

The Purpose of America's Public Lands

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ABSTRACT

What is the purpose of America's public lands? By first reviewing the rise of different conceptions of public lands over the course of American history, then discussing more modern controversies involving the Bears Ears National Monument and the Malheur National Wildlife Refuge, it becomes clear that there are ultimately three possible solutions: commodification, transcendentalism / preservation, or conservationism. Ultimately, taking a philosophical approach by way of Plato's definition of "the good life," this thesis concludes that conservationism is the best conception of the purpose of public lands, because it accommodates for both consumptive *and* non-consumptive uses. Accordingly, federal land managers are called upon to begin adhering to conservationist practices in regard to America's public lands.

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INTRODUCTION

During the summer of 2016, I had the opportunity to experience the state of Alaska – I mean, *really* experience it, traveling for miles in a small RV on a cross-state expedition. I drove on the two-lane roads that the Alaskans call “highways,” frequently stopping to take in the beauty of snow-capped mountains, ice-blue rivers, and massive glaciers. I also came to find out that nearly 60% of this land was owned by the federal government. While I have always known that I want to work in government, it was not until I went to Alaska that I finally realized what I was actually meant to *do* in government: advocate on behalf of these phenomenal public lands. Thus, personally, public lands now serve as the inspiration for both my academic and professional careers. But what is the purpose of public lands for the more general population?

This question is not a recent one, as America’s public lands have existed for nearly as long as the country itself. Over time, three possible answers have become clear. First, ideas such as the “Manifest Destiny” and those of Thomas Jefferson, combined with concrete gains from early economic transactions, resulted in the conception that public lands exist for their resources to be commodified. Second, the literary publications and activist efforts of monumental figures such as Ralph Waldo Emerson and John Muir promoted the conception that public lands exist to be preserved – either for the benefit of the human soul, or for the inherent value they encompass in themselves. Third, the rise of politicians, such as Theodore Roosevelt, who had unprecedented ideas regarding natural resources, gave impetus to the conception that public lands exist so that they can be both intelligently used *and* conserved for the benefit of future generations.

Interestingly enough, the same answers regarding the purpose of public lands are still being offered today. A more modern controversy surrounding the Bears Ears National Monument exemplifies the idea that public lands should be open to resource extraction

(commodification), as well as the idea that public lands should be preserved and left untouched because they are valuable both for the soul and in themselves (transcendentalism / preservation). Additionally, a second case study involving the Malheur National Wildlife Refuge illustrates the idea that the control of public lands should be localized so that individuals may use their resources more freely (commodification), as well as the idea that the use of resources on public lands needs to be closely and intelligently monitored (conservationism).

Given that the same three solutions have been consistently given for nearly as long as public lands have existed, the final step in answering “What is the purpose of public lands?” is to simply choose the *best* solution for the future reference of federal land managers. By examining each conception according to the philosophical objective of “the good life,” this thesis ultimately offers an argument for why conservationism is the most compelling answer.

PART I: A HISTORY OF PUBLIC LANDS

When one thinks of the origins of public lands in the United States, the efforts of wilderness pioneers such as John Muir and Teddy Roosevelt may come to mind. While it is true that the roles of these individuals cannot be overstated, the foundations of federal land management actually stretch back much further than the early twentieth century – in fact, they coincide with the foundations of America itself. More specifically, the first public lands were created in 1781, when New York surrendered its territory west of the Mississippi River to the federal government.¹ The other colonies soon followed suit, and by 1802, all western territory had become “Public Domain” lands owned by the federal government.² This Public Domain originally consisted of about 237 million acres of land, but was soon magnified in size due to famous agreements such as the Louisiana Purchase, the Oregon Compromise, and the Mexican Cession.³ Eventually, with the Alaska Purchase in 1867, the government-owned region came to consist of a total of 1.8 billion acres.⁴

This massive acquisition of land promptly raised the question of how to properly manage it. In response, three conceptions of the true purpose of public lands have gradually come to the forefront over the course of American history: 1) land as a commodity, 2) land as valuable either for the human soul, or for the inherent value it encompasses in itself, and 3) land as a trust to be intelligently used *and* conserved for the benefit of future generations. Accordingly, the first section of this paper is devoted to examining the origins of each conception.

¹ “America’s Public Lands: Origins, History, Future,” *Public Lands Foundation*, December 2014, 3-4, https://publicland.org/wp-content/uploads/2016/08/150359_Public_Lands_Document_web.pdf.

² “America’s Public Lands: Origins, History, Future,” 3-4.

³ “The Management of Public Lands,” *Congressional Digest* 61, no. 12 (December 1982): 290, <https://proxy.library.upenn.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=keh&AN=10577227&site=ehost-live>.

⁴ “America’s Public Lands: Origins, History, Future,” 4.

Commodification

When the United States government initially inherited the vast Public Domain, the first conception of its purpose was that it and its resources should be commodified for the benefit of the newly-founded country. This idea was largely a result of Americans viewing settlement of the land as their “Manifest Destiny” – that is, the citizens felt that they were divinely inspired to expand westward and claim property.^{5*} Moreover, the impacts of the nationwide “Manifest Destiny” movement were magnified when coupled with the ambitions of politicians such as Thomas Jefferson. Jefferson played a major role in the common desire for westward land settlement because of his proposed “Agrarian Ideal.”⁶ A counter-reaction against “[t]he specter of the wretched existence of workers toiling in factories” during the Industrial Revolution in England, the “Agrarian Ideal” relied instead upon an economy of small farmers – individuals whom Jefferson labeled “the chosen people of God” – who were to live more simply off of the land. A second motivation behind Jefferson’s vision for the Public Domain was his Lockean perception of property ownership as a natural right for each individual.⁷ This famous principle encouraged Congress to adopt legislation such as the Land Ordinance of 1785, which allowed western lands to be more easily transferred from one person to another.

Philosophical ideas such as “Manifest Destiny” and those of Thomas Jefferson ultimately promoted the conception of land as a commodity by emphasizing the opportunity associated with inhabiting and exploiting the land that the West had to offer. However, this conception was also

⁵ Robert J. Miller, “American Indians, the Doctrine of Discovery, and Manifest Destiny,” *Wyoming Law Review* 11, no. 2 (2011): 329-36, <https://repository.uwyo.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&referer=https://www.google.com/&httpsredir=1&article=1092&context=wlr>.

⁶ Lisi Krall, *Proving Up: Domesticating Land in U.S. History* (Albany: State University of New York Press, 2010), 1-10, ProQuest Ebook Central.

⁷ Krall, *Proving Up: Domesticating Land in U.S. History*, 11-12, 15-16.

* The “Manifest Destiny” idea most likely stemmed from a European legal custom of automatically acquiring property rights in native lands. [Miller, “American Indians,” 329-36.]

promoted by the concrete economic gains which resulted from selling off the Public Domain.⁸ Namely, the federal government raised money by transferring over 40 million acres of the region to individuals, corporations, and states in the form of land grants for purposes such as railroads and wagon roads.⁹ The government also encouraged the settlement and exploitation of western lands by passing legislation such as the Homestead Act of 1862, which allowed farmers to “acquire 160 acres [of the Public Domain] at no cost other than their time and labor.”¹⁰ This economic opportunity eventually expanded beyond agriculture to include other industries, such as timber and mining.¹¹ Generally speaking, in these early times, federal lands were viewed as having unlimited natural resources for public and private consumption.

Transcendentalism / Preservation

Eventually, however, a different conception arose of public lands as being necessary for one’s soul and general well-being, especially as some of the adverse effects associated with exploiting the West became explicitly clear to Americans. For example, the bison population, which was originally about 65 million, all but disappeared by the mid 1880’s, and the passenger pigeon was driven to extinction.¹² Moreover, “in the course of a lifetime, an area of the size of Europe already had been deforested in the United States,” and dams, mining, and grazing had contributed to a noticeable loss of grasslands and wetlands.¹³

In response, a new idea concerning the relationship between man and nature – labeled as transcendentalism – began sweeping the nation.¹⁴ More specifically, transcendentalism portrayed

⁸ “The Geography of Freedom: A Brief History of America’s Public Lands,” *Public Lands Interpretive Association*, 2007, 7, <http://publiclands.org/pdf/GeographyofFreedom.pdf>.

⁹ “America’s Public Lands: Origins, History, Future,” 4-6.

¹⁰ “The Geography of Freedom: A Brief History of America’s Public Lands,” 7.

¹¹ Krall, *Proving Up: Domesticating Land in U.S. History*, 5-6.

¹² “The Geography of Freedom: A Brief History of America’s Public Lands,” 12-13.

¹³ “The Geography of Freedom: A Brief History of America’s Public Lands,” 12-13.

¹⁴ Daryl C. Stuhr, “The Heritage of Environmentalism,” *The American Biology Teacher* 35, no. 2 (1973): 70, doi:10.2307/4444223.

nature as a spiritual means to “replenish the weary soul” of man.¹⁵ Authors such as Ralph Waldo Emerson are often credited with helping to spread this movement. In his essay *Nature* (1836), Emerson wrote, “In the woods, we return to reason and faith. There I feel that nothing can befall[] me in life, — no disgrace, no calamity, (leaving me my eyes,) which nature cannot repair...I am part or particle of God.”¹⁶ Moreover, author Henry David Thoreau similarly emphasized nature as a method for enlightenment: in *Walden* (1854), he wrote, “A lake is the landscape's most beautiful and expressive feature. It is earth's eye; looking into which the beholder measures the depth of his own nature.”¹⁷ The transcendentalist movement did not end with literature, however – George Catlin, for instance, was famous for paintings that were inspired by his experiences in the West.¹⁸

In fact, Catlin even took his appreciation for nature a step further by being the first to publicly call for “the establishment of a national park to preserve land in its ‘pristine beauty and wildness.’”¹⁹ In this respect, one may consider Catlin to be more of a *preservationist* than a transcendentalist. Because of their common desire to preserve nature in its entirety, the transcendentalist and preservationist movements can ultimately be combined into one general conception in regard to public lands. That said, unlike transcendentalism, which values nature because of the spiritual potential it offers humans, the doctrine of preservation instead focuses more on the *inherent* value of nature as justification for its protection.²⁰

¹⁵ Judith A. Layzer, *The Environmental Case: Translating Values into Policy* (Thousand Oaks: SAGE Publications, 2016), 1-2.

¹⁶ Ralph Waldo Emerson, *Nature* (1836; Facsimile of the first edition, with an introduction by Kenneth Walter Cameron, New York: Scholars' Facsimiles & Reprints, 1940), 12-13.

¹⁷ Henry David Thoreau, *Walden* (1854; Facsimile of the first edition, with an introduction by David Aloian, New York: Harper & Row, 1963), 247.

¹⁸ Layzer, *The Environmental Case: Translating Values into Policy*, 1-2.

¹⁹ Layzer, *The Environmental Case: Translating Values into Policy*, 1-2.

²⁰ Stuhr, “The Heritage of Environmentalism,” 71.

Perhaps the most prominent preservationist in American history was John Muir.²¹ Muir was the main driver behind having Yosemite Valley set aside as a “public park” in 1864, thus helping to formally establish “the wilderness park idea” in America.²² Consequently, the first official National Park, Yellowstone, was established just 8 years later. Yet, it is worth noting that the establishment of all of the parks and monuments following Yosemite was met by opposition from industries – such as railroad, timber, and mining – which wanted control over the lands and their resources. Nonetheless, Muir believed that “the growing interest in the care and preservation of forests and wild places in general [was fine and natural and full of promise],” as “Thousands of tired, nerve-shaken, over-civilized people [were] beginning to find out that going to the mountains is going home; that wildness is a necessity; and that mountain parks and reservations are useful not only as fountains of timber and irrigating rivers, but as fountains of life.”²³ Today, Muir’s legacy and preservationist beliefs live on not only through his publications, but also through the well-known Sierra Club, which he founded in 1892.

Conservationism

Around the turn of the 20th century, conservationism emerged as a different way of perceiving nature and public lands. Namely, it supported efficiently *using* natural resources that the lands had to provide, rather than just *preserving* them.²⁴ That said, while conservationists focused more on “natural resource yields,” and preservationists focused more on “preserving ecosystem health,” both groups ultimately valued keeping nature intact to some degree.²⁵ Sometimes credited with spearheading the conservationist movement is George Perkins Marsh,

²¹ Stuhr, “The Heritage of Environmentalism,” 71.

²² “The Geography of Freedom: A Brief History of America’s Public Lands,” 13.

²³ John Muir, *Our National Parks* (1901; Facsimile of the first edition, with a foreword by Richard F. Fleck, Madison: University of Wisconsin Press, 1981), 1-2.

²⁴ Layzer, *The Environmental Case: Translating Values into Policy*, 1-2.

²⁵ Layzer, *The Environmental Case: Translating Values into Policy*, 1-2.

who was an American congressman and diplomat.²⁶ His *Man and Nature* (1864) argued that “Man has too long forgotten that the earth was given to him for usufruct* alone, not for consumption, still less for profligate waste,”²⁷ and ultimately called upon the roles of science and civic responsibility in managing resources more rationally for the benefit of future generations.²⁸

While Marsh focused more on the role of individuals than the role of government in land management, his ideas helped lay the foundation for the sort of “active government” trend that people such as Theodore Roosevelt were to introduce into concrete policy and institutions.²⁹ Indeed Roosevelt, serving as president from 1901 to 1909, became known as “the conservationist president”³⁰ because of his extensive efforts in office. For instance, in 1905, he created the modern United States Forest Service, with Gifford Pinchot serving as the agency’s first Chief.³¹ Pinchot came to be known as a major figure in American conservationism himself, condemning the wasteful practices of the timber industry and calling for government intervention in order to promote the scientifically-based, efficient use of the country’s natural resources. Pinchot was also the founder of the Yale School of Forestry, helping to bring not only the general notion of conservationism to America, but also the idea that people can be trained to be the expert land managers which are needed in order for the conservation of public lands to actually succeed.³²

²⁶ Stuhr, “The Heritage of Environmentalism,” 70.

²⁷ George Perkins Marsh, *Man and Nature; Or, Physical Geography as Modified by Human Action* (New York: Charles Scribner, 1864), 35.

²⁸ Thomas R. Cox, “Americans and Their Forests: Romanticism, Progress, and Science in the Late Nineteenth Century,” *Journal of Forest History* 29, no. 4 (1985): 163-64, doi:10.2307/4004710.

²⁹ Cox, “Americans and Their Forests,” 163-64.

³⁰ “Theodore Roosevelt and Conservation,” National Park Service, updated November 16, 2017, <https://www.nps.gov/thro/learn/historyculture/theodore-roosevelt-and-conservation.htm>.

³¹ Layzer, *The Environmental Case: Translating Values into Policy*, 1-2.

³² Kevin Dennehy, “First Forester: The Enduring Conservation Legacy of Gifford Pinchot,” *Yale School of Forestry and Environmental Studies*, September 21, 2016, <http://environment.yale.edu/news/article/first-forester-the-conservation-legacy-of-gifford-pinchot/>.

* The term “usufruct” is defined as “the temporary right to the use and enjoyment of the property of another, without changing the character of the property.” [“Usufruct,” *Encyclopædia Britannica, inc.*, April 10, 2018, <https://www.britannica.com/topic/usufruct>.]

Roosevelt was also a friend of preservationist John Muir, despite their differing philosophies.³³ This ideological clash was perhaps best exemplified by the Hetch Hetchy Valley controversy: while conservationists, such as Roosevelt, sought to dam the valley as a reservoir for San Francisco, preservationists, such as Muir, wished to maintain the area and its beauty in its natural state.³⁴ Despite preservationist efforts, a major San Francisco earthquake in 1906 provided new motivation to enlarge the city's water supply, and the dam was eventually completed 17 years later.³⁵ The year 1906 also saw the passage of the Antiquities Act, which effectively “authoriz[es] the President to establish national monuments for the preservation of features of historic, prehistoric, and scientific interest, and forbid[s] unauthorized injury of objects of antiquity.”³⁶ The Antiquities Act is just one example of the several far-reaching conservation acts endorsed by Roosevelt.

Conclusively – “[y]ear by year, act by act, proclamation by proclamation, Roosevelt built his natural empire” of public lands.³⁷ Following the end of his presidency, he announced:

*“There is a delight in the hardy life of the open. There are no words that can tell the hidden spirit of the wilderness that can reveal its mystery, its melancholy and its charm. The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased and not impaired in value.”*³⁸

³³ “Theodore Roosevelt and Conservation.”

³⁴ “Documentary Chronology of Selected Events in the Development of the American Conservation Movement, 1847-1920,” *The Library of Congress*, May 3, 2002, <http://www.memory.loc.gov/ammem/amrvhtml/cnchron4.html>.

³⁵ “Hetch Hetchy: Timeline of the Ongoing Battle Over Hetch Hetchy,” *Sierra Club*, accessed December 7, 2018, <http://vault.sierraclub.org/ca/hetchhetchy/timeline.asp>.

³⁶ “Documentary Chronology of Selected Events in the Development of the American Conservation Movement”; American Antiquities Act of 1906, 16 U.S.C. § 431-433 (1906).

³⁷ “Theodore Roosevelt and the Environment,” *WGBH Educational Foundation*, accessed December 7, 2018, <http://www.pbs.org/wgbh/americanexperience/features/tr-environment/>.

³⁸ “The Conservation Legacy of Theodore Roosevelt,” *U.S. Department of the Interior*, October 27, 2016, <https://www.doi.gov/blog/conservation-legacy-theodore-roosevelt>.

Roosevelt ultimately oversaw the establishment of “150 national forests, 51 federal bird reserves, four national game preserves, five national parks and 18 national monuments on over 230 million acres of public land.”³⁹ Moreover, as is consistent with the idea of needing “expert land managers,” these designations helped lead to the eventual creation of the National Park Service in 1916, the United States Fish and Wildlife Service in 1939, and the Bureau of Land Management in 1946.⁴⁰

³⁹ “The Conservation Legacy of Theodore Roosevelt.”

⁴⁰ “The Geography of Freedom: A Brief History of America’s Public Lands,” 15.

PART II: PUBLIC LANDS TODAY

Since the Roosevelt administration, the debate surrounding how to properly use America's public lands has relentlessly continued.⁴¹ Generally, today's uses can either be categorized as "consumptive" or "non-consumptive." Consumptive uses are meant to provide jobs and sustain economies centered on either *non-renewable* practices, such as mineral, oil, or gas extraction, or *renewable* practices, such as grazing or logging.⁴² On the other hand, non-consumptive uses include such activities as protecting cultural and/or historic resources, or preserving natural resources for the benefit of public tourism and recreation.⁴³ The distinction between consumptive and non-consumptive uses should ultimately serve as a reminder that "the benefits of public lands go beyond the economics of jobs; oil and gas royalties paid to the states; or the payments in lieu of taxes that counties with public lands receive."⁴⁴ Indeed, the lands also function as "a vast playground," "an outdoor classroom," a scientific research facility, a healthy source of "clean air and water and open space," and a place of "spiritual and mental renewal."⁴⁵ Nowadays, public lands exist in every state and can provide a vast array of benefits and experiences for all people.*

As might be expected, there is a disagreement between the proponents of non-consumptive uses and those of consumptive uses. As exemplified above, this battle arguably started years ago with the rise of transcendentalists against the commodification of the Public Domain. That said, while land policies may have been able to adequately handle this conflict in

⁴¹ "The Geography of Freedom: A Brief History of America's Public Lands," 16-19.

⁴² "The Geography of Freedom: A Brief History of America's Public Lands," 16-19.

⁴³ "The Geography of Freedom: A Brief History of America's Public Lands," 16-19.

⁴⁴ "The Geography of Freedom: A Brief History of America's Public Lands," 16-19.

⁴⁵ "The Geography of Freedom: A Brief History of America's Public Lands," 16-19.

* It is acknowledged that some people may not feasibly have access to public lands, especially due to the constraints of financial resources, disabilities, etc. That said, while a full assessment of the distributive justice implications of public lands is a worthy research topic, it is ultimately outside the scope of this particular paper.

the past, the post-World War II era has seen more demands on public land and a more rapid depletion of natural resources.⁴⁶ This may be at least partially attributed to the fact that the world has become too “full” of people – with a large increase in population comes a large increase in resource consumption.⁴⁷ As a result, it has become noticeably more difficult to simultaneously accommodate both non-consumptive and consumptive uses of public lands.⁴⁸ More recent legislation, such as the Wilderness Act of 1964, has attempted to appease the proponents of non-consumptive uses by offering certain federally-owned lands more protection against such activities as drilling and grazing.⁴⁹ However, some analysts suggest that “simply setting aside islands of wilderness” is ineffective in preserving public lands because it fails to address the underlying economic pressures for consumptive uses.⁵⁰ As will be illustrated below, it is often the case that resource demands simply overwhelm any previous federal attempts to restrain consumptive uses.

This contentious debate over whether public lands should accommodate consumptive or non-consumptive uses is illustrated by such modern cases as the Bears Ears National Monument and Malheur National Wildlife Refuge controversies: Bears Ears in the form of proponents of commodification versus proponents of transcendentalism / preservation, and Malheur in the form of proponents of commodification versus proponents of conservationism.

⁴⁶ Krall, *Proving Up: Domesticating Land in U.S. History*, 79-83.

⁴⁷ Herman E. Daly, “Economics In A Full World,” *Scientific American* 293, no. 3 (September 2005): 100-7, http://pages.wustl.edu/files/pages/imce/fazz/ad_5_2_daly.pdf.

⁴⁸ Krall, *Proving Up: Domesticating Land in U.S. History*, 79-83.

⁴⁹ Wilderness Act of 1964, 16 U.S.C. § 1131-1136 (1964).

⁵⁰ Krall, *Proving Up: Domesticating Land in U.S. History*, 90-95.

Bears Ears National Monument

President Barack Obama designated the Bears Ears National Monument, located in Southeastern Utah, on December 28, 2016.⁵¹ He did so under the authority granted by the Antiquities Act of 1906 – an example of the everlasting influence of Teddy Roosevelt’s administration. More specifically, the Antiquities Act authorizes the President, “in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and [to] reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected.”⁵² Indeed, viewing it as “in the public interest to preserve the objects of scientific and historic interest on the Bears Ears lands,” the federal government successfully set aside the area for preservation.⁵³ It originally consisted of about 1.35 million acres.

Then, on December 4, 2017 – less than a year later – President Donald Trump issued his own proclamation in regard to Bears Ears.⁵⁴ This proclamation drastically reduced the size of the monument – from 1.35 million to approximately 200,000 acres. His justification for this action was that “[s]ome of the objects Proclamation 9558 identifies are not unique to the monument, and some of the particular examples of these objects within the monument are not of significant scientific or historic interest.”⁵⁵ These “objects” include “ancient cliff dwellings...Native American ceremonial sites...a prehistoric road system...petroglyphs, pictographs, and recent

⁵¹ Proclamation No. 9558, 82 Fed. Reg. 1139 (December 28, 2016).

⁵² American Antiquities Act of 1906, 16 U.S.C. § 431-433 (1906).

⁵³ Proclamation No. 9558, 82 Fed. Reg. 1139 (December 28, 2016).

⁵⁴ Proclamation No. 9681, 82 Fed. Reg. 58081 (December 8, 2017).

⁵⁵ Proclamation No. 9681, 82 Fed. Reg. 58081 (December 8, 2017).

rock art,” and notable “landscape features” and “paleontological resources,” as well as several different animal species.⁵⁶ Moreover, President Trump’s proclamation declared that “many of the objects Proclamation 9558 identifies were not under threat of damage or destruction before designation such that they required a reservation of land to protect them.”⁵⁷ Accordingly, viewing the original designation of the monument as *not* “confined to *the smallest area compatible* [emphasis added] with the proper care and management of the objects,” President Trump attempted to use the Antiquities Act to shrink the Bears Ears National Monument.* Nevertheless, some believe that President Trump’s reduction of Bears Ears was unlawful, and that his interpretation of the Antiquities Act was nothing more than an excuse to support consumptive uses of public lands in the form of “increased energy development in the area.”⁵⁸ This notion is supported by internal agency documents which have since been released to the public, such as a March 2017 email from Utah Senator Orrin Hatch’s office which called for a review of the boundaries of Bears Ears in order to “resolve all known mineral conflicts” on the land. These “conflicts” are mainly referring to oil and gas sites which public schools in Utah wished to lease in an effort to “bolster funds.”⁵⁹

⁵⁶ Proclamation No. 9681, 82 Fed. Reg. 58081 (December 8, 2017).

⁵⁷ Proclamation No. 9681, 82 Fed. Reg. 58081 (December 8, 2017).

⁵⁸ Ethel Branch and Daniel Cordalis, “The Unlawful Reduction of Bears Ears National Monument: An Executive Overreach,” *Trends* 49, no. 5 (2018): 4-6, <https://heinonline.org/HOL/Page?handle=hein.journals/trends49&id=117&collection=journals>.

⁵⁹ Eric Lipton and Lisa Friedman, “Oil Was Central in Decision to Shrink Bears Ears Monument, Emails Show,” *New York Times*, March 2, 2018, <https://www.nytimes.com/2018/03/02/climate/bears-ears-national-monument.html>.

* However, there is an ongoing legal debate over whether he actually had the authority to do so. Technically speaking, Congress is the entity which “holds the authority to dispose of, regulate, and protect public lands” under the Property Clause of the Constitution. The Antiquities Act simply delegated some of this power to the President – but while the Act allows a president to *create* monuments, there is no explicit language which allows him to *diminish* or *revoke* them. [Kathryn A. Tipple, “Bears Ears National Monument: Unprecedented Surveys of Boundary Lines and Executive Authority,” *Trends* 49, no. 1 (2017): 8-11, <https://heinonline.org/HOL/Page?handle=hein.journals/trends49&id=9&collection=journals>.]

The reaction against President Trump’s proclamation was swift, and came from both transcendentalist and preservationist perspectives favoring non-consumptive uses of public lands. Consistent with the transcendentalists’ views, the outdoor retailer Patagonia – which claims that its “love of wild and beautiful places demands participation in the fight to save them”⁶⁰ – initiated a lawsuit against the administration.⁶¹ Yvon Chouinard, Patagonia’s founder, stated beforehand that “public lands have never been more threatened than right now, because [of]...a few self-serving politicians who want to sell them off and make money.”⁶² He also asserted that “the one thing that really keeps [him] going are these wild places that are the real soul of this country.”⁶³

Additionally, consistent with the preservationist approach, five Native American tribes – the Navajo Nation, Hopi Tribe, Ute Mountain Ute Tribe, Zuni Tribe, and the Ute Indian Tribe – sued the Trump administration for “unlawful revocation” of the monument designation.⁶⁴ These tribes were the main driving force behind President Obama’s original proclamation, having formed the Bears Ears Inter-Tribal Coalition in a united effort “to advocate for permanent protections of the Bears Ears region’s cultural and natural resources.”⁶⁵ Ultimately, the Coalition’s “Preservation Goals” for Bears Ears were, and still are:

1. Archaeological and cultural resource protection.
2. Preservation of historic sites, items of spiritual significance, and ongoing cultural activities.

⁶⁰ “Patagonia’s Mission Statement,” Patagonia, accessed December 8, 2018, <https://www.patagonia.com/company-info.html>.

⁶¹ David Gelles, “Patagonia v. Trump,” *New York Times*, May 5, 2018, <https://www.nytimes.com/2018/05/05/business/patagonia-trump-bears-ears.html>.

⁶² “Why Patagonia is Fighting for Public Lands,” *Patagonia*, September 28, 2017, video, 1:00, <https://www.youtube.com/watch?v=3VmjdNL0-IE>.

⁶³ “Why Patagonia is Fighting for Public Lands.”

⁶⁴ Branch and Cordalis, “The Unlawful Reduction of Bears Ears National Monument,” 4-6.

⁶⁵ Branch and Cordalis, “The Unlawful Reduction of Bears Ears National Monument,” 5.

3. Protection for native fish, wildlife, and plants.
4. Access for hunting, ceremonies, fuel wood, and herb collection.
5. Preservation of wilderness and scenic values.⁶⁶

As of the time that this paper is being written, the courts have yet to decide the fate of the Bears Ears National Monument in regard to the Patagonia lawsuit and *The Hopi Tribe, et al., v. Donald J. Trump, et al.* In the end, the outcome of this legal battle will surely have practical consequences for public lands by formally determining whether a commodification approach favoring consumptive uses, or a transcendentalism / preservation approach favoring non-consumptive uses, is more consistent with the law.

Malheur National Wildlife Refuge

A second illustration of modern disagreement over the purpose of public lands arises out of the 2016 occupation of the Malheur National Wildlife Refuge. This particular public land designation traces its beginnings back much further than Bears Ears. Still, the creation of both places can be at least partially attributed to the same person, as Teddy Roosevelt originally established Malheur as the Malheur Lake Bird Refuge in 1908.⁶⁷ The refuge is located in Harney County, Oregon, which is one of the largest counties in the country, consisting of more than 10,000 square miles – about 75 percent of which is owned by federal agencies.⁶⁸ The rural area also contains approximately 500 privately-owned ranches and farms.⁶⁹

⁶⁶ “Proposal Overview,” Bears Ears Inter-Tribal Coalition, accessed December 8, 2018, <http://bearscoalition.org/proposal-overview/>.

⁶⁷ William G. Robbins, “The Malheur Occupation and the Problem with History,” *Oregon Historical Quarterly* 117, no. 4 (Winter 2016): 574-603, http://go.galegroup.com/ps/i.do?p=AONE&u=upenn_main&id=GALE%7CA477203401&v=2.1&it=r&sid=AONE&asid=6169fba4.

⁶⁸ Noelle Crombie, “Where is Burns? Harney County Home to More Cattle than People,” *OregonLive*, January 3, 2016, https://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/01/where_is_burns_harney_county_h.html.

⁶⁹ Crombie, “Where is Burns? Harney County Home to More Cattle than People.”

Accordingly, the tension in Malheur revolved around ranchers who, unsurprisingly, favored *consumptive* uses of the land, and federal employees of land management agencies who favored more *non-consumptive* uses of the land. The conflict first began in 1994, when employees at the Malheur National Wildlife Refuge refused to renew a cattle-grazing permit for a rancher named Dwight Hammond.⁷⁰ The same year, Hammond and his son, Steven, disrupted a Fish and Wildlife Service crew from building a fence on the land. The fence was designed to keep the Hammonds' cattle from a wetland that they had been using as a watering hole.⁷¹ The Hammonds were arrested, and locals who supported the ranchers consequently made several hostile threats toward federal employees.⁷² Some years later, in 1999, Steven Hammond "started a fire that escaped onto public land."⁷³ Because burning the land was not permitted without first receiving permission from the Bureau of Land Management (BLM), a BLM employee "reminded" him of the rules associated with ranching public lands.⁷⁴ Nonetheless, the Hammonds proceeded to start another fire in 2001, supposedly in an effort to cover up evidence that they had illegally shot at least seven deer in one sitting.⁷⁵ The fires successfully destroyed the evidence, as well as 139 acres of public land.⁷⁶ Then, in 2006, Steven Hammond set more fires in an attempt to save his winter feed from wildfires, despite a burn ban that was in effect for

⁷⁰ Jeffrey St. Clair, "Disquiet on the Western Front: Showdown in the Malheur Marshes," *Salem News*, January 31, 2010, http://www.salem-news.com/articles/january312010/cattle_jsc.php.

⁷¹ St. Clair, "Disquiet on the Western Front: Showdown in the Malheur Marshes."

⁷² St. Clair, "Disquiet on the Western Front: Showdown in the Malheur Marshes."

⁷³ "Background: US Attorney issued press releases on Hammond case in October, December," *KVAL-TV*, January 7, 2016, <https://kval.com/news/local/background-us-attorney-issued-press-releases-on-hammond-case-in-october-december>.

⁷⁴ "Background: US Attorney issued press releases on Hammond case in October, December."

⁷⁵ "Background: US Attorney issued press releases on Hammond case in October, December."

⁷⁶ "Background: US Attorney issued press releases on Hammond case in October, December."

the area.⁷⁷ The 2001 and 2006 fires ultimately resulted in the Hammonds being tried for arson on federal land. In 2015, a federal court sentenced both men to five years in prison.⁷⁸

In response, a rancher named Ammon Bundy felt the need to intervene. Beforehand, in 2014, Bundy's father had led a notorious standoff against the BLM in regard to his own ranch in Nevada.⁷⁹ Bundy felt that the Hammond case was the perfect opportunity to address what he saw as tyrannical government overreach to an even larger audience.⁸⁰ Claiming that "God had called him to leave his home and protest on behalf of the Hammonds,"⁸¹ he led a movement for a peaceful protest in Harney County that resulted in about 300 people turning out to support the Hammonds.⁸² But, before the rally concluded, Bundy called on attendees "to join him in taking a harder stand."⁸³ Most refused, yet "Bundy, two of his brothers and about 20 other protesters split off from the parade and drove out to the [Malheur] refuge."⁸⁴ The armed protestors vowed to occupy Malheur* until the Hammonds were released and the federal land was "divvied up and

⁷⁷ "Background: US Attorney issued press releases on Hammond case in October, December."

⁷⁸ "Background: US Attorney issued press releases on Hammond case in October, December."

⁷⁹ Carli Brosseau, "Oregon occupation planned for months by Ammon Bundy and Montana militia leader," *OregonLive*, January 11, 2016, https://www.oregonlive.com/oregon-standoff/2016/01/bundy_militia_leader_plotted_o.html.

⁸⁰ Brosseau, "Oregon occupation planned for months by Ammon Bundy and Montana militia leader."

⁸¹ Laura Gunderson, "Ammon Bundy: His history and a \$500,000 federal loan," *OregonLive*, January 5, 2016, https://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/01/ammon_bundy_his_history_and_a.html.

⁸² Brosseau, "Oregon occupation planned for months by Ammon Bundy and Montana militia leader."

⁸³ Brosseau, "Oregon occupation planned for months by Ammon Bundy and Montana militia leader."

⁸⁴ Gunderson, "Ammon Bundy: His history and a \$500,000 federal loan."

* Just as there is disagreement over whether the President had the authority to shrink the Bears Ears National Monument, there is also legal dispute over whether the ranchers had the authority to occupy the Malheur National Wildlife Refuge. Bundy and his followers justified their actions with a controversial interpretation of the Constitution's Property Clause, stating that it "only intended to give broad federal power of property in Territories, as the Founders contemplated the expansion westward." Bundy claimed that, since Oregon was not a "Territory" in 1787, "once statehood occurred for Oregon, Congress lost the right to own the land inside the state." However, the Supreme Court has already determined in *United States v. Gratiot* that "'Territories' in the Property Clause [are] 'equivalent to the word lands,'" meaning more than just the "territories" that existed in 1787. Moreover, as of *United States v. Oregon* in 1935, federal ownership of Malheur has already been affirmed. [Michael C. Blumm and Olivier Jamin, "The Property Clause and Its Discontents: Lessons from the Malheur Occupation," *Ecology Law Quarterly* 43, no. 4 (2016): 814-16, doi:10.15779/Z38W66977S.]

handed over to citizens.”⁸⁵ However, after 41 days and a shootout that killed one of the protestors, all of the occupiers were eventually removed and arrested.⁸⁶

Ultimately, in July 2018, President Trump did pardon the Hammonds from their “unjust” five-year prison sentences.⁸⁷ In the end, the pardons “could have major implications for how federal officials enforce rules on grazing” and other consumptive uses on public lands.⁸⁸ According to the president of the Oregon Cattlemen’s Association, the pardons send “a signal that the new administration really understands the significance and the importance of what the ranching community provides for these Western landscapes.”⁸⁹ On the other hand, the president of Backcountry Hunters & Anglers argued on behalf of conservationists that the pardons only send “a message of tolerance for lawbreakers who could diminish our public lands and waters.”⁹⁰

It should be noted that the cases of Bears Ears National Monument and Malheur National Wildlife Refuge do have an interesting difference when it comes to the relevant parties and their stances regarding the purpose of public lands. In the case of Bears Ears, individual citizens are protesting in the name of a love for nature and preservation against the *federal government’s* increasing commodification of public lands. In contrast, the case of Malheur involves the federal government’s existing conservationist practices in conflict with *individual citizens* who wish to increase commodification of public lands. Nevertheless, in keeping with the objective of finding a normative solution to the purpose of public lands, three general conceptions are still ultimately present in the two aforementioned cases: 1) land as a commodity, 2) land as valuable either for

⁸⁵ Gunderson, “Ammon Bundy: His history and a \$500,000 federal loan.”

⁸⁶ John Wagner et al., “Trump pardons Oregon cattle ranchers in case that sparked 41-day occupation of national wildlife refuge,” *The Washington Post*, July 10, 2018, https://www.washingtonpost.com/politics/trump-pardons-oregon-cattle-ranchers-in-case-that-sparked-41-day-occupation-of-national-wildlife-refuge/2018/07/10/8f7aefa0-844c-11e8-8553-a3ce89036c78_story.html?noredirect=on&utm_term=.64e69cdf8c0e.

⁸⁷ Wagner et al., “Trump pardons Oregon cattle ranchers in case that sparked 41-day occupation.”

⁸⁸ Wagner et al., “Trump pardons Oregon cattle ranchers in case that sparked 41-day occupation.”

⁸⁹ Wagner et al., “Trump pardons Oregon cattle ranchers in case that sparked 41-day occupation.”

⁹⁰ Wagner et al., “Trump pardons Oregon cattle ranchers in case that sparked 41-day occupation.”

the human soul, or for the inherent value it encompasses in itself, and 3) land as a trust to be intelligently used *and* conserved for the benefit of future generations.

PART III: THE FUTURE OF PUBLIC LANDS

These case studies demonstrate that debates surrounding the true purpose of public lands have not changed – tensions present in historical America are still present today. Given that there are three enduring conceptions regarding the purpose of public lands – commodification, transcendentalism / preservation, and conservationism – how should these conceptions now be interpreted so as to determine which is the best, and which should therefore be implemented in regard to public lands from this point forward?

Taking a philosophical approach, it seems logical to answer this question according to a basic principle that has guided philosophers for ages: that is, the objective of achieving “the good life.”⁹¹ Loosely speaking, Plato has associated “the good life” with the ability to use *reason* to govern one’s *spiritedness*, which is not to be confused with one’s more stubborn *desires*.⁹² That said, even outside of the formal boundaries of the field of philosophy, the concept of defining and obtaining “the good life” permeates our daily lives. This holds especially true in Western cultures, which seem obsessively driven by an urge to maximize happiness.^{93*} Therefore, in order to determine whether one of the three conceptions of the purpose of public lands should predominate, the final section of this paper is devoted to examining how well each conception accommodates this objective of “the good life.”

⁹¹ Øyvind Rabbås et al., *The Quest for the Good Life: Ancient Philosophers on Happiness*, Oxford, United Kingdom: Oxford University Press, 2015, <https://doi.org/10.1093/acprof:oso/9780198746980.001.0001>.

⁹² Plato, *Republic*, 434c-442e.

⁹³ Brock Bastian, “Is Our Western Happiness Fetish Causing Depression?” *Psychology Today*, August 2, 2017, <https://www.psychologytoday.com/us/blog/the-other-side/201708/is-our-western-happiness-fetish-causing-depression>.

* Consider, for example, how advertising and social media are constant sources of “idealized happy faces.” [Bastian, “Is Our Western Happiness Fetish Causing Depression?”]

Conceptions and Consumptive / Non-Consumptive Uses

First, however, it may be useful to characterize the conceptions of public lands according to whether they best provide for *consumptive* or *non-consumptive* uses. That is, in considering both the historical and modern accounts of public lands, recurring themes suggested that public lands are either valuable because they provide jobs and sustain economies, or because they protect cultural and/or historic resources, as well as natural resources for public recreation and spiritual renewal.

From the perspective that the purpose of public lands is to commodify them, the most evident benefits are the consumptive uses: that is, providing jobs and actively using natural resources for non-renewable or renewable practices.* Consider the selling of the Public Domain so that more people could own land, the shrinking of Bears Ears so that companies could extract more oil and natural gas, and the proposal to localize control of Malheur so that more ranchers could freely use the land. Each of these instances ultimately attest to the economic potential of public lands. Nevertheless, commodification does not accommodate non-consumptive uses very well: allowing for more resource exploitation surely does not guarantee the protection of cultural and/or historic resources, and furthermore threatens natural resources which may provide for public recreation and spiritual renewal.

In contrast, the transcendentalism / preservation approach best allows for non-consumptive uses. Emerson and Thoreau stressed the importance of harmony with nature, and Catlin and Muir envisioned large tracts of nature being set aside and freed from the threat of excessive human intervention. In the case of Bears Ears, both Patagonia and the Native

* For instance, the Department of the Interior reported that the development of fossil fuels alone on public lands contributed about \$134 billion in economic output and 676,000 jobs for fiscal year 2017. [“U.S. Department of the Interior Economic Report FY 2017,” *The Department of the Interior Office of Policy Analysis*, October 19, 2018, 5-7, <https://doi.sciencebase.gov/doidv/files/2017/pdf/FY%202017%20Econ%20Report.pdf>.]

American tribes took action against the Trump administration for reducing the monument: Patagonia on behalf of their “love of wild and beautiful places” and the Native American tribes on behalf of the cultural aspects and natural resources at stake. Each of these examples ultimately idealizes public lands as treasures to be protected because of the value of their cultural and/or historic resources, as well as their natural resources which allow for public recreation and renewal. That said, it necessarily follows that this conception does not accommodate the use of public lands for the economic benefits associated with providing jobs and actively using natural resources.

Lastly, conservationism can be viewed as a compromise between the two extremes of commodification and transcendentalism / preservation. As exemplified by the ideas of Marsh, Roosevelt, and Pinchot, as well as the government policies allowing for ranchers to use the land in the Malheur National Wildlife Refuge, conservationism clearly allows for the use of natural resources and, consequently, the creation of jobs. That said, conservationism *also* allows for the protection of cultural and/or historic resources, as well as natural resources for public recreation and spiritual renewal, because, by taking into account the needs of future generations, it only supports the *efficient* – not excessive – use of the lands. It may seem, therefore, since conservationism accommodates for the main benefits of both commodification and transcendentalism / preservation, that it is the obvious best approach in regard to public lands. Nonetheless, conservationism can only account for these benefits to a certain degree: advocates of commodification would argue that it does not allow for *enough* consumptive uses, and advocates of transcendentalism / preservation would argue that it does not allow for *enough* non-consumptive uses.

“The Good Life” and Conservationism

Ultimately, because of Plato’s emphasis on reason as being necessary for “the good life,” conservationism is the best approach in regard to the purpose of public lands: while the part of an individual focused on *spiritedness* may be attuned to such noble objectives as protecting the cultural and/or historic resources, as well as the natural resources for public recreation and renewal, and the part of an individual focused on stubborn *desires* may be concentrated on the more immediate benefits associated with employment and extracting natural resources, the part of an individual focused on *reason* may find a compromise between the two prior extremes in the form of protecting resources for the ultimate benefit of future generations, while still permitting for some economic growth.^{94*}

This conclusion may seem unsatisfactory in that one could easily imagine an individual with some external circumstance that makes either completely protecting or exploiting the land seem like a much more likely option to result in “the good life.” For instance, the CEO of an oil drilling company surely has much more to gain from completely extracting resources from the land, as opposed to leaving some of the resources untouched because of their cultural, historic, or recreational value. However, in considering this objection, it is important to note Plato’s emphasis on the good of the community as a whole, as opposed to the good of each individual citizen.⁹⁵ That is, in the context of public lands in America, individuals should accept the

⁹⁴ Plato, *Republic*, 434c-442e.

⁹⁵ Plato, *Republic*, 419a-421d.

* Interestingly, this interpretation finds justification not only in Plato’s definition of the three parts of the *soul*, but also in his definition of the three parts of the *state*: for instance, his “auxiliaries” can be equated to modern environmental groups fighting to defend the land, his “producers” can be equated to modern industry laborers who work off of the land, and his “guardians” can be equated to the modern “expert land managers” who practice the most wise and intelligent practices in regard to the land. [Plato, *Republic*, 428b-430c.]

simultaneous use of public lands for consumptive *and* non-consumptive practices, because it is the most reasonable option contributing to “the good life” *of the entire country*.

Because the simultaneous use of public lands for consumptive *and* non-consumptive practices is the most accommodating for “the good life,” it ultimately follows that conservationism is the best conception regarding the purpose of public lands. Indeed, in regard to public lands from this point forward, federal land managers should more closely adhere to the advice of the aforesaid champions of the conservationism movement, such as Teddy Roosevelt. That is, the adequacy of the current laws in regard to America’s public lands should not be the focus so much as “the lax, unintelligent, and often corrupt *administration* [emphasis added] of these laws,” especially at the federal level.⁹⁶ For example, more attention needs to be given to saving the lands’ resources for public use, as opposed to upholding private rights. As Roosevelt said, “It is better for the Government to help a poor man to make a living for his family than to help a rich man make more profit for his company,” and “whoever...takes public property for private profit should pay for what he gets.”⁹⁷

⁹⁶ Theodore Roosevelt, *Theodore Roosevelt: An Autobiography* (Newburyport: Open Road Media, 2016), 256-257, ProQuest Ebook Central.

⁹⁷ Roosevelt, *Theodore Roosevelt: An Autobiography*, 251-252.

CONCLUSION

Throughout the course of American history to the present day, debates surrounding the purpose of public lands have not changed. More specifically, just as the early federal government sought to transfer public lands to private citizens and industries in an effort to boost the nation's economy, a more modern controversy surrounding the Bears Ears National Monument shows a similar desire in opening the lands to resource extraction. Additionally, a second case study involving the Malheur National Wildlife Refuge also shows a similar desire in the citizens' objective of localizing control of the lands so that they may be used more freely. Moreover, just as Emerson attested to the inherent value of nature as good for the human soul, so does a lawsuit from Patagonia regarding Bears Ears show a similar spiritual approach among certain modern-day Americans. Also, just as Muir sought to set aside nature so that it would not be touched, so do the goals of the Native American tribes advocating for the preservation of Bears Ears express a similar desire today. Finally, just as Roosevelt sought to effectively use public lands so that economic benefits could be reaped while still preserving them for the benefit of future generations, so does the Malheur case show a similar sentiment on behalf of existing government practices to closely monitor how public lands are being used.

In the end, public lands must be intelligently used *and* conserved for the benefit of future generations, and this conception of conservationism should be collectively practiced by federal land managers moving forward. This is because "the good life" involves the use of reason to govern both desires *and* spiritedness, and conservationism indeed suggests the use of reason to simultaneously use public lands for both consumptive *and* non-consumptive practices. It necessarily follows that federal land managers should take heed the actionable strategies of such greats as George Perkins Marsh, Gifford Pinchot, and Theodore Roosevelt – all of whom helped

found the notion that it is possible for America's public lands to serve more than just one function.

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