


THE WASHINGTON ARCHAEOLOGIST



NEXT MEETING: Seattle Chapter - December 14, 1960 - 8:00 P. M.

MEETING PLACE: Washington State Museum
4037 15th Avenue N. E.
Seattle 5, Washington

SPEAKER: Mr. B. J. White, Flight Purser for Pan American,
will have as his subject: Machu Picchu, the
Plateau City of the Incas.

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PLAINS ANTHROPOLOGIST The revived Plains Anthropologist, journal of the "Plains Conference for Anthropology," has been revived and revised in a new format, and is now to appear on a regular schedule. Developing out of the old Plains Conference Newsletter, this became the Plains Anthropologist in 1954, went through eight issues and became dormant in May, 1957. In the new format (7" x 10"), offset printing, and attractive cover, the 9th issue was available in June 1960 and the 10th issue in November 1960. It will appear four times a year thereafter.

The Plains Conference is an informal organization of anthropologists which has met annually since 1931. Its members include archaeologists, ethnologists, linguists, physical anthropologists, and other scientists whose research interests center in the Plains area of the United States and Canada. The new editorial staff of the Plains Anthropologist includes representatives from all disciplines of anthropology in the Plains states and is devoted to the anthropological interpretation of the Plains area.

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COMMENTS ON ANTIQUITIES LEGISLATION

By C. G. Nelson

The research conducted in connection with the framing of the proposed 'antiquities' legislation for presentation to the Thirty-Seventh Legislature, 1961-1963, of the State of Washington has resulted in a collection of correspondence, laws and other data which is probably unusual because of its thoroughness. This is, therefore, the first in a series of articles which will attempt to document the significant facts. It should be noted here that the research is continuing since each new piece of correspondence suggests other inquiries. This is in effect an interim report. As Chairman of the Inter-Society Committee on Antiquities Legislation, Gifford Nickerson has written to the Secretary of State of each state. Forty-four states have responded. In many cases the response has been multiple since the original inquiry has been referred to interested persons or agencies.

Part of the problem is the varied meaning given to 'antiquities.' The original concept predates the existence of archaeology as a science. Antiquarianism was the result of the discovery and systematic collecting of classical antiquities in the later part of the fifteenth century when the people of great wealth and status gathered objects of art produced by the Roman and Greek civilizations. It is interesting to note the formation of a society for the preservation of national (English) antiquities in 1572. This was followed by the Society of Antiquaries of London. There was also an office of the King's Antiquary. The seventeenth century marked the start of the collection of antiquities in great volume by the English. After denuding Greece, the antiquaries of England began to recognize their country as a source of antiquities. During the middle decades of the nineteenth century, the public interest (ownership) as related to antiquities was being recognized as a valid concept. It was during this period that the archaeologist evolved from the antiquarian. Antiquities, once the product of the antiquarian, now became one of the products of the archaeologist. The interest of both the antiquarian and archaeologist in historic and prehistoric antiquities has given the connotation of historic and prehistoric to the term 'antiquities' and this dilemma of semantics exists today. Coincident with the initial development of archaeology as a science was the rapid advancement of geology. The concept of stratigraphy as related to historical geology was made during the middle decades of the nineteenth century. Often the same scientist would be recognized for his work in both fields. The notion of the two sciences being vaguely the same still exists today. How many archaeologists have been asked, 'Oh, you collect fossils?' While archaeology (prehistory), protohistory, history and paleontology have achieved recognition as being definitive they are often considered in the same frame of reference. This is especially true about the legislation conceived for the preservation of 'antiquities.'

In the United States the federal government was the first to recognize the problem of preservation by passage of public law #209, approved June 8, 1906. The law is titled "An Act for the Preservation of American Antiquities" and states that it is against the law to "appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States without permission---." This law also established the precedent that permits for examination of ruins, the excavation of archaeological sites, and the gathering of

objects of antiquity, may be granted to a qualified person provided that work is undertaken for the benefit of 'reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation.' The language of this law and the 'uniform rules and regulations' has been repeated, often times verbatim, by a number of states. Idaho passed its first law protecting specific historic sites in 1907. Wisconsin has what would be the first state law oriented to archaeology, this being passed in 1911. The Wisconsin Archaeological Society introduced this bill. Fifty years later the Washington Archaeological Society is doing the same thing. Alabama followed with the second state law in 1915. New Mexico and Texas were next but not until sixteen years later in 1931. Probably as a result of archaeological projects of the WPA, Oregon, Oklahoma and North Carolina created their laws in 1935; five more states in 1939. There was additional activity in the late 40's and early 50's and following the ten year pattern the next significant number is a decade later. Since 1957 six states have passed legislation. Nine states are currently considering new legislation or amending or strengthening existing laws.

Plate I -- Geographical Distribution of Antiquities Legislation has been prepared on the basis of information submitted by the states. When a state has said they have no antiquities legislation we have accepted the statement subject to further study. There are fourteen such states, thirteen shown on Plate I and Alaska. It is possible that some of these states actually have legislation relating to historical sites. In some cases the sequence of the correspondence and the tenor of the reply suggests that the problem of semantics mentioned earlier is more serious than we think. The question that becomes painfully obvious is why is there no antiquities legislation in these states. From Alaska: "Similar legislation has been proposed and suggested over the past several years, but has not received serious consideration by our legislature." From Connecticut: "The Archaeological Society of Connecticut, which has its headquarters in our institution (Yale University), has considered the possibility of proposing such legislation, but has not actually done so. The need is probably not so great in our state as in yours since archaeological remains are relatively scarce here." From the Kansas State Archaeologist: "Kansas does not have legislation protecting sites. Such protection that does exist is to sites that lie on state owned land. These are protected only by that virtue, and not because they are archaeological sites." From New Jersey: "We have contacted Dr. Dorothy Cross, who is currently the State Reference Archaeologist, and she informs us that we are about to consider such legislation in New Jersey,---" From West Virginia: "We recently added an archaeologist to the Geological staff and we hope to enact legislation in the coming legislature giving him more authority." From the State Geologist of West Virginia: "Since there are no antiquities restrictions, there are no penalties for disturbance; public opinion however, has been used to prevent destruction of sites of interest. --- Actually we in West Virginia are apparently at the same point Washington is; we would like to have some manner of antiquities act passed in the near future, but we are investigating what would be the best type of law." In some of the states shown as having no legislation, the reason may very well be because of no interest. On the other hand, public interest and knowledge may be developed to the point where self-regulation obviates the necessity for legislation. This certainly must be true in Missouri. One conclusion does emerge from our inquiries: that in addition to having a genuine need for antiquities legislation, the public must be made aware of that need in terms of the motivation of those proposing the legislation.

With further reference to Plate I, those states shown with legislation protecting historic sites vary considerably in their degree of restriction. The "H" infers that their frame of reference concerning antiquities is primarily historic structures or areas. There is a certain correlation between this area and the area involved in the American Revolution. The "H-A" infers that both an historic and archaeological orientation but with a heavy emphasis on the historic. The suffix "-L" means that the archaeological aspects are definitely limited. With such a generalized classification, it is impossible to show the many variations that exist. States should not be considered equal because they are marked in the same way. This is also true of the states marked "A" and "A-L."

In regard to the states marked "A" this designation means that the law attempts to protect most of the archaeological situations and materials, a permit is required, the permittee is qualified, the end result is to increase knowledge, the materials will end up in a place where it will be available for further study, and that there is some provision for enforcement. The symbol "A-L" implies that one or more of these features are lacking. Here again the variation is almost as great as the number of states marked. With reference to the lands or areas to which the law applies, this varies from all public and private land in a state to only state owned or controlled lands. In between is a group that includes state and federal lands and another which specifies all public lands, i.e., federal, state, county, municipal and other categories of public ownership. Permit requirements differ greatly. A few of the states charge fees. In some cases a time limit is imposed by the law. The resident vs. non-resident status shows up in many of the laws by requiring the non-resident to donate up to 50% of the material found to the state. One state even provides that the division shall be equal in number and value. Permits are often restricted to a specific site or location. Some states exempt certain groups from the permit requirement while others require a permit at the county level as well as the state level. Others require both a federal and state permit for work on federal land. The specific office charged with the issuance of permits varies. The provision for enforcement reflects the struggle that the authors of the legislation must have had. Whether to be practical, politic or idealistic is the question. Usually the violation is defined as a misdemeanor with a fine or imprisonment or both as the penalty. One state stipulated that each day constituted a separate violation. A number of states also provide for forfeiture of all materials and some include records. One state provides for forfeiture only. Several states stipulate which peace officers are to enforce the law. One goes a little further and states who is to prosecute.

Arkansas is unique in their approach: rather than passing punitive or restrictive legislation, they have enacted legislation by which preservation is to be achieved through education of the public and a comprehensive program of scientific research. The board of trustees of the University of Arkansas is directed to initiate, operate, and maintain a program in archaeology which shall include: (a) excavation of sites; (b) fundamental research in Arkansas archaeology; (c) research in anthropology, geology and related social and physical sciences; (d) publication of findings both at popular and professional level; and (e) display and custodianship of artifacts, sites and other tangible results of the program. Further recognition is given to the basic problem in that the University is authorized to cooperate with individuals and State and Federal agencies in doing salvage work. The State Highway Commission is authorized to enter into contracts with the University and U.S. Bureau of Public Roads and to expend funds, 'both State and Federal,' in aid of archaeological salvage and preservation. All other state agencies, depart-

ments and institutions, as well as county and city officials are directed by law to cooperate in the activities described. Section 10 of the law states the spirit and approach: "It is hereby determined by the General Assembly that archaeological materials, sites, mounds, and relics are being lost through thoughtless destruction by untrained excavators as well as through the construction of public dams and highways; that early preventive action is required and that immediate educational efforts should be made in order that the heritage of an earlier age not be lost; that a comprehensive state program of archaeology will result in findings which will be of interest and value not only to the citizens of this State but to those who visit Arkansas as well; that the best method of accomplishing these objectives and preventing the losses referred to is by creation of a state program of archaeological research."

On Plate I the State of Washington is shown only with the symbol for proposed legislation with no other classification given. There is a law on the books which prohibits the disturbance of any cairn or grave of any native Indian or any glyptic or painted record of any prehistoric tribes or peoples. No other archaeological situations or materials are included in the law. The Presidents of the two Universities are authorized to grant permission to remove archaeological materials from a cairn provided that the materials are destined for exhibit and perpetual preservation in a duly recognized museum. In a sense there is a very limited type of antiquities legislation existing in Washington.

While it is premature to draw conclusions, the study of existing antiquities legislation has shown that there is a lack of uniformity and treatment of the problem at the state level. There is sufficient proof that the motivation factor has much to do with ultimate adequacy of the legislation. While restrictions will provide a means for protection, the concept of preservation is almost entirely dependent upon a program of information and education at the general public level.

The text of the proposed antiquities legislation which will be presented to the Thirty-Seventh Legislature, 1961-1963, of the State of Washington, will be furnished to each member of the Washington Archaeological Society in the near future.

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