

Robin Winks on the Evolution and Meaning of the Organic Act

With an Afterword by Denis P. Galvin

Editor's note: The historian Robin W. Winks (1930–2003) distinguished himself in many areas of scholarship during a tenure of more than 45 years at Yale University. One of his passions was America's national parks. Few people, if any, were more knowledgeable about the parks—he “saw the historical importance of the national parks concept more clearly than almost anyone,” according to one Yale colleague—and his knowledge did not come solely from books: he was one of only a handful of people to have visited every one of the units of the national park system. Aside from writing extensively about the national parks, Winks also served as chair of the National Park System Advisory Board. The National Parks Conservation Association's award for contributions to public education on behalf of America's national parks is named in his honor.

This Centennial Essay has been abridged from Winks' seminal analysis of the meaning of the Organic Act, “The National Park Service Act of 1916: A Contradictory Mandate?,” published in 1997 in the Denver University Law Review and reproduced here with permission. The essay published here represents less than one-quarter of Winks' original article. Much rich detail has been omitted from the discussion remaining, as well as entire discussions of historic objects in parks, the relationship of the Hetch Hetchy controversy to the Organic Act, the effects of other environmental legislation, water rights, implications for activities outside of parks, and most of the discussion of later laws affecting the interpretation of the act. Selections are focused on retaining Winks' principal arguments and information pertaining to the intent of Congress in 1916. The extractions were made by Abigail Miller. To minimize the editorial apparatus, we have not marked those points where whole sentences or paragraphs have been excluded, and have extensively reformatted and renumbered the endnotes without editorial indications. However, in the main text ellipses are used wherever the internal structure of a sentence has been changed; square brackets, where an editorial emendation or addition has been made. The complete article in its original format may be viewed at www.nature.nps.gov/Winks/.

Introduction

HISTORIANS CONCERNED WITH THE NATIONAL PARK SERVICE, managers in the Park Service, and critics and defenders of the Service frequently state that the Organic Act which brought the National Park Service into existence in 1916 contains a “contradictory mandate.” That “contradictory mandate” is said to draw the Park Service in two quite opposite directions with respect to its primary mission; the contradiction is reflected in management policies; the inability to resolve the apparent contradiction is blamed for inconsistencies in those policies.

The apparent contradiction is contained in a single sentence of the preamble to the act. That sentence reads, in addressing the question of the intent of the Service to be established by the act, that the Service is

to conserve the scenery and the natural and historic objects and the wild life therein [within the national parks] and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.¹

This paper is an attempt to determine the intent of Congress with respect to the Act of 1916. It is the work of an historian, not a legal scholar. The historian recognizes that the intent of the whole of Congress in passing an act, and the intent of the individuals who framed that act, do not perfectly coincide; that intent must nonetheless be interpreted as individual; that intent changes; and that the law of unintended consequences looms large in any legislation.

Creating a National Park Service: The Act of 1916

The National Park Service was created by act of Congress in August 1916, and President Woodrow Wilson signed the Organic Act on August 25. The act was the result of some six years of discussion,

intense lobbying by a variety of interest groups, and growing public concern. The leaders of the campaign to establish a Park Service were, in the House, Congressmen William Kent and John Raker, both of California, and in the Senate, Reed Smoot of Utah. Congressman Kent had the close advice of Frederick Law Olmsted, Jr., son of the founder of American landscape architecture and creator of Central Park. Stephen T. Mather, a wealthy borax industry executive (who later would become the first full-time director of the new National Park Service created by the act) was heavily involved, as were a number of recreational, outdoor, tourist, and automobile associations, of which the American Civic Association was the most important.

These advocates spoke of most of the thirty-seven parks that then existed, as well as the wide range of park proposals pending before Congress, in terms of scenic reserves, often invoking a comparison with Switzerland, which it was invariably argued had capitalized on its natural scenery more effectively than any other nation. Both railroad and automobile interests advocated more consistent administration of the existing parks in order to protect them more effectively, and also to make certain that accommodations and campgrounds were held to a consistent standard for the public's pleasure. While the railroads wished to bring spur lines to the borders of the parks,

they seldom argued for actual entry. Automobileists wished to see roads to and within the parks upgraded so that visitors could tour the parks in greater comfort. All spoke of “scenery” with respect to the principal natural parks, though with a variety of qualifiers, and all referred to the need for preservation of that scenery while also making the scenery accessible for the “enjoyment” of the public. Thus, any discussion of congressional intent in 1916 involves some understanding of what was meant at the time by “scenery,” as well as the specific references to it in hearings, debate, legislation, and the correspondence of the key legislators.

Debate, and the [House Committee on Public Lands] members’ papers, make it abundantly clear that the key members in the House, with respect both to the Organic Act and to specific national park bills during this time, were Congressmen Kent and Raker, Congressman Irvine Lenroot of Wisconsin, who was a watchdog preoccupied with scrutinizing all bills for their financial impact on government spending, and Congressman Edward T. Taylor of Colorado, who was an advocate of the bill that created Rocky Mountain National Park in 1915 and who saw the two acts as closely related.... [A]lmost never did any Congressman other than these four speak to general principles of preservation and protection or to matters concerning water. Thus, in the House one best focuses on Congressman Kent, whose bill, H.R. 8668, was ultimately enacted (with slight modifications) as H.R. 15522, and whose papers are voluminous.

The story is similar in the Senate. While several Senators spoke with respect to their final bill, S.9969, which was offered by Senator Smoot, almost no one took up

broad questions of the language of the bill. The preamble, or “statement of fundamental purpose” for the act of 1916, was drafted by Frederick Law Olmsted, Jr., at the request of Congressman Kent. Thus Olmsted’s views ... are also important to understanding Kent’s intent. Fortunately, his papers survive at the Library of Congress (and, to a lesser extent, at the former Olmsted offices and studios in Brookline, Massachusetts).

The governing sentences of the National Park Service Act of 1916 read as follows:

The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.²

It is this language which requires explanation, and it is the path to this language, beginning with the first suggestion that there should be a national park service or bureau, that requires tracing if we are to understand congressional intent.

Taft and Ballinger recommend a bureau

Beginning early in 1910 the American Civic Association had declared the need for a special bureau, most likely within the Department of the Interior, to administer

the nation's national parks. . . . In his annual report for 1910, the secretary of the interior, Richard Ballinger, recommended that Congress should create a "bureau of national parks and resorts" in order to assure future generations competent administration of the parks.³ This statement was immediately taken up by the American Civic Association, though never again was there reference to "and resorts" in relation to a bureau's prospective title.

The lobbyists often referred to the parks as "the nation's playgrounds," as "havens of rest," as places where the public might enjoy solitude, recreation, and "a sense of good health." To some, however, "resort" carried a somewhat undemocratic connotation, while "playground"—which was universal, for the people—became the preferred term at the time. In all the lobbying, congressional hearings, and debates to follow, emphasis remained upon ways of bringing benefits "to the people."

[James] Penick[, Jr.] astutely observes that "[t]he same generation which would soon sanction immigration laws to protect the genetic purity of the American population and would support a National Park Service to protect the heritage of natural beauty awoke somewhat earlier to the revelation that the material wealth had been acquired by a few men who used their great economic power to exploit the farmer and laborer. . . ."⁴ "These people," largely middle class, wished to see the grand scenery of America preserved virtually as a patriotic act. They did not want any of the natural scenery within the national parks to be used to private ends. . . .

On February 12, 1912, [President William Howard] Taft . . . declared in "consideration of patriotism and the love of nature and of beauty and of art" [that] it was essen-

tial to spend the money needed to "bring all these natural wonders within easy reach of our people."⁵ A bureau would improve the parks' "accessibility and usefulness," he concluded.⁶ These were common themes at the time, for parks were likened to "nature's cathedrals" through which the United States, a raw young country, matched in splendor the great human-built cathedrals of Europe (a commonplace comparison, especially for Yosemite), and in which nature imitated the colors of art (usually said in reference to Yellowstone or the Grand Canyon). Such messages made clear that the president regarded, and believed that the American people regarded, the parks as symbols of the nation and thus of vital importance. . . .

The hearings of 1912 and 1914: What is scenery?

The first substantive discussion of the purposes of a national park service or bureau occurred during the House hearings on H.R. 22995 on April 24 and 25, 1912.⁷

This hearing in 1912 was typical of discussion to follow. For the most part, both members of the House and witnesses from the executive branch restricted themselves to mid-level generalities. No one asked probing questions about precisely how scenic values were to be preserved or, indeed, what scenery was. Nonetheless, three generalizations emerged. Parks were to be held to a higher standard of preservation because of their grandeur and (with monuments) scientific values than were other federally-administered lands; this would best be achieved through a separate bureaucracy which would understand these different needs and values; and while roads, accommodations, and other man-made intrusions were necessary in order to enhance the

recreational purposes of the national parks, such physical objects were to be subordinate to the preservation of the “scenery.” Never, however, was scenery defined, for clearly all believed they understood its meaning.

There is no doubt that Congress wished to protect the scenery of the national parks. . . . Though “scenery” is to some extent subjective, one should note that the word has certain agreed meanings which have not changed substantially. “Scenery” is “the aggregate of features that give character to a landscape”—a definition that allows for scenery to fall well short of “grandeur” and which thrusts a significant burden onto “landscape” One may argue, then, that if one may assume those who used the term “scenery” in conjunction with “protection” knew the value of the words they chose, they intended that priority should be given to land that embraced several natural features (an aggregate) that were capable of being viewed from some point, whether road, trail, outlook, above or below, and that any alteration of timber cover, water course, rock face, or naturally occurring floral or faunal presence was to be avoided.

In 1911 the Century Company had issued a new *Dictionary and Cyclopedia* which had become the favored reference of Congress. . . . [T]his authoritative dictionary had added a definition of scenery which also included the notion of the “picturesque or pictorial point of view.”⁸ Thus, no matter which dictionary one might consult, “scenery” is tied to “a place,” or “features”; involves more than one “object”; and derives special value from the “aggregate” or conjunction of those objects, as viewed from some undefined but nonetheless human vantage point.

The National Park Service bill was introduced again at the 63rd Congress, and as H.R. 104 it was the subject of another hearing before the Committee on the Public Lands on April 29, 1914. . . . [T]his hearing turned largely upon the practical question of whether a separate service would reduce expenses, be more efficient, and eliminate the need to use U.S. Army troops in some of the parks. . . .

The hearings of 1916

The House hearings of April, 1916, dealt with two bills, H.R. 434 (Raker’s bill) and H.R. 8668, a new bill introduced by Congressman Kent. H.R. 8668 differed from H.R. 434 in that it contained the significant preamble quoted at note 1 above. . . . What he wanted when he agreed to introduce a bill in place of Congressman Raker’s was a document that was “as short and uncluttered as possible,” knowing that this meant that language would not be provided to clarify all future areas of conflict and ambiguity. The resulting act was only two and a half pages long.⁹

In the hearings only two new points were made. For the first time the phrase “national park system” was used, involving the image of a systematic inventory of the nation’s grandest scenic landscapes and natural and scientific curiosities, all to be combined (with the ultimate transfer of national monument properties then under the jurisdiction of the Department of Agriculture) within one efficient and consistent administration.¹⁰ Secondly, for the first time the notion of the parks as great educational enterprises, places to which the public could come to learn about nature, geology, fossils or sedimentation, while also increasing their working efficiency, their health,

and their patriotism, was set out clearly, in this case by [the American Civic Association's Jay Horace] McFarland and by R.B. Marshall, the superintendent of the national parks, a newly-created position. . . .¹¹

Olmsted's statement of "fundamental purpose"

Frederick Law Olmsted, Jr., is important to understanding the language of Kent's bill. The son of Frederick Law Olmsted, the great creator (with Calvert Vaux) of Central Park, the person who had been one of the first to promote the idea of a Yosemite National Park, and the "father of American landscape architecture," the younger Olmsted had by 1916 long emerged from his distinguished father's shadow and was both a famed designer of major parks in his own right and a member of the federal government's Commission of Fine Arts. Olmsted shaped his language in conjunction with Kent, Raker, and others. The key provision Olmsted originally wrote for H.R. 8668 read:

The fundamental object of these aforesaid parks, monuments, and reservations is to conserve the scenery and the natural and historical objects therein and to provide for the enjoyment of said scenery and objects by the public in any manner and by any means that will leave them unimpaired for the enjoyment of future generations.¹²

This would be very slightly altered in its final form, to state (as we have seen) that the "fundamental purpose" of the parks was "to *conserve* the *scenery* and the *natural* and *historic* objects and the wild life therein and to provide for the *enjoyment* of the same in such manner and by such means as will

leave them unimpaired for the enjoyment of future generations. . . ."¹³ What may we reasonably believe Congress, and those who framed the legislation, meant by "unimpaired"? To stalk this question, one must turn to the papers, first, of Frederick Law Olmsted, Jr., and then to those of Congressman William Kent, for it was Olmsted who had insisted that there must be an overriding and succinct statement of purpose (today one would say "mission statement"). Since he expected and hoped for substantial public use of the parks, he was not content with leaving an area "unimpaired for future generations," but inserted the key words, "for the enjoyment of" those generations.

Herein lay an ambiguity and a potential source for future conflict. "Enjoyment" reasonably required access, and at the time roads, trails, hotels, campgrounds, and administrative facilities did not seem unduly invasive. The act cannot have meant that "unimpaired" was to be taken in its strictest sense, particularly since the act included specific approval for certain inevitably compromising actions: leasing for tourist accommodation was the most obvious example.

The Organic Act also contained a provision likely to affect natural resources in parks. By reaffirming an act of 1901 that authorized the secretary of the interior to permit rights of way in Yosemite, Sequoia, and General Grant national parks, for pipelines, canals, ditches, water plans, dams, and reservoirs "to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber outside the parks," the act of 1916 showed that public use of the national parks might, when approved by the secretary, extend to consumption of some of

the park's resources. Did the statement of "fundamental purpose" temper this section of the bill?

One should not make too much of this provision. First, it applied by name to only three national parks, all in California, where water interests were powerful and historically entrenched within and around the three parks in question. That the act was silent on other parks may be taken to mean that the provision did not—or at least did not readily—apply to them, unless specific legislation with respect to a park mentioned such rights of way (the 1915 act creating Rocky Mountain National Park did contain such a provision). Second, to the degree that multiple use was peculiar to the mandate of the National Forest Service, other language in the Organic Act of 1916, and most particularly in subsequent amendments to that act in 1970 and 1978, clearly meant to provide national parks with a higher standard of protection than in national forests or, conversely, those acts were less permissive of the application of a policy of multiple use. Third, across time the conflict between any grant of authority to the secretary to provide for multiple use and the language relating to "unimpaired" and "for future generations" was interpreted by the courts to stricter and stricter (that is, more protective) meanings of "unimpaired."

What did Olmsted mean at the time? We have a commentary by him, written in 1937, in which he provides a gloss on his meaning. In the midst of debate in Colorado over the Colorado–Big Thompson Project, a water diversion plan that would bring water from the western slope of the Continental Divide to the parched agricultural lands on the eastern slope, in part by the use of a tunnel that would pass

through, or under, Rocky Mountain National Park, Olmsted wrote of what he deemed the "common sense" approach to the question of impairment. . . .¹⁴ [N]ot content with . . . [a] general . . . argument, he proposed actual criteria, in keeping with the original intentions of the Organic Act, that should be applied when issues of this nature arose.

Olmsted proposed five criteria. (1) The burden of proof—"and thoroughly well-considered and convincing proof"—must rest upon the advocates of "any enterprise for non-park purposes within the theoretical limits of jurisdiction of a National Park"; (2) the enterprise must be of "real social importance from a *national* [italics added by Winks] standpoint and is not to be practically attainable" elsewhere; (3) the enterprise must not "endanger the value of the park for its proper purposes to the slightest appreciable degree"; (4) the danger must be "so slight and of such a nature that the land if subject to it in advance would nevertheless have been wisely considered eminently suitable for selection and permanent maintenance as a National Park"; and (5) the non-park purpose must be "of so much more importance nationally than the purposes of the park" as to justify the lessening of the park. Olmsted concluded that, while he was open to reason, he did not find the arguments for the Colorado–Big Thompson Project complete or convincing.

Congressman Kent's views

What did the principal formal author of the National Park Act of 1916, Congressman William Kent, say about it himself? Kent often is singled out as the "father of the National Park System," and his views deserve some extended analysis.¹⁵

Kent was a Chicago businessman who had bought a home in Marin County, California, in 1899 and moved there in 1907.... He wished to see the nation's flooding rivers brought under control, advocated extensive irrigation projects,... strongly supported public water power projects,... and was an early proponent of the Tennessee Valley Authority. As he championed public power, he also opposed private power.... A second consistent strain in his thought was revealed in his persistent efforts to transfer to public ownership a large area of Mt. Tamalpais, [most of which he owned] in Marin County.... In 1908 he was successful in these endeavors, and his redwood grove became Muir Woods National Monument. From 1903 forward he spoke of the need for more national parks and the necessity to keep lands in or destined for parks out of local politics.

Thus Kent favored the development of water power through public means, the protection of watersheds, and the creation of national parks and monuments to preserve scenic and natural areas.... At Muir Woods, he wrote all was to be left natural, with no plants to be removed and no naturally downed trees to be cleaned up from the valley floor. As a member of Congress, Kent was not dogmatic on the water issue, save for his insistence on public power, and he was not invariably a supporter of undisturbed wilderness even in national parks. After all, he was among those who pressed for opening up Yosemite National Park to the Hetch Hetchy reservoir.... Kent's views on what a national park should be had been made clear, however, across several park proposals.... [I]n January, 1915, he had come out strongly in House debate for the Rocky Mountain National Park bill,

declaring that the preservation of scenery is a "most valuable purpose." He drew a distinction between national forest, national monument, and national park land, asserting that a national park must be held "in a state of nature" and that animal life must be "forever free from molestation."¹⁶ One may reasonably conclude that this was still his view only a year later, as sponsor of H.R. 8668.

Kent's position thus seems clear. He promoted his own park bill because he thought it, and not Raker's, would pass and also because it was the better bill. It contained Olmsted's preamble and Raker's had none.... [H]e intended to withdraw from the congressional race in the first district of California (though he postponed an official announcement until June to allow for an appropriate successor to test the waters) because of ill health. Thus, he also felt a sense of urgency in getting the bill to the president. For reasons of health, Kent's focus on his bill clearly declined after it was reported out of committee in May, but he could well feel he had made his position abundantly clear already, and he knew that Senator Smoot would carry the bill in the Senate.

Had Kent intended any emphasis on recreational purposes for the parks ... he surely would have said so, for at the time Kent was a vice president of the Playground and Recreation Association of America. Had he believed that he could leave interpretation of the bill to the secretary of the interior, Frederick K. Lane, he surely would not have written to Woodrow Wilson on July 24, when the bill was soon to be on the president's desk, advising him that Interior was abandoning sound policy. The assistant secretary, A. A. Jones, was not to be trusted, and Lane himself "had broken down to a

considerable extent in his conservation policies.”¹⁷

Until his death William Kent tracked the national parks. . . . In 1925, when a Senate Subcommittee of the Committee on the Public Lands held hearings on the national forests, Arno B. Cammerer, assistant director of the National Park Service, appeared before it, and Kent noted his remarks with approval. Cammerer asserted that the parks “were established to be kept absolutely in their natural condition,” except for roads and hotels: it was, he felt, preferable to lose land and change boundaries than to permit an incompatible act within a park.¹⁸ Reservoirs, for example, were clearly incompatible, Cammerer noted, pointing out that Congress had, by amendment to the federal water power act of 1920, gone on record that before any ditches, reservoirs, etc., could go into any national park, they would have to be specifically authorized by an act of Congress. Kent appears to have felt that his basic principles had at last been clearly recognized.

A contradictory mandate?

Several commentators on the National Park Service Act of 1916 have concluded that the preamble, or statement of fundamental purpose, presented the Service with a contradictory mandate. . . . [I]f the new National Park Service was handed a contradictory mandate by Congress, the contradiction arose from the language of the bill, and in particular from its statement of “fundamental purpose.” Whether such a contradiction exists or not now requires further examination.¹⁹

These recent commentators ask, in one form or another, how a management policy can both accommodate use and preserve a natural area. These commentators, often in

very similar terms, conclude that the Park Service was presented by the act with a “fundamental dilemma,” that the Service was asked to attempt “harmonizing the unharmonizable,” and that the dilemma is not capable of either logical or historical resolution.²⁰ None of these authors appears to have examined the bills that led to the act of 1916, the hearings, the debates—that is to say, the legislative history—much less having sought out and explored the private papers of the members of the Committee on the Public Lands.

To accept the conclusion that the preamble presented the Park Service with an inherent contradiction, that it is illogical, is to conclude that Congress had no clear intent, that it either did not know what it was doing when it posed a dilemma, that it did not care, or that there is no inherent contradiction in the preamble. While congressional acts undeniably contain unclear language, and (when acted upon administratively) unresolved issues, it seems unreasonable to so summarily dismiss congressional intent when the act was the product of well-informed men, especially Raker and Kent, both of whom had studied the issue with care, one of whom declared the act to be his “pet” and the other, by evidence of his correspondence, having spent much time upon it; when the act was the last of a series, each of which had benefited from the clarification of hearings; when the co-sponsor in the senate, Reed Smoot, confided to his diary that this act was one of the most important of his accomplishments;²¹ and when such careful and scholarly individuals as Frederick Law Olmsted and Robert B. Marshall had a hand in its language. . . . [W]e know that Raker (and Kent) met regularly in 1916 at the apartment of Robert Sterling Yard, a journalist working for the

United States Geological Survey in Washington, and that the final bill was drafted by these men, joined by [others who were “professional publicists, editors of travel and outdoors oriented magazines, or officers of similarly inclined organizations”]....

Once Kent agreed to sponsor a new parks bill, these men moved their meetings to his home on F Street in Washington, where they met “fairly regularly,” according to the young Horace Albright,²² who was Mather’s assistant and a regular member of the group.... Thus there was reasonable continuity of attendance at these meetings. It seems unlikely that such a group, even though they wanted a simple and uncluttered bill and wished it in a hurry, would allow a glaring contradiction to be part of the statement of “fundamental purpose” over which Olmsted labored, producing at least three versions. One must presume that the language was deliberate and that it is worthy of the closest attention.

Not present at the F Street meetings was Stephen Mather himself.... Mather had taken pains to get to know the people who ran the national parks, by calling a national park conference for Berkeley, California, in March of 1915, and asking all park superintendents to attend. He also had invited most of the concessionaires from the parks and took with him from Washington several key players.... At Berkeley, Mather had spoken of the need for a park service and had shared with Albright his sense that many of the superintendents, being political appointees, were not up to their tasks, a deficiency a park service would remedy.

Mather also took the trouble to get to know the key members of the House and Senate committees.... He talked with them about the need for a service, shared with them his philosophy of what the parks

should be, and urged them to move forward as quickly as possible with a new bill. Finally, it was Mather who orchestrated the presence of powerful journalists at the planning meetings on F Street.... Given this careful preparation, it is also unreasonable to assume that Mather would have allowed a “logical contradiction” to emerge from Olmsted’s pen.²³

[I]n 1918 [Mather] agreed with Secretary of the Interior Lane that the parks “must be maintained in absolutely unimpaired form.” If he believed this in 1918, he surely believed it in 1916, and it seems reasonable to conclude that, given the care with which he orchestrated the shaping and passage of the Organic Act, he believed that the statement of “fundamental purpose” supported his view.²⁴

We also have the commentary of two men who were consistently present at the meetings in Yard’s and Kent’s residences. One was Robert Sterling Yard himself. In [his book *National Parks Portfolio*] Yard wrote that “[o]riginally the motive in park-making had been unalloyed conservation”; indeed, he used the controversial language, that Congress had said it wished to “lock up” certain places.²⁵ Horace Albright, likewise present at the creation, is the only one of those who helped to talk out the proposed bill who would later explicitly confront the presumed contradiction in the act. In his memoirs, published in 1985, he noted that contrary to some scholars’ accounts Olmsted did not write the full bill itself, though he was “responsible for the wording of the governing sentence,” and that all present wanted the bill “to carry a clear definition of what the Park Service should be.” They were aware of the “inherent conflicts between use and preservation,” he wrote—he did not say “contradiction”—

but they were facing the political reality that this issue could not be resolved by the organic act alone.²⁶

At McFarland's urging, Olmsted had submitted directly to the Department of the Interior his first attempt at a general statement to accompany the first draft bill. The statement in the draft read:

That the parks, monuments, and reservations herein provided for shall not at any time be used in any way detrimental or contrary to the purpose for which dedicated or created by Congress.

Olmsted said this was not adequate and added to the bare bones section the additional proviso that the parks, etc., should not be used in any way contrary to "promoting public recreation and public health through the use and enjoyment by the people . . . of the natural scenery and objects of interest" in the parks. Olmsted was particularly concerned that the word "scenery" be inserted in connection with "natural" throughout the document. Olmsted sent copies of this correspondence to McFarland.²⁷

There is, as a final approach to the "contradictory mandate," the logic of rhetoric. Many of those involved in framing the Organic Act, and certainly the former judges, school teachers, and present congressmen, were well accustomed to the use of rhetoric, or the study of the effective use of language. As rhetoricians, Senator Smoot and Congressmen Kent, [Scott] Ferris,²⁸ and Lenroot were highly regarded. The classical education of the time—and Olmsted and Raker had such an education—included rhetoric as a formal study. The principles of rhetoric held that, when listing two or more elements to an argu-

ment, the most important be stated first, and when speaking in public debate, a significant element of the argument which was not, however, the most significant, should be stated last in order to allow for an "Attic fall." If the principles of rhetoric were applied to the language of the preamble, then conserving "the scenery and the natural and historic objects and the wild life" within a park took precedence over providing for public "enjoyment," and there was no contradiction between two elements of equal weight for the elements were not, in fact, equal.

The Senate passed its bill on August 5. S. 9969, Reed Smoot's bill of 1911, was recycled in slightly altered form. . . . The need to reconcile the two bills meant further delay. . . . Then the chairman of the Senate public lands committee, Senator Henry L. Myers of Montana, and the House chairman, Congressman Ferris, agreed to allow grazing in all national parks with the explicit exception of Yellowstone. At the last minute a powerful Congressman from Wisconsin, William Stafford, who opposed new bureaus on principle, sought to bottle up the bill that had emerged from the conference committee, and Kent was able to persuade him to stand down.²⁹ Approval in the Senate quickly followed.³⁰

National park acts of the 1970s and explication of text

While the crucial words from the preamble to the Organic Act of 1916 have traditionally been viewed as the statement of "fundamental purpose" already examined here, there is other language in the act that requires consideration. Let us read the preamble again:

The service thus established shall *promote* and *regulate* the use of the Federal

areas known as national parks, monuments, and reservations hereinafter specified . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will *leave* them unimpaired for the enjoyment of future generations.³¹

Thus, the primary goal of the new service is to “leave” the parks and monuments unimpaired, placing clear priority on protection as opposed to restoration of landscapes and by implication arguing for a presumption of inaction in the face of any request for what may be viewed as “impairment.” Arguably any action taken prior to passage of the Organic Act that might be viewed as impairment represented an action that could be, in so far as possible, undone, reversed, or nullified.

But what of “shall promote and regulate” in reference to the parks and monuments? Here arises the true source of the dichotomy of purpose, between preservation and use, conservation and enjoyment.³² It may well be argued that the order in which these two objectives are set forth, as well as the sequence by which taken together they precede other terms in the statement, is significant, with “enjoyment” circumscribed by “unimpaired.”³³ The legislative history of the act would appear to support this view, and successive directors of the National Park Service, and for the most part secretaries of the interior, as well as chairpersons of the relevant committees and subcommittees in Congress, have usu-

ally acted in such a manner as to suggest that the Park Service’s first priority should be preservation.

In 1978, Congress reaffirmed the Organic Act and declared that parks must be protected “in light of the high public value and integrity” of the park system in a way to avoid “derogation of the values and purposes” for which the parks, collectively and individually, were created.³⁴ “High public value” is somewhat subjective and clearly changes over time; by the use of this criterion, Congress appears to have instructed the National Park Service to manage parks in relation to public sentiment and, in effect, sociological jurisprudence. By this standard in 1978 Congress gave a powerful mandate to the Park Service, a mandate which would prohibit actions that could have the effect of “derogation” of park values. Virtually all commentators at the time and since have concluded that the 1978 provision added to the Park Service’s mandate to protect ecological values.

Conclusion

Arguably the intent of Congress with respect to any single act cannot be perfectly divined or proven. The intent of Congress across a number of related acts, and as adumbrated by other acts that bear upon the related group, may more nearly be understood. This paper has attempted to judge that intent. It has argued that the language contained in the preamble to the National Park Service Act of 1916 is not, in fact, contradictory and that Congress did not regard it as contradictory; that to the extent that a contradictory interpretation can be imputed to the sentence to the preamble quoted in the Introduction to this paper, that contradiction can be eliminated by reference to the printed record of

Congress at the time, to the private papers of those individuals most directly responsible for framing the language of the act, and to the prevailing canons of rhetoric in 1916. Further, it is argued that subsequent legislation, and numerous interpretations of related legislation by the courts (taking water as a resource by way of example) [the latter not included herein] sustain the view that there was and is no inherent contradiction in the preamble to the Act of 1916. The National Park Service was enjoined by that act, and

the mission placed upon the Service was reinforced by subsequent acts, to conserve the scenic, natural, and historic resources, and the wild life found in conjunction with those resources, in the units of the National Park System in such a way as to leave them unimpaired; this mission had and has precedence over providing means of access, if those means impair the resources, however much access may add to the enjoyment of future generations.

Endnotes

1. 16 U.S.C. § 1 (1994).
2. Ibid.
3. Bills to Establish a National Park Service and for Other Purposes: Hearing on H.R. 434 and H.R. 8668 Before the House Committee on the Public Lands, 64th Cong., 1st Sess., 3 (1916). [Hereinafter "Hearing 1916."]
4. James Penick, Jr., *Progressive Politics and Conservation: The Ballinger–Pinchot Affair* (Chicago: University of Chicago Press, 1968), 24.
5. Taft's address on parks appears in A Bill to Establish a National Park Service and for Other Purposes: Hearing on H.R. 104 Before the House Committee on the Public Lands, 63rd Cong., 2nd Sess. 6 (1914) (introduced by Congressman Raker).
6. Ibid.
7. A Bill to Establish a National Park Service, and for Other Purposes: Hearing on H.R. 22995 Before the House Comm. on the Public Lands, 62nd Cong., 2nd Sess. (1912).
8. William Dwight Whitney, ed., *The Century Dictionary and Cyclopaedia* (New York: Century Co., 1911), vol. VIII, 5385.
9. On the framing of the bill, see Horace M. Albright and Robert Cahn, *The Birth of the National Park Service: The Founding Years, 1913–33* (Salt Lake City, Utah: Howe Bros., 1985), 34–35. This is a primary source, being Albright's memoirs. He was present at the meetings in Kent's home. Albright appears to have been the first administrator to refer to a national park "system." See Dwight F. Rettie, *Our National Park System: Caring for America's Greatest National and Historic Treasures* (Urbana: University of Illinois Press, 1995), 13.
10. "Hearing 1916," 56.
11. Ibid., 54. [Ed. note: Marshall's position was a forerunner of the directorship of the National Park Service. See Richard West Sellars, *Preserving Nature in the National Parks: A History* (New Haven, Conn.: Yale University Press, 1997), 34.]
12. In 1911 Olmsted and McFarland had used this language:

That the parks, monuments, and reservations shall not at any time be used in any way contrary to the purpose thereof as agencies for promoting public recreation and public health

through the use and enjoyment by the people of the said parks, monuments, and reservations, and of the natural scenery and objects of interest therein, or in any way detrimental to the value thereof for such purpose.

Letter from J. Horace McFarland, president of the American Civil Association, to Richard Ballinger, secretary of the interior, January 3, 1911; on file with the National Archives, Record Group 79, entry 6, box 783, 61st Cong.). Ballinger had promptly accepted this language. Letter from Ballinger to Frederick Law Olmsted, Jr., January 4, 1911; on file with the National Archives, Record Group 79, entry 6, box 783, 61st Cong.).

13. 16 U.S.C. § 1 (1994). [Emphasis added by Winks.]
14. Letter from Olmsted to Bradford Williams (October 22, 1937; on file with the Library of Congress, American Society of Landscape Architects).
15. The Kent Papers are in the Sterling Memorial Library at Yale University. I have also examined his correspondence with his son Sherman Kent, later director of the Office of National Estimates at the Central Intelligence Agency (these papers are under restricted access at the Yale University Library), and inquired of the family, through Mrs. Sherman Kent, and through a grandson, whether any papers remained at the family home in Kentfield, California, to which the answer was no.
16. William Kent Papers (on file with Yale University Library, Record Group 309, scrapbook B, microfilm reel 4, §§ 8–10).
17. Letter from Kent to Woodrow Wilson, president (July 24, 1916; William Kent Papers, box 25, folder 493; see also folder 500). Lane's views were, indeed, moving more toward commerce than conservation in 1916, but on the national park bill itself he remained supportive. The sparse Lane Papers at the Library of Congress do not help us here, nor does *The Letters of Franklin K. Lane: Personal and Political* (Anne Wintermute Lane and Louise Herrick Hall, eds., Boston: Houghton Mifflin, 1922). Having had a heart attack, Lane was not vigorous and would die in 1921. The only biography, Keith W. Olson, *Biography of a Progressive: Franklin K. Lane, 1864–1921* (Westport, Conn.: Greenwood, 1979), is silent on parks. An unpublished M.A. thesis that apparently shows access to additional materials—Henry W. Wiens, “The Career of Franklin K. Lane in California Politics” (1936; unpublished M.A. thesis, University of California)—has been reported lost by the Berkeley institution.
18. William Kent Papers (April 1925; pamphlet file, copy).
19. Many standard books on the National Park Service, or in conservation or environmental history, devote a paragraph or so to the act, usually in much the same language. When one pursues these paragraphs through the references supplied, one finds a nearly infinite regression, each leaning upon the previous secondary statement, most virtually devoid of any independent examination. For the most part these accounts pass over the actual framing of the bill and raise no questions about congressional intent, simply celebrating (in words attributed to Wallace Stegner) “the best idea America ever had.” Perhaps half the secondary works conclude that the preamble to the act contains a “logical contradiction” (the words of Ronald A. Foresta in his *America's National Parks and*

Their Keepers (Washington, D.C.: Resources for the Future, 1984), 100), or appears to. However, not one of these books or articles is based on an examination of the Kent, Olmsted, or other relevant papers, and Donald Swain's 1966 article ("The Passage of the National Park Service Act of 1916," *Wisconsin Magazine of History* [Autumn]), on which most of the recent writings are based, is drawn almost wholly from the papers of Horace Albright, secondary accounts, and a limited survey of congressional hearings or other manuscript collections.

20. Upon examination more recently, this conclusion is often cited to an unpublished Master's thesis, Daniel McCool, "The National Park Service: The Politics of Appropriations" (University of Arizona, 1980), which is in fact about funding rather than purpose; or from political scientists and sociologists whose primary inquiry is into the theory of management. A check of five frequently quoted articles shows that not one of the authors went beyond what they construed to be the common sense meaning of the language, which they found on the face of it contradictory. However, if one is to construe, deconstruct, or (as an historian) explicate a text, one generally may not do so without going behind the text.
21. Diary of Reed Smoot (July 11 and August 6, 1916; Reed Smoot Papers, on file with Brigham Young University). See also his biographical sketch (which he himself wrote) in the *National Cyclopaedia of American Biography* (New York: Macmillan, 1949), vol. 35, 63–64.
22. Albright and Cahn, 35.
23. Robert Shankland, *Steve Mather of the National Parks*, 2nd ed. (New York: Alfred A. Knopf, 1954), 83–99; Albright and Cahn, 24–26; Swain, "Passage of the National Park Service Act," 8–15; Donald C. Swain, *Wilderness Defender: Horace M. Albright and Conservation* (Chicago: University of Chicago Press, 1970), 41–60.
24. On this early period see also John C. Miles, *Guardians of the Parks: A History of the National Parks and Conservation Association* (Washington, D.C.: Taylor & Francis, 1995), 12–16.
25. Robert Sterling Yard, *The Book of the National Parks* (New York: C. Scribner's Sons, 1919), 24.
26. Albright and Cahn, 35. In particular, see Albright's exchanges with Huston Thompson, Horace Albright Papers (February 23 and 27, 1916; March 26, 1964; typescript interview on file with University of California–Los Angeles).
27. Letter from Olmsted to Frank Pierce, acting secretary of the interior (December 31, 1910; Olmsted Papers). This document, retyped, also appears in the Olmsted Portfolio (on file with the Bancroft Library, University of California–Berkeley), and in the National Archives (Record Group 79, entry 6, box 783).
28. Congressman Ferris was a lay preacher. See his use of rhetoric in his scant papers, held by the Museum of the Great Plains in Lawton, Oklahoma.
29. The papers of Clarence D. Clark, at the University of Wyoming, consist only of scrapbooks. On Clark, see Albert G. Anderson, Jr., "The Political Career of Senator Clarence D. Clark" (unpublished M.A. thesis, University of Wyoming, 1953). No Myers papers have survived save for fugitive letters in the papers of Montana Senators Thomas J.

Walsh and Burton K. Wheeler at the Montana Historical Society in Helena and his death certificate at the Western Heritage Center in Billings, Montana. There is a sketch of his career in the *Billings Gazette* of November 12, 1943. All efforts to locate the papers of [Congressman] William Stafford failed.

In addition to the major collection of Smoot papers at Brigham Young University, there are Smoot papers at the Library of Congress and at the Library of the University of West Virginia. An article, the title of which offers promise—Thomas G. Alexander, “Senator Reed Smoot and Western Land Policy, 1905–1920,” *Arizona and the West* 13 (Autumn 1971), 245–264—proved to contain only passing references to the national park bill. The best biography is Milton R. Merrill, “Reed Smoot: Apostle in Politics” (unpublished Ph.D. dissertation, Columbia University, 1950). The other senators who served on the Committee on the Public Lands and Surveys, or who spoke on the floor of the Senate, were Colorado’s John F. Shafroth and Charles S. Thomas, California’s James D. Phelan and John D. Works, and Thomas J. Walsh of Montana.

The writer was unable to examine the papers of the Coloradoans, Edward T. Taylor, Charles B. Timberlake, John F. Shafroth, and Charles S. Thomas. The Taylor papers, at the Colorado State Historical Society and the University of Colorado, were examined for him and revealed nothing of relevance. Two collections might prove of value: the Thomas papers, which consist of 15,000 items, also at the Colorado State Historical Society, and the papers of Burton L. French, a Congressman from Idaho, who interested himself in the act though he did not attend the hearings. This last collection is at Miami University in Oxford, Ohio.

With respect to the NPS Act, the Papers of Woodrow Wilson, at Princeton University, are silent (Arthur Link to writer, telephonic communication).

30. William C. Everhart, *The National Park Service* (New York: Praeger, 1972), 19–20, states that before 1915 only a “scattered few members of Congress” could have spoken on the national parks for longer than five minutes. In 1916, debate in the Senate was almost nonexistent, but debate in the House showed that a number of members had formulated views on what parks should and should not be.
31. 16 U.S.C. § 1 (1994). [Emphasis added by Winks.]
32. On this point see Thomas J. Carolan, Jr., U.S. Department of State, “The Political Dynamics of the National Park Service” (1980–81), especially pp. 2–5.
33. The act refers to “enjoyment” by “future generations,” not to “the people,” which introduces an expectation of changing definitions of “enjoyment” by reference to the future. This makes legitimate an examination of changing perceptions relating to the signifying terms in the statement of purpose. Significantly, “the people” are acknowledged not to be static. Even were the term used in its customarily monolithic way, courts have interpreted “the people”—as in decisions involving the right to bear arms, for example—to mean the people as a group, not as individuals, thus opening the way to barring certain individuals. The same is true of use of grandfathered privileges within a park: they might apply to “the people” but not necessarily to any given person.
34. Act of March 27, 1978, Public Law 95-250, § 101(b), 92 Stat. 166 (codified as amended at 16 U.S.C. § 1a-1 (1994)).