediate similarities to the statue statutes, it is also dramatically different in important and fundamental ways. And as the remainder of this Article will show, the differences between the Antiquities Act and the statue statutes can help to illuminate some of the shortcomings of the latter in ways that in turn may help to erode the arguments that continue to be advanced by Confederate monument defenders.

The remainder of this Article explores these areas of comparison and contrast between the Antiquities Act and the statue statutes. Part I reviews the Antiquities Act and its evolution, focusing on the values that the statute has come to protect, as well as the widespread national and regional popularity of both the Act itself and the national monuments it protects. Part I also reviews the local opposition to new monuments that often arises when presidents invoke the Antiquities Act, focusing on the ways in which decisions about monuments taken pursuant to the Antiquities Act can seem arbitrary and unjustified to local communities that do not want to live near new national monuments—much as the statue statutes can seem arbitrary and unjustified to local communities that wish to get rid of their own Confederate monuments.

Next, Part II critically compares the statue statutes to the Antiquities Act. In particular, Section II.A highlights the ways in which the Antiquities Act has evolved in practice in recent decades, with monument designation processes that involve far more local, statewide, and regional consultation than in the first half of the twentieth century, and far more local consultation than the statue statutes provide. Section II.A also reviews a number of national monument proclamations made pursuant to the Antiquities Act in recent decades, taking note of how much more specific and detailed these proclamations are than those from the first half of the twentieth century.

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61 See, e.g., Larry D. Curtis, Bears Ears National Monument Designated by President Obama in Utah, 2KUTV (Dec. 28, 2016), kutv.com/news/local/bears-ears-national-monument-designated-by-president-obama [https://perma.cc/3QQM-AWMN] (quoting state and federal legislators from Utah who argued that the Bears Ears proclamation was an act of “tyranny” by a “dictator” that represented “an attack on an entire way of life”).
62 Bray, supra note 2, at 59–60.
century, and pointing out how many of these new monuments seek to serve the aesthetic, historical, cultural, and social values often invoked by defenders of the statue statutes and Confederate monuments. Finally, Section II.B turns to the statue statutes and the monuments they protect, showing how both fail to serve the aesthetic, historical, cultural, and social values invoked by their defenders and implemented by the Antiquities Act and many relatively new national monuments.

I. THE ANTIQUITIES ACT AND THE HISTORY OF LOCAL OPPOSITION TO NEW NATIONAL MONUMENTS

As noted above, the Antiquities Act and the national monuments created pursuant to the Act have been lightning rods for controversy for over a century—almost since the statute was enacted and the first national monuments proclaimed. But while the Antiquities Act and national monuments have always been a flashpoint in the larger history of American conflicts over monuments, both the Antiquities Act and national monuments, in general, enjoy relatively widespread popularity and esteem. And despite frequent local opposition to specific monuments, presidential proclamations establishing national monuments pursuant to the Antiquities Act have rarely been revised by Congress; moreover, many of the national monuments now thought to be the most significant and valuable were the most controversial, at least at the local level, when they were first created.

Indeed, some of the most bitter local opponents to new national monuments later concede that the Antiquities Act generally and the new monuments specifically have worked out for the best, providing opportunities for local economic growth while preserving unique resources for the benefit of the entire nation. For example, the Jackson Hole National Monument proclaimed by President Franklin Roosevelt was one of the most controversial monuments designated under the Antiquities Act—so controversial, in fact, that it led to one of the few amendments to the statute itself. Yet decades after the monument was proclaimed, many of its once-bitter local opponents, like Wyoming Senators Clifford Hansen and Alan Simpson, readily admitted that their past opposition had been a mistake and acknowledged that the

64 See, e.g., Louise Liston, Sustaining Traditional Community Values, 21 J. LAND RESOURCES & ENVTL. L. 585, 585 (2001) (describing the “destructive” local effects associated with many monument designations); Curtis, supra note 61.
65 See JAMES RASBAND ET AL., NATURAL RESOURCES LAW & POLICY 687 (3d ed. 2016) (noting that “presidential proclamation of monuments . . . has often generated public outcry” but that the controversies have “generally been limited to directly affected communities and [have] been relatively short-lived” because so many of those national monuments are now recognized as among the nation’s greatest treasures).
66 Squillace, supra note 59, at 550, 581–82.
67 E.g., id. at 498 n.159 (quoting Wyoming Senators Clifford Hansen and Alan Simpson, who initially opposed the Jackson Hole National Monument, but who later admitted that their opposition had been a mistake and that the monument had been a great boon locally as well as to the nation).
68 Id. at 498; see also infra note 79 (describing 54 U.S.C. § 320301(d)).
monument had been a great boon locally as well as to the nation.69

As a result, both the Antiquities Act and the national monuments it protects have been popular across the country for at least the past several decades.70 These numbers may be skewed by relative ignorance about what the Antiquities Act actually does,71 and because the very term “national monuments” may generate vaguely positive associations leading to broad but shallow polling support among members of the public. And it is also true that conflicts over the Antiquities Act and new monuments tend to break along a rural-urban divide similar to that found in debates over Confederate monuments,72 although in this context monument supporters and opponents tend to find themselves on opposite sides of our great national divide. But support for the Antiquities Act and national monuments remains strong even in states that are home to some of the most intense local opposition to recent monument designations.73 For example, substantial majorities in some of the states most impacted by recent monument proclamations describe national monuments as economically beneficial, national treasures, and important sites for future generations to learn about the country’s “history and heritage”—terms that are obviously very similar to those used by Confederate monument defenders in other contexts.74

To appreciate the enduring popularity of the Antiquities Act and the national monuments it has helped create, as well as the recurring cycles of regional and local opposition that many new monuments engender, it is necessary to step back and look at the Act’s origins and relevant text. For all the controversy it has engendered and all the land it has protected, the substantive text of the Antiquities Act is extremely short. Without much elaboration, in the Antiquities Act Congress delegates to the President the discretionary power to “declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or

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72 See supra notes 27-30 and accompanying text (discussing the broader rural-urban divide and how it relates to debates over Confederate monuments and the laws that protect them).
74 Colorado College Press Release, supra note 73 (noting that majorities of over 80% in the poll’s sampled respondents described national monuments in these terms).
75 See supra text accompanying notes 15–19.
scientific interest" on federal land "to be national monuments." The Act also provides that the President may, as part of the monument designation process, "reserve parcels of land as a part of the national monuments," restricting the uses to which such parcels of federal land might otherwise be subjected in order to protect the resources associated with the designated monument. In reserving such parcels of land, the President is supposed to be confined "to the smallest area [of land] compatible with the proper care and management of the objects to be protected."

And that is essentially the whole of the relevant statutory text. In just a handful of sentences, the Antiquities Act gives presidents extremely broad discretion to designate national monuments without having to wait for the sort of specific congressional authorization that would be required to create a national park—even though most national monuments are run like national parks and by the National Park Service. In other words, the Antiquities Act gives presidents authority to make an end run around a hesitant Congress in order to protect potentially valuable historic or natural resources on federal land that might be compromised before Congress can act. This is a feature of the statute, not a bug: the Antiquities Act was motivated by a concern that particularly vulnerable sites of natural or archaeological importance would be despoiled or looted before Congress could act to protect them with park-enabling legislation. In the century-plus since the Act was passed, many monuments have been proclaimed by presidents shortly before the end of an administration, as outgoing presidents seek to protect resources by proclamation that they were unable to protect through congressional legislation—these "midnight" monuments often have attracted particularly intense local opposition.

Although these "midnight" monuments are often particularly controversial, monuments of all types have triggered intense local and regional opposition almost since the first conflicts after the Antiquities Act was originally passed. In recent months, the most prominent Antiquities Act controversy has been related to

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77 Id. § 320301(b).
78 Id.
79 The above-quoted provisions are essentially, but not literally, the whole of the relevant statutory text. Another provision of the Antiquities Act expressly authorizes the federal government to acquire and retain privately owned property that may be necessary for the proper care and management of national monuments. Id. § 320301(c). Still another provision, added to the Antiquities Act in the 1940s after the controversy over the Jackson Hole National Monument designated by President Franklin Roosevelt, prohibits any additional monument designations in Wyoming without express congressional authorization. Id. § 320301(d); Squillace, supra 59, at 498. For a short summary on the controversy over the Jackson Hole National Monument, see Squillace, supra note 59, at 495–99.
80 Indeed, many of the most-cherished national parks were originally national monuments, later converted and expanded into parks by Congress. Squillace, supra note 59, at 488–89.
82 See, e.g., Curtis, supra note 61 (quoting federal and state legislators from Utah who were particularly incensed about the alleged "midnight" nature of President Obama's final monument designations).
President Trump’s efforts to reduce the size of national monuments originally designated by President Obama. In December 2017, President Trump issued two proclamations shrinking national monuments established by Presidents Clinton and Obama, amounting to “the largest reduction of public-lands protection in [American] history.” Whether or not this reduction of the monuments’ size was an appropriate exercise of presidential authority pursuant to the Antiquities Act has been much debated, and many of the American Indian tribes, environmental groups, and other organizations supportive of the monuments’ original designation are challenging the reductions in court.

The prominence of this recent conflict—the fight over President Trump’s reduction of previously designated national monuments—has obscured what has traditionally been a far more significant and recurring source of conflict under the Antiquities Act: namely, the nature and scope of presidential authority to create national monuments in local communities that will face economic and cultural changes as a result of increased restrictions on nearby federal land. Notwithstanding the national popularity of the Antiquities Act, many who live near new monuments and feel they have been excluded from the decision-making process deeply oppose both the statute and the new monuments, at least initially.

Such sporadic but intense local opposition to the Antiquities Act generally and new monuments more specifically dates back to the earliest days of the Antiquities Act: in 1920, the Supreme Court ruled on the first significant challenge to the Antiquities Act in Cameron v. United States, a challenge that was brought by a mineral rights-holder and early tourism entrepreneur in the Grand Canyon. In Cameron, the disappointed local challenger argued that President Theodore Roosevelt’s monument designation was unsupported by the Antiquities Act because it did not contain a particularly specific statement of the canyon’s scientific interest.
or any of the other enumerated bases for monument designation given in the statute. Instead, Roosevelt's proclamation stated only that the Grand Canyon was "an object of unusual scientific interest," as covered in the statutory text, because it is "the greatest eroded canyon in the United States," without any additional elaboration as to why its size made it of unusual scientific interest, or any other information as to why preserving the monument would be in the public interest. Implicit in Cameron's challenge was a question about the size of the monument designation as well: Roosevelt’s proclamation created a national monument of more than 800,000 acres—a size potentially incompatible with the Antiquities Act's text, which, as noted above, directs the President to restrict monuments "to the smallest area [of land] compatible with the proper care and management of the objects to be protected.

But Cameron's challenge was unsuccessful. Notwithstanding the apparent deviations from the apparent spirit if not the text of the Antiquities Act, the Court in Cameron concluded that the designation of the Grand Canyon as a national monument was appropriate. In particular, the Court held that President Roosevelt's monument designation was appropriate because the Grand Canyon "has attracted wide attention among explorers and scientists, affords an unexampled field for geologic study, is regarded as one of the great natural wonders, and annually draws to its borders thousands of visitors"—even though none of these specific reasons were provided in Roosevelt's proclamation, and some of the reasons, such as the canyon's attraction to visitors, are not supported by the text of the Antiquities Act.

Since Cameron, most presidents from both parties have used the Antiquities Act

92 See Cameron, 252 U.S. at 455.
93 Id. at 455-56 (quoting, without citation, Proclamation No. 794, 35 Stat. 2175 (Jan. 11, 1908)).
94 President Theodore Roosevelt was not always so terse when it came to the Grand Canyon. Roughly five years before the monument was proclaimed, on May 6, 1903, Roosevelt gave an address at the Grand Canyon on a number of topics, among them the importance of preserving the country's great "natural wonder[s]" including the "absolutely unparalleled" Grand Canyon itself. 1 PResidential Addresses and State Papers of Theodore Roosevelt 369, 370 (1905) [hereinafter President Addresses of THEODORE ROOSEVELT]. More specifically, Roosevelt urged his audience not to do anything with the "great wonder," the "wonderful grandeur, the sublimity, the great loneliness and beauty of the canyon" besides working "to keep it for your children, your children's children, and for all who come after you, as one of the great sights which every American if he can travel at all should see." Id. at 370.
95 Had this address been incorporated into Roosevelt's monument proclamation in 1908, it would not have seemed out of place with the more recent proclamations discussed in Section II.A. At the same time, it is difficult, if not impossible, to imagine a contemporary American president describing any of the monuments protected by the statute statutes in such soaring language.
96 See Squillace, supra note 59, at 492 (noting that although the issue was not directly addressed in the Court's opinion in Cameron v. United States, "the clear implication of the Court's decision was that the size of the monument was not disqualifying if the 'protected object' was otherwise of 'scientific interest'").
97 Id. at 486 n. 70.
99 Cameron, 252 U.S. at 455-56.
100 Id. at 456.
101 Compare id. (justifying the monument designation as appropriate under the Antiquities Act), with Proclamation No. 794, 35 Stat. 2175 (Jan. 11, 1908) (containing no mention of the specific factors articulated by the Court), and 54 U.S.C. § 320301 (2018) (containing no discussion of appeal to visitors as a potential basis for national monument designation).
to designate monuments of ever-increasing size—including monuments of many
thousands of square miles. And like the Grand Canyon National Monument
proclamation litigated in Cameron, subsequent monuments often have been
designated for stated purposes that have little or no basis in the text of the statute
itself, including but not limited to preserving features of natural beauty or wildlife
conservation. Like President Theodore Roosevelt’s proclamation, in the first
several decades after the Antiquities Act was enacted, presidential monument
proclamations tended to be rather terse, providing little information about the
resources at issue or the specific reasons for their protection as national monuments.
And while subsequent monument proclamations have grown ever longer—a trend
that will be discussed toward the end of Part I below—courts have continued to
approve monument designations that have only a nodding correspondence with the
stated purposes of the Act or its insistence that land reserved as part of a monument
be confined to the “smallest area” of land compatible with protecting the unique
resources at issue. For example, in Tulare County v. Bush, the D.C. Circuit held
that a “lyrical[]” description of “magnificent groves of towering giant sequoias” and
the “enormous number of habitats” for wildlife present in a monument designation of
over 325,000 acres was specific enough to satisfy the statutory limits of the
Antiquities Act.

The Effigy Mounds National Monument in Iowa, designated in 1949 by President
Truman provides a good example of the relative dearth of information and
justification provided in monument proclamations from the first several decades after
the Antiquities Act. Effigy Mounds National Monument protects roughly two
hundred earthen mounds, which usually rise about three feet in height and
occasionally extend hundreds of feet in length, and which were built on bluffs with
scenic views near the Mississippi River between B.C.E. 100 and C.E. 1200. Most

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100 Antiquities Act: Monuments List, NAT'L PARK SERV., https://www.nps.gov/archeology/sites/antiquities/monumentslist.htm [https://perma.cc/F2ZX-YMAC] (listing national monuments by the date of their initial creation, and including information about the presidents who designated or expanded them as well as their size).
101 See Bray, supra note 2, at 54 (concluding that “[i]t is hard to argue that Congress . . . clearly intended the expansive interpretation of the Antiquities Act that we live with today, even for those,” like the author, who “believe that most if not all of the monuments so designated have been an invaluable boon for the nation”).
of the mounds—well over a hundred of them—are conical or linear in their structure, but over two dozen of the mounds were built in the shape of enormous bears and birds.  The mounds at the monument, which were usually, but not always, used as burial sites, are representative of hundreds more built throughout the upper Midwest, many of which were destroyed in the 20th century to make way for cornfields or utility lines.

The preceding three sentences do scant justice to the site or its importance to American history and present culture. But they are longer and provide substantially more detail about the monument than the substantive portions of President Truman’s monument proclamation, which noted simply that the monument would protect “earth mounds . . . [that] are of great scientific interest because of the variety of their forms,” including “animal effigy, bird effigy, conical, and linear types, illustrative of a significant phase of the mound-building culture of the prehistoric American Indians,” all of which were recognized “to be of national scientific importance” by the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments.

Despite this lack of detail, under the standard articulated in Cameron and developed in subsequent cases like Tulare County, the description of Effigy Mounds provided in Truman’s proclamation was perfectly adequate under the Antiquities Act. Indeed, at its original size of a little more than a thousand acres, Effigy Mounds is far smaller than many monuments designated in the last century, which makes it a far better fit with the guidelines set forth by the text of the Antiquities Act than many other monuments designated before and since.

In sum, the brevity and lack of detail of the Effigy Mounds proclamation, which are so typical of monument proclamations in the first half of the twentieth century, demonstrates how substantial the discretion afforded to presidents is pursuant to the Antiquities Act. Moreover, as noted above, even when monument designations have been challenged, courts have largely declined to enforce the statute’s guidelines about potential monuments’ substance and size. These factors have contributed to the alienation and resentment that many local opponents of new monuments feel, at least in the initial years after a monument is proclaimed. Not only do many

mounds-scandal/31073151/ [https://perma.cc/V95B-CTA8] (providing quotes from National Park Service officials and others about the recent scandals at Effigy Mounds).

105 Fenster, supra note 104, at 22.
106 Id. at 22, 34.
109 See Antiquities Act: Monuments List, supra note 100 (listing national monuments by the date of their initial creation, and including information about the presidents who designated or expanded them as well as their size).
110 See supra notes 90–102 and accompanying text.
111 See supra text accompanying notes 67–69.
neighbors of new monuments feel that they lack control over the end result of the monument designation process, but the end result of the process often appears inconsistent with the guidelines of the governing statute.\textsuperscript{112}

II. A CRITICAL COMPARISON OF THE STATUTE STATUTES TO THE ANTIQUITIES ACT

In some ways the Antiquities Act has changed very little since monuments such as Grand Canyon and Effigy Mounds were designated. The statutory text is little changed since it was enacted, presidents continue to enjoy broad discretion to proclaim new monuments, and the Act and the idea of national monuments enjoy widespread national popularity, all while some new monuments continue to foster substantial resentment and feelings of disenfranchisement at the local level.\textsuperscript{113} But in recent decades the monument designation process has evolved in at least two important ways from the examples of the Grand Canyon and Effigy Mounds outlined above. First, the process for monument designations have become more collaborative, open to the public, transparent in terms of the underlying research, and—at least in some recent instances—shaped more by collaboration with local and regional stakeholders than in the past. And second, monument proclamations themselves have become more detailed, providing better explanations about the interests and resources being served.

\textit{A. The Evolution of the Antiquities Act in Recent Decades}

The process of opening up the monument-designation process began in the 1990s—partly in response to some of the criticism associated with the monuments proclaimed in President Clinton’s first term.\textsuperscript{114} In particular, Interior Secretary Bruce Babbitt articulated a new approach to monument designations, beginning by assigning other federal agencies besides the Park Service authority for overseeing new monuments.\textsuperscript{115} The mid- to late-1990s monument-designation process also became significantly more collaborative than in the past—despite substantial regional and local opposition, monument designations since this time have tended to involve consultation opportunities with Congress to see if protective legislation could be enacted to make presidential proclamations under the Antiquities Act unnecessary.\textsuperscript{116}

\textsuperscript{112} E.g., Liston, supra note 64, at 585–86 (noting how “destructive” it is to local residents “when the fate of a region is determined by people who do not have to live with the direct results of their decisions,” who do not take into account local concerns, and whose decisions do not appear to meet the “requirements imposed by federal law”).

\textsuperscript{113} See supra text accompanying notes 61, 82–87.

\textsuperscript{114} RASBAND ET AL., supra note 65, at 696–97.

\textsuperscript{115} E.g., John D. Leshy, The Babbitt Legacy at the Department of the Interior: A Preliminary View, 31 ENVTL. L. 199, 200, 217 (2001) (describing how the Grand Staircase-Escalante monument was assigned to the Bureau of Land Management rather than the Park Service, thereby opening a new chapter in federal land management history); see also RASBAND ET AL., supra note 65, at 697 (noting that this procedural reform has “resulted in legislation protecting several remarkable areas” that otherwise likely would not have received legislative protection).

\textsuperscript{116} E.g., Leshy, supra note 115, at 217; see also RASBAND ET AL., supra note 65, at 696–97.
The procedural reforms developed under Secretary Babbitt and President Clinton also included greater opportunities for meetings between federal officials tasked with exploring monument designation and local and regional officials as well as members of the public likely to be substantially affected by new monuments. While these processes are not baked into the statute itself—and perhaps they should be—they have largely been followed and even expanded by many subsequent administrations. For example, President Obama’s approach to the Bears Ears monument involved a novel approach to monument designation, focusing on participatory stewardship and collaborative management with local stakeholders rather than exclusion based on federal control. As a result, despite the presence of some passionate local and regional opposition to President Obama’s proclamation of Bears Ears as a national monument, many and perhaps most residents of the state favored the designation.

In addition to these procedural reforms, in recent decades, presidents of both parties have issued increasingly detailed proclamations when designating monuments, which explain what the monument seeks to protect and why in terms far more detailed than, for example, President Truman’s designation of Effigy Mounds or President Theodore Roosevelt’s designation of the Grand Canyon. As with the procedural reforms discussed above, this shift in monument proclamations began in earnest in the 1990s—designed in part as a reaction to the controversies that accompanied some of President Clinton’s initial monument designations. In the past few decades, presidents of both parties have designated dozens of national monuments, large and small, with proclamations that explain why the resources at issue deserve special protection in detail far greater than the proclamations that created monuments like the Grand Canyon and Effigy Mounds in the first half of the twentieth century.

118 See Bray, supra note 2, at 57–60 (arguing for these and other reforms to the Antiquities Act).
119 See Sarah Krakoff, Public Lands, Conservation, and the Possibility of Justice, 53 HARV. C.R.-C.L. REV. 213, 216 (2018); see also Mathew Gross, Tribes Formally Present Bears Ears Proposal to Obama Administration, REDROCK WILDERNESS (S. Utah Wilderness All., Salt Lake City, Utah), Autumn/Winter 2015, at 10–11 (describing the years of research and collaboration by the Bears Ears Inter-Tribal Coalition, which presented President Obama with a monument proposal for the area and urged him to designate the monument pursuant to the Antiquities Act).
120 Leshy, supra note 115, at 217 (noting an example of one of President Clinton’s monument designations in the 1990s that was far more detailed and descriptive than its predecessors, carefully outlining the objects of scientific and historic interest qualifying for protection under the Antiquities Act, and addressing specific areas of potential local, regional, and national concern).
121 Although the deliberate shift to longer monument proclamations dates to President Clinton’s second term, some of President Carter’s monument proclamations are nearly as detailed as those issued by Presidents Clinton, George W. Bush, and Obama, and therefore they also represent departures from the relatively terse approach seen in the Grand Canyon and Effigy Mounds models discussed above. One example of President Carter’s proclamations will be reviewed briefly. See infra note 123 and accompanying text.
Whether the monuments protected by these newer proclamations are more or less worthy of protection than their predecessors is not the point. What is relevant here, for purposes of comparison with the statue statutes, is the specificity and transparency of the explanations at issue. The monuments of recent decades have been created by proclamations which, by and large, contain a level of detail that allows all concerned parties to understand what is being protected and why, even if—perhaps especially if—the parties do not agree with the decision to create the monument.

Summarizing the proclamations creating the past two decades of national monuments is of course beyond the scope of this Article—and many of these monuments were designed to protect objects of natural scientific interest with relatively little relevance to the Confederate monuments that are protected by the statue statutes and examined in this Article. Indeed, the task is too long for this paper even if one restricts the survey to those monuments from the last few decades with detailed proclamations that are designed to protect objects or resources of primarily historical interest. But reviewing a few representative examples of relatively recent and detailed monument proclamations of primarily historic interest will be useful, before turning to some of the lessons that can be drawn from a comparison of national monuments and the Antiquities Act to the statue statutes and the monuments they protect.

Since the Carter administration, presidents of both parties have designated dozens of monuments protecting objects or resources of significant historic interest. As noted above, in recent decades, these monument designations have been carried out by relatively detailed proclamations, which, unlike monument proclamations from the first half of the twentieth century, explain in detail what historical resources are being protected and why they are worthy of protection. These monuments range across the country, from the thousand-year-old trade routes and pioneer mining archaeological sites protected by Alaska’s Gates of the Arctic National Monument, proclaimed by President Carter, to the rare wrecks of the specific slave ships protected in the expansion of the U.S. Virgin Islands’ Buck Island Reef National Monument, a monument expansion proclaimed by President Clinton.

Such recent and detailed historic national monument proclamations cover the full sweep of the continent’s rich human heritage as well. For example, President Clinton’s proclamation of the Grand Canyon-Parashant National Monument details the rock art images, quarries, villages, watchtowers, burial sites, trails, camps, pit houses, and pueblo structures that date back over thousands of years. To take another example, President Obama’s proclamation of the First State National Monument describes a variety of protected historic properties throughout Delaware related to Swedish, Finnish, Dutch, and English colonists in the seventeenth and eighteenth centuries, as well as other protected historic properties significant to the Revolutionary War and the Underground Railroad. And to take an example
drawing on still more recent historical events, President Obama’s proclamation of the Stonewall National Monument describes in detail the protected portions of Christopher Park in New York City and its decades-old relationship with the 1969 Stonewall Uprising specifically and the nation’s LGBT history more generally. Additional examples of such substantively diverse and richly detailed recent historic national monument proclamations abound, from President Clinton’s proclamation of the Minidoka Internment National Monument in 2001, to President George W. Bush’s proclamation of the African Burial Ground National Monument in 2006, to President Obama’s proclamation of the César E. Chávez National Monument in 2012 and the Pullman National Monument in 2015.

More specifically, there are many examples of such recent and detailed historic national monument proclamations that are designed to protect a wide range of objects and resources commemorating the specific military service and heritage that the text of many of the statue statutes focus upon. For example, President Clinton’s proclamation of the Governors Island National Monument in New York Harbor details the significance of protected Castle William and Fort Jay, not just in terms of their significance to American military history but also in terms of their significance to the history of military design more generally. To take another example, President George W. Bush’s proclamation of the World War II Valor in the Pacific National Monument describes in detail a series of protected sites, some associated with the Pearl Harbor area, others associated with battle sites or crash landings in the Aleutian Islands, as well as the segregation and internment center for Japanese Americans at Tule Lake in California.

Some of these detailed and recent national monuments dedicated to the country’s military heritage focus on specific figures rather than broader events—just as some of the monuments protected by the statue statutes focus on particular former Confederates. For example, President Obama’s proclamation of the Charles Young Buffalo Soldiers National Monument uses a detailed description of the life and military career of Colonel Charles Young, “the highest-ranking African-American commanding officer in the United States Army” from 1894 until 1922, as a focusing lens to provide a thorough account of the rich heritage of African-American military service in America.

In addition, some of these recent and detailed national monuments dedicated to the country’s military heritage focus on Civil War military history and service—including the lived experience of significant former Confederates. For example, President Obama’s proclamation of the Fort Monroe National Monument describes in detail the fort’s military significance during the Peninsula Campaign and the siege of Petersburg in the Civil War itself, as well as the fort’s importance as the

imprisonment site of Confederate President Jefferson Davis after the end of the conflict.\footnote{Proclamation No. 8750, 76 Fed. Reg. 68625 (Nov. 1, 2011).}

Last, although the Antiquities Act does not contain any provision for protecting resources of aesthetic significance, many of the recent and more detailed monument proclamations from the past few decades also contain detailed accounts of the inherent beauty, scenic interest, architectural significance, or artistic importance of the resources protected by the monument designation.\footnote{The Fort Monroe monument is not the only example of a recently proclaimed national monument that protects objects of historical significance to Civil War history or that celebrate Civil War military service and heritage. For example, the Governors Island monument proclamation details the site’s importance during the Civil War, and the Stonewall monument proclamation discusses the statue of Civil War General Philip Sheridan and the memorial plaque honoring Civil War Colonel Ephraim Elmer Ellsworth and the New York Fire Zouaves that are protected within Christopher Park. Proclamation No. 7402, 66 Fed. Reg. 7855 (Jan. 19, 2001); Proclamation No. 9465, 81 Fed. Reg. 42215 (June 24, 2016).} A few brief examples from the sample of monument proclamations already discussed above will suffice: President Clinton’s 2000 proclamation of the Grand Canyon-Parashant National Monument describes in detail the “spectacular” and “colorful vistas,” the “rugged and beautiful . . . canyons,” the ways in which certain cliffs “juxtapose the colorful, lava-capped Precambrian and Paleozoic strata” against various “recent lake beds, and desert volcanic peaks,” and the exposure of “purple, pink, and white shale, mudstone, and sandstone . . . [that] are exposed in Hells Hole”;\footnote{Proclamation No. 7265, 65 Fed. Reg. 2825 (Jan. 11, 2000).} President Obama’s 2013 proclamation of the First State National Monument takes note of the architectural significance of many of the preserved buildings as well as the bucolic rural surroundings and greenspace of the protected land;\footnote{See, e.g., \textit{supra} text accompanying note 102 (discussing Tulare County v. Bush, the Grand Sequoia National Monument proclamation, and the former’s holding about the latter’s “lyrical[]” description of “magnificent groves of towering giant sequoias,” among other protected resources).} and finally, President Obama’s 2016 proclamation of the Stonewall National Monument takes note of the significance of George Segal’s sculpture, “Gay Liberation,” which is protected by the monumental designation, as well as this statue’s aesthetic importance as a focal point in the plaza of protected Christopher Park.\footnote{Proclamation No. 9465, 81 Fed. Reg. 42215 (June 24, 2016).}

\textit{B. The Empty Values and Arbitrary Nature of the Statue Statutes}

What lessons can the evolution of the Antiquities Act and the shift in the character of national monument proclamations provide for the debate over statue statutes and the monuments they protect? As described above, in the last few decades, the Antiquities Act has evolved, at least in its application, into something that attempts to incorporate local concerns into the process of national monument designation and protection. Moreover, in roughly this time period, monument proclamations pursuant to the Antiquities Act have also changed, becoming far more detailed and specific about what resources new monuments are supposed to protect, and why these resources are deserving of protection.

\begin{itemize}
  \item \textit{Proclamation No. 8750, 76 Fed. Reg. 68625 (Nov. 1, 2011).}
  \item The Fort Monroe monument is not the only example of a recently proclaimed national monument that protects objects of historical significance to Civil War history or that celebrate Civil War military service and heritage. For example, the Governors Island monument proclamation details the site’s importance during the Civil War, and the Stonewall monument proclamation discusses the statue of Civil War General Philip Sheridan and the memorial plaque honoring Civil War Colonel Ephraim Elmer Ellsworth and the New York Fire Zouaves that are protected within Christopher Park. Proclamation No. 7402, 66 Fed. Reg. 7855 (Jan. 19, 2001); Proclamation No. 9465, 81 Fed. Reg. 42215 (June 24, 2016).
  \item See, e.g., \textit{supra} text accompanying note 102 (discussing Tulare County v. Bush, the Grand Sequoia National Monument proclamation, and the former’s holding about the latter’s “lyrical[]” description of “magnificent groves of towering giant sequoias,” among other protected resources).
  \item Proclamation No. 9465, 81 Fed. Reg. 42215 (June 24, 2016).
\end{itemize}
These changes have worked the Antiquities Act and the national monuments it protects into something far different than the statue statutes and the monuments they protect. And in these differences are important lessons for the debates over statue statutes and Confederate monuments in public spaces, and new arguments for their abolition and removal. But in order to appreciate these differences, it will be necessary first to examine some of the similarities between the Antiquities Act and the statue statutes—similarities that were once far greater in the past.\textsuperscript{140}

To begin, the statue statutes and the Antiquities Act share common historical roots. Although many of the statue statutes are of relatively recent vintage,\textsuperscript{141} the original version of Virginia’s statue statute is much older than those of other states.\textsuperscript{142} Like the Antiquities Act, this oldest statue statute dates back to the turn of the twentieth century: a time when American attitudes toward public monuments were in flux, as an old colonial-era skepticism about public memorials was being replaced by a new monumental enthusiasm and a desire to celebrate rather than reinvent the past.\textsuperscript{143} While one American legislator at the beginning of the nineteenth century proclaimed that “monuments are good for nothing,”\textsuperscript{144} and their Revolutionary ancestors had happily torn up and melted down a monument of King George III,\textsuperscript{145} within a few decades many Americans wanted to fill the country up with built civic monuments to the country’s founding generation while preserving great natural wonders and feats of engineering as permanent national monuments as well.\textsuperscript{146}

The earliest statue statute and the Antiquities Act both reach back to this same period: the early twentieth century, when attitudes about American monuments had shifted from skepticism to approval, even enthusiasm, but before America had other monument-protection laws—indeed, they date back to a period before there were many other laws for either natural or historic conservation and preservation at all.\textsuperscript{147} Both the Antiquities Act and the earliest statue statute also predate the “monument wars” of the late twentieth century and our own time.\textsuperscript{148} So it should not be surprising that both of these statutes display a nearly unexamined certainty in the positive value

\textsuperscript{140} Cf. Bray, supra note 2, at 59–60 (concluding that the modern “Antiquities Act and the statue statutes are fundamentally different”).

\textsuperscript{141} See supra notes 34–36 and accompanying text; see also Bray, supra note 9, at 20–44 (reviewing the history and evolution of each of the statue statutes).

\textsuperscript{142} See supra note 37 (discussing the history and evolution of Virginia’s statue statute).

\textsuperscript{143} See supra text accompanying notes 36–38.

\textsuperscript{144} 6 ANNALS OF CONG. 803 (1800) (quoting North Carolina Congressman Nathaniel Macon).


\textsuperscript{146} See Bray, supra note 2, at 4–6, 17–26 (gathering sources and describing shifting American attitudes toward monuments and monument protection laws from the Revolution until the twentieth century).

\textsuperscript{147} Id.

\textsuperscript{148} See generally Kirk Savage, Monument Wars: Washington, D.C., the National Mall, and the Transformation of the Memorial Landscape (2009) (describing the recurring “monument wars” of the twentieth century through the lens of Washington, D.C.); see also Levinson, supra note 20, at 21 (noting that it is difficult “to pick up any issue of a newspaper or magazine without finding examples” of conflicts over American monuments); Dell Upton, Why Do Contemporary Monuments Talk So Much?, in Commemoration in America 11, 19–21 (David Gobel & Daves Rossell eds., 2013) (discussing two great waves of monument building in this country, the first from 1880 and 1930, and the second beginning in roughly 1980 and continuing through our own era).
of their monumental subjects.

But despite being planted together at about the same time, the statue statutes and the Antiquities Act sprang from very different seeds. As another work has noted, the Antiquities Act embodies the spirit of the Progressive era, marked as it is by a belief in the efficacy of the federal government, the benefits of swift federal action for the benefit of all, and the value of academic if not scientific expertise in government action. Literally none of these things has ever been true of the statue statutes. For example, as discussed above, the statue statutes are notable for their rejection of academic and expert opinion about the merits and purpose of the Confederate monuments that they protect. In addition, the earliest version of the statute statutes was enacted not by federal Progressive legislators but by southern Democrats in Virginia just a few years after they decisively defeated their opponents and overturned the rights secured by Reconstruction in a series of nakedly discriminatory state constitutional amendments. And perhaps most obviously, the statue statutes, by the very nature of the monuments they seek to protect, are clearly not characterized by a particularly strong belief in the efficacy or benevolence of anything to do with the federal government.

As discussed above, most of the statue statutes were enacted by states soon after discriminatory laws were passed, or during periods of massive statewide resistance to integration, or after episodes of racist violence. In this, the statue statutes resemble the monuments that they protect: they are indelibly linked with post-Reconstruction patterns of racial discrimination and violence rather than near-Civil War efforts at commemoration and remembrance.

Compared to the statue statutes and the monuments that they were designed to protect, the Antiquities Act is less charged with such a history of institutional racism and violence. But the Antiquities Act has its own troubling history. Like many of the country’s earliest laws promoting the conservation or preservation of natural resources, the Antiquities Act frequently has been deployed in ways that deprived Native Americans and other traditionally marginalized communities from access to

149 Krakoff, supra note 119, at 218-19.
150 See supra notes 15-27, 37-40, 52-57 and accompanying text.
151 See James W. Fox, Jr., Intimations of Citizenship: Repressions and Expressions of Equal Citizenship in the Era of Jim Crow, 50 How. L.J. 113, 133-34 (2006) (quoting, inter alia, Carter Glass, later Secretary of the Treasury under Woodrow Wilson). Describing the voting restrictions adopted by the Virginia Constitutional Convention in 1900, just a few short years before Virginia’s legislature enacted the first statue statutes, Glass responded as follows when asked if the state constitutional reforms would discriminate:

Discrimination! Why, that is precisely what we propose; that, exactly is what this Convention was elected for—to discriminate to the very extremity of permissible action under the limitation of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the [W]hite electorate.

Id. at 134 (quoting Glass).
152 See supra notes 25-26, 40, 40-44, 151 and accompanying text; see also Bray, supra note 9, at 13-17, 20-44 (discussing the histories of the statue statutes).
land and resources without compensation or consent. It is a mistake, in other words, to ascribe a simple narrative of upward moral progress to the Antiquities Act or the evolution of national monuments—and in many ways current debates about public land use involving the Antiquities Act and national monuments fall short of a fully inclusive discourse that takes into account the interests and rights of all interested parties. In recent years, however, the shift in how national monument decisions get made has helped to address some of the historic injustices associated with monument proclamations and other federal land use decisions. The original designation of the Bears Ears National Monument is an obvious example of this trend, but other work has also noted how other recent monument designations also embody this partial transformation of the Antiquities Act into a “vehicle[] for equality and justice,” including the César Chávez, Charles Young Buffalo Soldiers, and Stonewall National Monuments discussed above. In contrast, however, the statue statutes remain stagnant: to the extent that they have changed, it is because state legislatures have amended them to make them ever more regressive and restrictive, at least in terms of the monuments they seek to preserve and the limits they attempt to impose on local governments.

The statue statutes and the Antiquities Act are similar in another way—or, at least, they used to be similar, until presidents of both parties adopted a different approach to the Antiquities Act as described in Section II.A above, and this change and the current contrast between the two offers a final set of useful comparisons. As described above, throughout much of the twentieth century, it was easy for presidential decisions about national monuments to seem arbitrary to local and regional opponents of those decisions. After all, most early national monument proclamations

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153 Krakoff, supra note 119, at 214–16.
154 Id.
155 Id. at 216; see also supra notes 119–121 and accompanying text (discussing the approach pursued by the Obama Administration and various local, state, and regional stakeholders in developing the initial Bears Ears designation).
156 Krakoff, supra note 119, at 216, 216 n.20 (discussing these and other recent monuments as examples).

At around this same time, the Tennessee state legislature also voted to remove $250,000 from the state’s 2019 budget that previously had been intended to celebrate Memphis’s bicentennial. Chas Sisk, Tennessee Strips $250,000 from Memphis as Payback for Removing Confederate Statues, NPR (Apr. 18, 2018, 11:02 AM), https://www.npr.org/2018/04/18/603525897/tennessee-strips-250-000-from-memphis-as-payback-for-removing-confederate-statue [https://perma.cc/VNSL-UPLF]. Several state legislators upset at the Confederate monuments’ removal justified their votes for this budget change by blaming the city for its “sneaky” and successful attempt to remove Confederate monuments while complying with the statue statute through the hard work of “smart lawyers.” Id.

For more detail on the Tennessee statue statute, the techniques used by Memphis to remove Confederate monuments while complying with the then-current version of the state’s statue statute, the legislature’s subsequent changes to the statute, and the legislature’s punitive (and petty) approach to the funds once marked for Memphis’s bicentennial, see Bray, supra note 9, at 27–31.
provided little to no detail about why the specific resources that were being preserved were worthy of protection, and reviewing courts had essentially read most of the Antiquities Act’s substantive restrictions right out of the statute.\footnote{See supra notes 90–102 and accompanying text.}

The Antiquities Act as implemented today is also far from perfect—it retains some of its historically arbitrary character and should be reformed in some particulars.\footnote{See Bray, supra note 2, at 57–60 (offering suggestions for reforming the Antiquities Act).} But in recent decades the Antiquities Act has been implemented in ways that are quite different than the ways it was implemented in the first half of the twentieth century and vastly different than the ways that the statue statutes have always been implemented. Beyond their association with patterns of institutionalized discrimination and violence, the statue statutes appear at least as arbitrary and unjustifiable as the most locally oppressive national monuments designated with the vaguest of proclamations, for a number of reasons that will be explored immediately below.

One of the most arbitrary features of most statue statutes is the scope of their coverage: they tend to cover all monuments within a state, so long as the monument meets their minimal definitional criteria.\footnote{See infra notes 161–165 and accompanying text. There is, however, one counter-example: Kentucky’s statue statute is potentially as broad as other states in terms of the types of monuments that the statute can protect, but it is procedurally more selective. More specifically, the Kentucky statue statute requires the Kentucky Military Heritage Commission to approve monuments that otherwise meet the statute’s requirements before they are covered. See KY. REV. STAT. ANN. §§ 171.780, 171.784, 171.786 (West 2020). For more information about this and other aspects of Kentucky’s statue statute, see Bray, supra note 9, at 39–40.} For example, Alabama’s statue statute protects all monuments located on public property and intended to be a “permanent memorial” to any event, person, group, “movement, or military service that is part of the history of the people or geography now comprising the State of Alabama” from any sort of relocation, removal, alteration, renaming, or disturbance.\footnote{See supra notes 90–102 and accompanying text.} There is, in other words, no ‘opt-in’ or discretion that can be exercised about what the statute protects—everything within the state’s borders that fits the expansive statutory definition of “monument” is presumptively covered, and although there is a cumbersome process through which local governments can ask a special Committee on Alabama Monument Protection for subsequent relief from the statute’s coverage, this is available only for monuments that have been around for less than forty years.\footnote{Id. §§ 41-9-232(b), 41-9-235. To be precise, relief through the special Committee on Alabama Monument Protection is available only for monuments that have been around for less than forty years but more than twenty years. Id. § 41-9-232(b). For more information about this and other aspects of Alabama’s statue statute, see Bray, supra note 9, at 31–34.}

To take another example, South Carolina’s statue statute is similarly broad in the scope of its coverage. More specifically, it protects all monuments and memorials—terms that are otherwise undefined—erected on public property that have as their subject any one of ten military conflicts, ranging from the Revolutionary War to the Persian Gulf War, and including the “War Between the
States," as well as monuments or memorials to "Native American" or "African-American History." There is, in other words, no ‘opt-in’ or discretion that can be exercised about what the statute protects—as in Alabama, everything within the state’s borders that fits the expansive statutory definition of “monument” is presumptively covered. Like Alabama’s statute, South Carolina’s statute contains a process through which local governments or other parties can seek relief from the statute’s protection for qualifying monuments. Unlike Alabama’s statute, this process does not involve a special committee; rather, the only process contemplated under South Carolina’s statute for relief from monument protection is a subsequent two-thirds vote of the state legislature.

The contrast here with the Antiquities Act is obvious. Although the process of national monument designation has been criticized for decades by some as a relatively arbitrary process that gives too much discretion to presidents to designate unnecessary monuments, the process does require some monument-specific discretionary protective action by presidents. And even in the case of ‘midnight’ monument proclamations made near the end of an administration and a change in the governing party, the affirmative act of designating a national monument pursuant to the Antiquities Act carries with it the possibility of some political repercussions, if only for the outgoing president’s political party in future elections. In contrast, almost all of the statue statutes impose a blanket of protections on all monuments within their jurisdiction and their broad statutory terms, providing only the most remote possibilities for discretionary relief from these protections.

The arbitrary breadth of many statue statutes is compounded by the absence of any meaningful justification for this breadth—or, indeed, the absence of any meaningful justification in the statutes’ text, legislative history, or application. The fundamental problem here, of course, is that identified by Du Bois almost ninety years ago: any earnest attempt to justify the statue statutes in terms of the Confederate monuments they are designed to protect is almost certainly doomed to failure. And thus many of the statue statutes tend to be drafted so as to protect monuments to a wide range of historical events or figures, so long as the list includes unspecified types of “military service” or “military heritage”—terms that will be familiar, for discussed above they are frequently used to defend Confederate monuments in the popular press. Indeed, some commentators have used the term “Heritage Protection Acts” as a catch-all term for these statutes, so common is the
invocation of "heritage" in these statutes.

Instead of or in addition to such invocations of "heritage" and unspecified "military service," some other statute statutes provide a long list of protected monuments to conflicts that includes the Civil War or the "War Between the States"—the latter term providing another clue about the relationship between these statutes and the post-Civil War history of institutionalized discrimination and violence. Sometimes these statutory lists of potentially protected war memorials border on the absurd, including as they do conflicts such as "Operation Urgent Fury (Grenada)," the French and Indian War, and the "Algonquin" conflict in Virginia. The gravity of these historical conflicts should not be minimized—they are not absurd in themselves—but their inclusion in these statutes is almost ridiculous. After all, there are few if any monuments to these conflicts, and fewer still monumental controversies about these nearly nonexistent monuments. Thus there is essentially zero need for any sort of statutory protection for monuments to the 1983 invasion of Grenada, aside from a transparent attempt to make a statute designed to protect Confederate monuments look like something else.

But even if the legislative history behind most of the statue statutes did not clearly demonstrate that they were designed with protecting Confederate monuments foremost in their drafters’ minds—and other work has shown that the legislative history behind most of these statutes does clearly demonstrate this link—then their use would confirm their purpose. Despite purporting to cover a host of other types of monuments, years of monitoring the statue statutes have revealed only one instance where such a statute has been invoked to protect a monument that does not involve the Confederacy or a former Confederate figure—and that lone exception, from Greenwood, South Carolina, rather tends to prove the rule, because it involved a memorial to war dead from World Wars I and II with the names of the memorialized dead servicemembers listed in racially segregated categories.

Here, too, the contrast with the Antiquities Act is obvious and damning for the statue statutes, though it stems from a point of initial similarity. The Antiquities Act, again, is not perfect: there is something dishonest and therefore troubling about the ways in which both its statutory text and the text of some national monument proclamations fail to meet the actual reasons that presidents have for designating national monuments.

171 S.C. CODE ANN. § 10-1-165(A) (2019). South Carolina’s statue statute is far from the only one to refer to the Civil War as the “War Between the States”—so too do Virginia’s, Tennessee’s, and Mississippi’s. MISS. CODE ANN. § 55-15-81(1) (2020); TENN. CODE ANN. § 4-1-412(a)(2) (2020); VA. CODE ANN. § 15.2-1812 (2019).
172 TENN. CODE ANN. § 4-1-412(a)(2) (2020).
173 VA. CODE ANN. § 15.2-1812 (2019).
174 See Bray, supra note 9, at 20–44 (discussing the legislative history of the various statute statutes, and their obvious and nearly exclusive concern with protecting Confederate monuments). Perhaps the clearest such example is Tennessee’s statute statute, which was written and introduced in both houses of the Tennessee state legislature by members of the Tennessee Division of the Sons of Confederate Veterans, which immediately hailed the bill as, inter alia, “one of the greatest documents in modern history.” See id. at 27 (gathering sources and quotes for same).
175 Id. at 40, 40 n.266.
176 See supra notes 97–112 and accompanying text.
the statute’s purpose, the rhetoric found in many proclamations, and the true purposes for which many monuments were created all combine to make the Antiquities Act and its application appear arbitrary in many instances, at least to local opponents of new national monuments.\textsuperscript{177}

The dishonesty and the appearance of arbitrary treatment associated with the Antiquities Act may provide good reason for its reform.\textsuperscript{178} But it is important to note that the dishonesty associated with the Antiquities Act is born from an incredible bounty: the statute itself is very narrowly drafted, but there are so many good reasons for preserving many national monuments—far more than were recognized or even anticipated at the time the statute was drafted in 1906. As the monument proclamations surveyed in Section II.A demonstrate, this incredible bounty is evident even if one examines only national monument proclamations that seek to serve the sorts of values of heritage, service, sacrifice, and beauty that are invoked by defenders of Confederate monuments. In the eleven decades since the Antiquities Act was passed, almost every president has found more good reasons to designate national monuments than the drafters of the statute were able to envision—and most of these monuments have become very popular with the public, including many former monument opponents.\textsuperscript{179}

As this Section has shown, there is also something dishonest and therefore troubling about the ways in which the statue statutes are drafted and work. But unlike the Antiquities Act, the dishonesty associated with the statue statutes is not associated with any surfeit but rather with a deep poverty. Unlike the national monuments that the Antiquities Act protects, the Confederate monuments protected by the statue statutes have grown increasingly difficult to defend with every passing year, and defending them was already difficult, if not impossible, back in 1931.\textsuperscript{180} And because it is almost impossible to defend the true purpose of the statue statutes without trafficking in the racism that is inextricably intertwined with the monuments they protect, the statue statutes are surrounded in a tissue of half and un-truths: they purport to be about things that they are not. This is a very different and far worse problem than the dishonesty associated with the Antiquities Act—it is a problem so significant that the statue statutes are beyond saving: they should be junked, along with the monuments they seek to protect.

CONCLUSION

One final useful comparison can be made between the statue statutes and the Antiquities Act, which has to do with the relevance that monumental beauty plays in both statutory schemes. Of course there is no reference to beauty in the text of either the Antiquities Act or most of the statue statutes: the text of the former refers to objects of historic and scientific interest,\textsuperscript{181} whereas the texts of the latter tend to

\textsuperscript{177} See supra notes 97–112 and accompanying text.
\textsuperscript{178} Bray, supra note 2, at 61–64.
\textsuperscript{179} See supra notes 66–74, 80 and accompanying text.
\textsuperscript{180} See, e.g., Du Bois, supra note 26, at 279.
refer to the importance of heritage, service, and history.\footnote{See supra notes 160–70 and accompanying text.}

But although the statutory text of the Antiquities Act and the statue statutes are silent about the importance of beauty to the monuments they seek to protect, others have not been so reticent. For example, in a speech made years before the Antiquities Act was passed, President Theodore Roosevelt lauded the beauty of the Grand Canyon—which was, of course, one of the first national monuments that he designated once given the chance.\footnote{Presidential Addresses of Theodore Roosevelt, supra note 93, at 370.} In sites like the Grand Canyon, Roosevelt saw a "wonderful grandeur" and a sublime beauty that he thought was uniquely American, and in his address at the Canyon’s edge, he urged his fellow citizens to keep the Grand Canyon and other similar sites for future generations—advice which he took himself, at least once the Antiquities Act (arguably) gave him the discretion to do so.\footnote{Id. at 370–71.} As this Article has shown, most of Roosevelt’s successors and much of the general public have come to agree with him on all of these points. More specifically, in recent decades, many of Roosevelt’s successors have issued monument proclamations that include many references to the special beauty of the protected site or other aesthetic qualities,\footnote{See supra notes 136–36 and accompanying text.} and public approval for both the Antiquities Act and national monuments is typically strong, despite substantial local opposition in some cases.\footnote{Id. at 370–71.} In sum, much of the country has come to appreciate Roosevelt’s observation that the country is full of wonders like the Grand Canyon, which every American should see in person if they are able, and which we should all work to keep for future generations\footnote{See supra notes 93–94 and accompanying text.}—through the Antiquities Act, if need be.

To take another example, President Trump has lauded the beauty of civic Confederate monuments, many of which are protected by statue statutes, while expressing his dismay that some cities might choose to get rid of these monuments.\footnote{See supra notes 166–74 and accompanying text.} Insofar as this is a statement of a personal aesthetic preference, there may be nothing worth arguing about here. But if one takes these comments to be some sort of statement about the monuments’ objective aesthetic quality, then they are generally wrong: many if not most Confederate monuments in this country are lousy pieces of mass-produced art with little connection to the site or the community in which they are located.\footnote{See Presidential Addresses of Theodore Roosevelt, supra note 93, at 370–71.} Indeed, to argue otherwise strains the limits of human reason and tolerance, much like every other argument for retaining Confederate monuments.\footnote{See supra text accompanying note 18.} In sum, as this Article’s comparison with national monuments and the Antiquities Act has attempted to show, the Confederate monuments protected by the statue statutes are "awful things,"\footnote{See supra notes 20–23 and accompanying text.} much like the statutes that protect them, and we should get rid of both as soon as we can.

\footnote{Du Bois, supra note 26, at 279.}