

RAILROADS, POLITICS,
AND THE EARLY HISTORY OF
YELLOWSTONE NATIONAL PARK

By

Hugh D. Galusha, Jr.

January, 1968

RAILROADS, POLITICS, AND THE EARLY
HISTORY OF YELLOWSTONE NATIONAL PARK

Hugh D. Galusha, Jr.

It was about the beginning of 1871 that the people of the United States first became generally aware of the "wonders of the Upper Yellowstone region"; fourteen months later, on March 1, 1872, President Grant signed the Organic Act setting aside a "tract of land in the territories of Montana and Wyoming . . . as a public park or pleasuring ground for the benefit and enjoyment of the people." From such extraordinary speed in proceeding from the first stirrings of public awareness to an epochal piece of legislation in the history of the national park movement, it is not unreasonable to conclude they knew what they wanted. And what they wanted, if one succumbs to the easy temptation to extrapolate the prevailing attitudes of today, was "a policy that recognized the need for the holding of land in public ownership in perpetuity for other than material gain."¹ The extrapolation is justified by the symmetry of the language of Mission "66", the Act of 1916 which created the Park Service, and the Yellowstone Act -- but just how wrong it is, an examination of the forty-four turbulent years between 1872 and 1916 reveals. Far from representing a general acceptance of the national park concept, the

¹ Attributed to Conrad L. Wirth, former Director of the National Park Service, by Carrington in Great National Parks of the World, Random House, 1967, p. 14.

Yellowstone Act was a political accident -- fortuitous indeed, but an accident, for neither in Congress nor among the ardent proponents of the Act was there a unanimity of purpose. Just how diverse - and perverse - their various objectives were is revealed in the legislative history of Yellowstone during this period.

It is with the analysis of the hope for "material gain" which surfaced predictably and regularly in Congress, and alternately advanced and then sought to destroy Yellowstone, that this work is concerned. Parenthetically it might be added that there may be more current relevance than might be supposed - or hoped - for the protection-consumption dialectic has hardly concluded. As Arnold W. Green points out in Recreation, Leisure, and Politics, the dilemma the Park Service faces is posed by the conflicting objectives of "use and enjoyment" on the one hand, and "preservation unspoiled for the future" on the other. Reconciling the consumption requirements of a comfort-loving urban America -- requiring major capital investment and generating revenues to scale -- with a "wilderness experience" is a policy problem of expanding dimensions.

The economic climate of the period.

The efforts to implant the alien concepts given poetic, but hardly precise, enunciation in the Organic Act in the laissez-faire society of 19th Century America, and get them accepted, were at least as uncertain of success as the first efforts of a medical team to get the human body to accept a transplant from another. Society has its own rejection mechanisms, and through most of those forty-four years they operated predictably.

For these years between the Civil War and the First World War were the golden years of expansion of private enterprise. People spilled across the United States in a torrent when the containing pressures of the Civil War were released at Appomattox. Before the flood of humanity, trees, prairies, minerals, distance itself vanished in the indiscriminating enthusiasm to get while the gettin' was good. Few admonitory voices were raised to decry the waste, for there seemed resources and opportunities enough for all time. It was a time of almost total economic freedom, when freed of the tyranny of limited space and resources, the American economy exploded in all directions.

And Adam Smith was its prophet. Although he had been in his grave for three-quarters of a century, the growth of the United States seemed ultimate proof of the wisdom of his reliance on the marketplace; of the justice of his law of accumulation; and even his law of population seemed to find justification in the population explosion necessary to fuel the burgeoning economy -- provided always, he argued, that government could be kept at its distance to assure the flourishing of the springs of private interest unchecked by artificial restraint.

"That to insure the said company a reasonable re-imbusement for such important improvements and the attendant outlays, they are authorized to supply and manage their hotel or hotels and station houses without restriction, on the ground that their own interests will be best subserved, by making everything satisfactory to their patrons; and they are hereby allowed to charge such tolls for the use of their road or roads as shall be deemed equitable and right." (Underlining supplied.) No, this

is not a quote from The Wealth of Nations, but it very well could be, for it placed reliance on the marketplace to contain the pressures of self-interest; by the government leaving well enough alone, the supplier of services and the user of the services would strike their own point of equilibrium. This language, quoted from Section 4 of H.R. 3133, introduced April 27, 1874 in the 1st Session of the 43rd Congress, is a superb expression of the dominant political-economic attitude of the era, and, most importantly, of the counterpoint that weaves through the early history of Yellowstone -- now supporting the creation and continuation of the Park, and then switching suddenly to support legislative proposals which would have destroyed the concept.

For one thing is certain -- the powerful motives of private interest were inextricably mixed up with motives of unimpeachable public interest in Yellowstone, to the ultimate discomfiture of the proponents of each. The mood of amity and common resolve which brought the Park into existence turned out to have been agreement only on a common means; the goal, which in true innocence on everyone's part had been assumed to be common to all, turned out to have been not one but a dozen, and all different.

The word "innocence" is used cautiously, and with a certain foreboding of criticism. For most of America, though, there was no consciousness of wrongdoing in the singleminded pursuit of private interest. To the contrary, it was wholly consistent with the prevailing mores, and a positive social good in the eyes of the disciples of Adam Smith. And in

curious ways, the pursuit did work for the social good in Yellowstone -- first in helping in its establishment, and then by applying more or less consistent pressure for nearly forty years on Congress to grant special privileges, private interests forced a disinterested Congress to think about national parks and their role in the evolving American society of the 20th Century. Out of this dialectic came the coherent expression of the National Park Service Act, but it hardly resembled the Organic Act of 1872 viewed in the context of its day in Congress.

How did it all start?

Without minimizing the roles of the early travelers ² through Yellowstone, each of whom contributed something to the curiosity that eventually precipitated the Cook, Folsom, Peterson expedition of 1869,³ followed by the Washburn, Langford, Doane expedition of 1870, and the

² See Cramton, Early History of Yellowstone National Park and its Relations to National Park Policies, U.S. Printing Office, 1932; Chittenden, The Yellowstone National Park, Robert Clarke Company, 1895.

³ The Cook, Folsom, Peterson party was certainly the least pretentious of the three parties -- it was comprised of just three men who were curious to see what was in the Yellowstone. As Peterson said, "Myself and two friends - Charley Cook and D. E. Folsom, who worked for the same company at Diamond that I did - after having made a trip to Helena to join the big party and finding out that they were not going to go, decided to go ourselves. It happened this way: when we got back from Helena, Cook says, 'If I could get one man to go with me, I'd go anyway.' I spoke up and said, 'Well, Charley, I guess I can go as far as you can,' and Folsom says, 'Well, I can go as far as both of ye's' and the next thing was, 'Shall we go?' and then, 'When shall we start?' We decided to go and started next day." Haines, The Valley of the Upper Yellowstone, University of Oklahoma Press, 1965, p. 7.

Hayden expedition of 1871, the story begins with the first of these three groups.

It was the report brought back by these men to Helena, Montana Territory that excited the larger, more prestigious Washburn party the next year to make their more famous expedition.⁴ It is about this expedition the most enduring of the folk myths (as some believe) about the birth of the national park concept have developed. With no less authority than the diary of N. P. Langford, the moment was sometime Tuesday evening, September 20, 1870, or the following morning, at a campsite near the confluence of the Firehole and Gibbon Rivers. "Mr. Hedges then said . . . that the whole of it ought to be set apart as a great National Park . . ."⁵ (Underlining, but not the capitals, supplied.) This diary was not published until 1905. As Cramton points out, "Neither in the Doane report, in form a diary, nor in the diary of Mr. Hedges himself, . . . is there any reference to this suggestion or to the national park idea."⁶

Except to buttress the distaste many feel for the distortion of history to enhance a protagonist's position, questioning the veracity of the Langford diary has to serve some larger purpose to be worth doing. It is sufficient at this point to state there are enough positive accomplishments flowing from this expedition and the subsequent efforts of N. P. Langford and the others to permit the gentle detachment of this credit --

⁴ Langford, The Discovery of Yellowstone Park, 1905, p. xi.

⁵ Langford, *supra*, p. 118.

⁶ Cramton, *supra*, p. 19.

the specific idea of a national park -- from this expedition.

Another major claimant of the credit is the redoubtable Professor Ferdinand Vanderveer Hayden. In House Executive Document #75 (45th Congress, 2d Session), which was a letter from Hayden to Secretary of Interior Schurz, Hayden said, ". . . I originated the idea of the park . . . It is now acknowledged all over the civilized world that the existence of the National Park, by law, is due solely to my exertions during the sessions of 1871 and 1872." Hayden had much to be proud of -- as director of the Geological and Geographical Survey of the Territories lodged in the Department of the Interior, he had led a distinguished group of artists and scientists on the expedition of 1871, out of which came Moran drawings and Jackson photographs to reinforce Hayden's skillful lobbying for the Yellowstone bill.

But the quote was too much. Cramton dismisses it with a laconic, "It would be difficult to sustain all the above statement." (Cramton, *supra*, p. 31.) Again, like Langford, Hayden played a significant role in the passage of the bill, and need not have tried so hard for his credit. "Dr. Hayden's work was scattered and disorganized, and he claimed more credit than was due him, but he did make very great contributions during his twenty-five years in the west."⁷ But the first articulation of the idea of a national park was not one of them.

⁷ Stegner, *Beyond the Hundredth Meridian*, Houghton Mifflin, 1953, p. 187.

As Cramton observed, "It is to be regretted that in a field where there would seem to be glory enough for all, the claims to credit should be so conflicting."⁸

The effort to identify the specific source of the "national park idea" might be dismissed as one of the more frivolous pedantic inquiries, except as it is relevant to a larger theme. Such relevancy it has for the purposes of this title, for evidence is now accumulating that in addition to supplying much of the momentum for the Congressional campaign, the Northern Pacific Railroad through one of its spokesmen contributed the title.

As to the first assertion, there appears little question that N. P. Langford's speaking tour in 1870 and 1871 was financed by the Northern Pacific. The relationship is well delineated by Cramton.⁹ Even then the tourist potential of the Yellowstone "and the resulting profits to a railroad penetrating it"¹⁰ was a delicious prospect. No one has

⁸ Cramton, *supra*, p. 28.

⁹ Cramton, *supra*, p. 18.

¹⁰ Oberholger, Jay Cooke, G. W. Jacobs & Co., Phila., 1907, Vol. II, p. 236. There are so many examples through the intervening years of the continued awareness of the importance of the tourist dollar, and the role of national parks as attractions, that another would seem unnecessary to prove the point. But it does add a certain symmetry to the assertion to quote from page 2 of the Minnesota Motorist of January, 1968: "Few dollars are more valuable to Minnesota than those spent by tourists. . . . If Minnesota really wants to become a major tourist state, then it must develop several major tourist objectives . . . major attractions. . . . They should be as good, or better, than . . . Yellowstone and Glacier National Parks (sic!) The proposed Voyageurs National Park on Kabetogama Peninsula could well be one of these major Minnesota attractions" Cf., Arnold W. Green, Recreation, Leisure, and Politics, McGraw-Hill, 1964, Chap. 1.

ever pursued the financing of the visits of Cornelius Hedges and S. T. Hauser to Washington in the winter of 1870 and 1871, nor the cost of the four hundred copies of Scribner's Magazine, in which Langford's article about the Yellowstone had appeared "and placed upon the desks of members of Congress on the days when the measure was to be brought to vote."¹¹ A frequent, and not unreasonable, speculation of the late Jack Ellis Haynes, the beloved dean of all Yellowstone's admirers and its most indomitable chronicler, was that the Northern Pacific must have financed this part of the program, a conclusion supported by elimination of other possible sources of support. There was no organized funding in the Montana Territory to support the cause, and Langford could hardly have sustained it unassisted. Until 1868 he had been Collector of Internal Revenue for the new Territory; his appointment as Governor was a casualty of the Senate's opposition to President Johnson. In 1872 he was appointed National Bank Examiner for the Pacific States and Territories, which was a salaried position, and the first Superintendent of Yellowstone, which was not. In the Helena Herald of January 26, 1871 appeared this note in the Washington letter to the Corrinne Reporter. "N. P. Langford, of Montana, is here working for various interests in that Territory." Certainly the railroad was one of these.

Further corroboration perhaps of the relationship between Langford and the railroads is supplied by the report of the Hayden survey party of 1872 (after the Park had been established) which appeared in the Weekly

¹¹ Chittenden, *supra*, p. 94.

Herald, Thursday, September 12, 1872, captioned, "Dr. Hayden's Geological Survey, Railroads through the National Park." Langford in his role as the first Superintendent accompanied the party. "The principal objective of Mr. Langford's explorations and survey was to determine the practicability, for a wagon road and railroad . . . and also by the Middle Fork and Geysers Basin and falls of the Yellowstone to Bozeman and Montana. . . Mr. Langford pronounces both routes entirely practicable for railroads. . . With a railroad running through the Firehole Basin, with its two thousand boiling springs, and on to the Great Falls of the Yellowstone, and along the marvelous canyon of that river to the Mammoth Springs, thousands of tourists will visit that remarkable region . . . and there can be no doubt that such an enterprise would not only pay a large interest upon the capital invested, but would greatly increase the travel . . . adding largely to the receipts of both the Union Pacific and the Central Pacific; and also that of the Northern Pacific, when it shall have reached the settled portions of Montana . . . The interests of the Northern Pacific, Union Pacific, and Central Pacific alike, demand that a road over one or both of these routes designated be speedily built."

As to the second assertion, that the Northern Pacific through one of its spokesmen contributed the title, the "National Park," a fascinating but unpublished manuscript by Aubrey L. Haines¹² gives added authority.

¹² Mr. Haines, who has served the National Park Service in a number of positions over a distinguished career, is an extraordinary historian. For a period he was officially posted the National Park Service historian for Yellowstone until the position disappeared in one of the periodic reorganizations of the Service. Fortunately, it made no difference in the level of his dedication to recording and analyzing man's history in Yellowstone National Park.

His candidate is Judge William Darrah Kelley. Judge Kelley was a lawyer from Philadelphia, a Republican representative from Pennsylvania, and first and last, "a transcontinental railroad man -- one of the earliest." In this role, he was a spokesman for the Northern Pacific, which at this stage of its career was being urged along by the Philadelphia banking house of Jay Cooke. On June 5, 1871, at the Academy of Music in Philadelphia, Judge Kelley spoke before a large audience about the territory to be traversed by the Northern Pacific. His talk was published under the title, "The New Northwest, an address by Hon. Wm. D. Kelley, on the Northern Pacific Railway, in its Relations to the Development of the Northwestern Section of the United States and to the Industrial and Commercial Interests of the Nation."

The talk was interlaced with references to Lt. Doane's report of the 1870 expedition. As Haines points out, "From such first-hand accounts, coupled with the experiences of his own western tour, this broad visioned man, who had never seen the Yellowstone country, was later able to formulate a clear, logical statement which expressed so exactly and so effectively the grand objective to be served by reservation that he catalyzed alike the unimaginative myopia of the Hayden scientists and the foggy provincialism of the Washburn explorers."

On October 27, 1871, A. B. Nettleton of Jay Cooke & Co. wrote to Dr. Hayden (on stationery of the Northern Pacific):

Dear Doctor:

Judge Kelley has made a suggestion which strikes me as being an excellent one, viz.: Let Congress pass a bill reserving the Great Geyser Basin as a public park

forever -- just as it has reserved that far inferior wonder, the Yosemite Valley and big trees. If you approve that, would such a recommendation be appropriate in your official report?

Yours truly,

A. B. Nettleton

It was, indeed. Hayden did seize upon the idea; he did promote it aggressively, and the Park did come into existence -- but the "catalyst" was Judge Kelley, and at least a part of his motivation was to enhance the fortunes of the Northern Pacific Railway.

It is tantalizing to speculate about the lobbying for the Yellowstone bill. Although there is no evidence in the legislative history of the Organic Act (other than a reference in the House Report to "no pecuniary loss"), representations must have been made by the proponents of the bill that leases and concession fees would support the Park, or not only would Congress not have acted so promptly on the bill, but it probably would not have passed the bill at all. "It should be understood also that the first and most unselfish advocates of the park dedication act had conceived extravagant ideas as to the income which would derive from the leases and privileges that were to be let to hotels, coach lines, and other conveniences and comforts for the travelers and tourists. They thought that this revenue would fully cover the expense of policing the Park, opening the driveways, and guarding the natural treasures of the place. . . So, too, the mistaken hopes of its enthusiastic promoters in anticipating adequate resources from the leases operated had a fortunate consequence; for it is probable that the Congress would not have passed the Act of Dedication if it had not believed that the park would be self-sustaining, or that it would become a financial 'burden' to the public.

Even when the devastation of its desecrators became known, Congress for several years failed to make any appropriation."¹³

From introduction on December 18, 1871, to the signature of President Grant on March 1, 1872, the Legislative process took only ten weeks, which is speedy action in any session. While it contained dedicatory language of lofty purpose, the Act as viewed by most of Congress had these particular virtues: (1) it did not require an appropriation; (2) it was a reservation of land already owned that had little agricultural value; (3) it was effectively lobbied by a broad spectrum of supporters from the railroads and the territorial interests on the one end, and Dr.

13

"Historical and Descriptive Sketch of Yellowstone" by John H. Raftery, which appears as Senate Doc. 752, 60th Congress, 2d Sess., pp. 15-16.

Further confirmation is to be found in the letter from Hayden to Secretary Schurz quoted on page 7, in which he states: ". . . the principal objection was that annual appropriations would be required for its care and improvement. I was myself compelled to give a distinct pledge that I would not apply for an appropriation for several years at least. Had Congress not been assured that no demands would be made upon them for annual appropriations, it is very doubtful the bill would have become law." He continues in his analysis of Congressional purposes and expectations by pointing out the general belief the Northern Pacific would have been completed into Montana, with a branch to the Park. "The failure of this road retarded development . . . for years." Lease requests were pending as soon as the bill appeared before Congress. "It was generally believed by Congress that a sufficient income would be derived from the leases to pay a superintendent and to make all the improvements that would be demanded." This interest died down with the failure of the railroad.

Hayden was unwilling to let Congress disavow the Park. He urged the Secretary to remind Congress that the baby should not only be brought into the house but fed, with these words: "If, therefore, the honorable Secretary of the Interior were to recommend an appropriation for carrying out the purposes of the act, the responsibility for any apparent neglect would rest on Congress alone."

Hayden with his exhibits of unquestioned scientific curiosity on the other; (4) the timing was right -- earlier or later it certainly would have been difficult, if not impossible, to pass any legislation sequestering over 2,000,000 acres.¹⁴ Look at this timetable:

(a) The Park had escaped any serious notice until well after the Civil War, even though there was substantial movement around it. Gold mining and farming had supplanted fur trapping, and permanent settlements were well established with strong regional pride.

(b) No settlement had taken place in the huge area of the Park. Only three claims were ever pressed in Congress for reimbursement of prior property rights.

(c) From the time of the discovery in a public sense less than eighteen months elapsed (if the clock is started with the Washburn party; still less than thirty if it is pushed back to the Cook party), which was sufficient time to generate enthusiasm for the area, but not enough to permit the taking up of claims in any substantial number.¹⁵

¹⁴ Chittenden, *supra*, p. 93. Cf. Cramton, p. 24.

¹⁵ Distance and fear of Indians also had a part to play. Remember, the frontier was far from settled -- Chief Joseph had yet to lead the Nez Perce through the area with General Howard in hot pursuit. One benefit of the pursuit, incidentally, was the first road through the Madison Canyon. (*Haynes Guide*, 1958, p. 73) Also see the affidavit of Matthew McGuirk, dated March 30, 1894, Senate Report to accompany S. 1040, 55th Cong., 1st Sess. "Indians were on the warpath. . . I have known them to steal horses from under the guns of Fort Ellis, 3 miles from the City of Bozeman, and from the time Bozeman was killed in 1867, up to 1875, when Jim Hughes was killed, many other prospectors fell to the scalping knife. . . So we had to be very cautious in traveling."

(5) The unofficial sponsorship of Representative Henry L. Dawes in the House. While the authorship of the bill has several claimants, especially the Montana delegate, W. H. Clagett, Cramton makes an excellent case for Dawes. Dawes was a formidable supporter. Chairman of Appropriations in the previous Congress, he was Chairman of Ways and Means in this one. He was also a staunch supporter of Hayden's survey work; his son, Chester M. Dawes, accompanied Hayden on the expedition of 1871. In honor of Dawes' support, the small sailboat the expedition packed in for use on Yellowstone Lake was named for his daughter.

(6) In the Senate, the sponsorship of Senator Pomeroy was important, although the base of support was apparently much broader than in the House, where the vote was 115 for, 65 against, 60 not voting. Unfortunately, no yea and nay vote was taken in the Senate, but only one voice was raised against it -- that of Senator Cole of California -- and it backfired. Said he, "The geysers will remain, no matter where the ownership of the land may be, and I don't know why settlers should be excluded from a tract of land forty miles square, as I understand this to be, in the Rocky Mountains or any other place. I cannot see how the natural curiosities can be interfered with if settlers are allowed to appropriate them."¹⁶

To this Senator Trumbull (whose son had been a member of the Washburn party) replied, "I think our experience with the wonderful natural curiosity, if I may so call it, in the Senator's own state should

¹⁶ Congressional Globe, Jan. 30, 1872, p. 697.

admonish us of the propriety of passing such a bill as this. There is the wonderful Yosemite Valley, which one or two persons are now claiming by virtue of a preemption. I think it is a very proper bill to pass, and now is the time to enact it. . . Now, before there is any dispute as to this wonderful country, I hope we shall except it from the general disposition of the public lands, and reserve it to the government."¹⁷

(7) It was a Republican bill, and the Republicans were in power. The vote in the house was substantially on party lines, in a day when parties were monolithic and reasonably well disciplined. Whether the vanishing of these two qualities represents a loss from the American scene may be debatable in some circles; there might be more agreement that we have been impoverished by the disappearance of the splendid phrasing of political invective from the American newspaper as it flourished in the last century. The battle over the bill was fairly joined in the Montana territorial press. Not only because they are revealing of the political attitudes of the day, but because of the searching questions posed at this early day about the means of development, a look at some of the editorial comments is useful. Both in Helena, the Herald was a staunch supporter of all good things Republican, including the Yellowstone bill and Delegate Clagett; equally vigorous in its advocacy of the Democratic party, the Rocky Mountain Weekly Gazette handled the Yellowstone bill gingerly, no doubt mindful that many of the principal members of the Helena establishment were ardent supporters of the bill. It would have been indiscreet

¹⁷ Ibid., p. 697.

to make a frontal attack on such respected figures as General Washburn,¹⁸ S. T. Hauser,¹⁹ Cornelius Hedges,²⁰ and Langford. Even with one arm tied behind him, Martin Maginnis (who soon would represent Montana in Congress) fought gamely, even though he was inhibited from personal attacks on the proponents. His arguments are drawn directly from the articles of faith of the prevailing economic beliefs -- unfortunately for him, the blithe ambivalence of the Herald on the exploitation of the Park made it an elusive target.

On February 1, 1872, the Herald, in announcing the bill had passed the Senate, referred first to the efforts of the Helena contingent among others to secure "a park worthy of the Great Republic"; then passing rapidly through a recital of its attractions, prophesied that: "Without a doubt, the Northern Pacific Railroad will have a branch track penetrating

¹⁸ And having just died (January 26, 1871) had undoubtedly acquired a special immunity because of the widespread public reaction to the death of this distinguished territorial figure. He had been a distinguished military figure in the Civil War, a Congressman, and at the time of his death was Surveyor-General of Montana. His prestige was a factor both in the Territory and in Washington in securing support for the Yellowstone proposal.

¹⁹ Hauser was on his way to his first million dollars, the governorship (1885-1887) and, not surprisingly, construction of a railroad -- the Helena and Northern Railway. (Montana Almanac, Montana University Press, 1959-60, pp. 119-20.)

²⁰ Perhaps the most respected of them all, Hedges had attended Yale as an undergraduate, and studied law at Harvard. He was a man of many parts in his life. Among other positions, he was a probate judge, U. S. district attorney, a newspaper man, the first territorial superintendent of public schools, and grand secretary of the Masonic Grand Lodge of Montana from 1872 to his death in 1906. This last role, as a measurement of territorial influence, was the most significant, for it was the Masonic Order that furnished the cohesive force for the Vigilante organization in the territory. (Historical Society of Montana, Vol. VII, p. 181, et seq.)

This Plutonian region, and few seasons will pass before excursion trains will daily be sweeping into this great park thousands of the curious from all parts of the world. A steamboat will be plying upon the crystal waters of Yellowstone Lake . . ."

The article closed with an admonition to those who wanted a wilderness experience to hurry.²¹ "The picture is altogether exhilarating to contemplate and we advise our citizens who would look upon this scene in its wild, primitive beauty, before art has practiced any of its tricks upon nature, to be prepared to go soon.

"Helena, though it probably will be less benefited than Bozeman or Virginia City, by the influx of visitors from abroad, will deserve the brief glory, not only of having made known to the world the wealth of attractive wonders this region contains, but of having conceived the project of making it a National Park, and having pushed it forward to realization before a swarm of greedy sharks had fastened their monopolizing fangs upon it."

The Gazette ignored the prophecy, and gloomily made its prediction in an editorial on February 19, 1872:

"As for ourselves, we regard the project with little favor, unless Congress will go still further and make appropriations to open carriage

²¹ An admonition to be repeated in various forms for the next ninety-six years, and probably destined to continue for many years to come. So far, fortunately, all but a few hundred of the more than two million visitors to Yellowstone each year concentrate their attentions on the loop road, leaving the magnificent wilderness areas of Yellowstone, comprising about ninety-three percent of the total area, in its pristine glory for those who would see it as it was when the Herald first published this warning.

roads through, and hotels in, the reserved district, so that ordinary humanity can get into it without having to ride on the 'hurricane deck' of a mule.

"Already private enterprise was taking measures to render the country accessible to such tourists as are not strong enough to endure the fatigues of a regular exploring expedition. .

"If Congress sets off that scope of country as proposed, all these private enterprises will immediately cease, and as it is not at all likely that the Government will make any appropriations to open roads or hostelrys, the country will be remanded into a wilderness and rendered inaccessible to the great mass of travelers and tourists for many years to come.

". . . we are opposed to any scheme which will have a tendency to remand it into perpetual solitude, by shutting out private enterprise and preventing individual energy from opening the country to the general traveling public. .

"It is the conveniences of travel as much as the grandness and beauty of the scenery, that make these places of general resort, and such conveniences of travel are the result of private enterprise and judicious Government aid. . ."

In acknowledging passage of the Act, the Daily Gazette²² sorrowfully observed:

²² Unfortunately, the files of the Gazette are fragmentary, but this was quoted in the Weekly Herald of March 7, 1872, so it must have been about that date.

"In our opinion, the effect of this measure will be to keep the country a wilderness, and shut out for many years the travel that would seek that curious region if good roads were opened through it and hotels built therein. We regard the passage of the act as a great blow struck at the prosperity of the towns of Bozeman and Virginia City, which might naturally look for considerable travel to this section, if it were thrown open to a curious but comfort loving public . . ."

The battle continued for a few weeks. In the Herald of March 28, 1872, the report of the Committee on Public Lands was reproduced and used to refute the "narrow minded" views of the Gazette, and its support of private development.

This was too much for the editor of the Gazette, who fired back in kind. Included in this editorial is a clear statement of its case for unrestricted private development, together with an ominous but all too true prediction of Congressional neglect:

"The men who were, this season, intending to open roads and erect hotels on the Upper Yellowstone, were doing so for the purpose of attracting travel to these curious and wonderful scenes and not for the purpose of keeping it away by the collection of 'gate money.'

"Their interests as hosts, depending upon the patronage of the public, would lead them to put forth all their efforts to preserve all natural curiosities. Instead of being the despoilers of the beautiful and wonderful, they would be its most zealous and interested guardians, and as such, might be called on to stop the 'vandalism' of Congressional and other

travellers, whose desire to carry off relics has defaced almost every beauty of nature or art in the civilized world; whose hands have not been restrained by the holy influences of venerable temples and cathedrals.

"And as to 'speculators,' who will make that country accessible and convenient, if private enterprise does not -- as the Government has not appropriated and shows no disposition to appropriate a single cent for that object. . ."

These were the parting volleys -- Yellowstone National Park was a reality by act of Congress. But it was a *de jure*, not a *de facto*, existence. Having brought it into existence, Congress now ignored it, perhaps in reliance upon the representations of its backers who had painted a picture of a self-financing institution which, tucked away in the office of the Secretary of the Interior, would be administered with a few rules and regulations. Not only did no one know what he had created, no one was very sure even where its boundaries were. In the next forty-four years, Congress was to be deluged with bills, some good but mostly bad. Opportunists, claimants, dedicated conservationists -- all beat on the doors of Congress with proposals for the expansion, contraction, and elimination of the Park; for railroads, funiculars, toll roads, leases, and steamboats; for a new pattern of administration by Interior, or War, or Agriculture; for criminal codes and civil codes that would extend jurisdiction of Montana, Wyoming, or both.

Small wonder, then, that periodically someone would erupt in Congress as did Senator Ingalls in 1883 (quoted by John Ise, Our National

Park Policy, Johns Hopkins, 1961, p. 37): "It is getting to be a good deal of an incubus, and it is very rapidly assuming troublesome and elephantine proportions. . . I do not know what the necessity is for the government entering into the show business in Yellowstone National Park."

During the period between the Act of Dedication and the act creating the National Park Service on August 25, 1916, there were 150 bills introduced, of which seven passed.²³ These were exclusive of the appropriation measures which were included in the Sundry Civil Bills of 1878 and 1879. They dealt with these subjects:

Right of way	8
Erection of a chapel	2
Roads and vehicles (other than railroads)	23
Repeal	1
To permit admission of cars	1
Administration	12
Leases	23
Jurisdiction, crimes, penalties	34
Boundaries	29
Railroads	29
To build a post office	6
Claims	20
Game management	4

It is with these that Congress was to be unwillingly, and usually unhappily, concerned for the next forty-four years. Caught between the

23

This analysis is based upon the compilation of the Congressional record prepared by Edmond B. Rogers, formerly superintendent of Yellowstone, and then archivist for the Service prior to his retirement. His work involved the microfilming of every bill, report and document that became part of the official Congressional Record. It has been cross-checked against the Cramton listing, which unfortunately goes through only the second session of the 54th Congress in 1897. Interestingly enough, there were several each missed.

Many of the bills included more than one subject, so the total arranged by subject matter is necessarily larger than the absolute total of the bills. Nor do some of these bills lend themselves easily to taxonomic analysis. Draftsmanship, enthusiasm, and a sense of purpose are not always found together in statute books.

cross fires of private interest represented by railroads, concessioners, and local communities, and the ardent conservationists represented principally by Senator Vest of Missouri, Congress reluctantly moved toward a national park policy. Along the way it became necessary to devise a system of jurisprudence for an area which until very recently shared with Platt National Park the distinction of being the only two places within the states where the federal government holds exclusive jurisdiction because of their having been created before the states in which they are located.

For the purposes of this book, some of these categories have to be eliminated. The story of the Yellowstone chapel,²⁴ the struggle to get a post office,²⁵ the claims of Messrs. Baronett, McGuirk, and McCartney,²⁶

24

A superb account of the Yellowstone chapel has been written by Aubrey Haines, entitled A History of the Yellowstone National Park Chapel (1913-1963), and published on the occasion of its 50th Anniversary by the Superintendent's Church Committee. Here again, Yellowstone was a seminal source for national park development; from this chapel originated the "Christian Ministry in National Parks and Recreation Areas," a program now of the National Council of Churches that has spread into similar areas across the United States.

25

S. 3163 (50th Cong., 1st Sess.); S. 488 (50th Cong., 2d Sess.); S. 426 and H.R. 7490 (52nd Cong., 1st Sess.); S. 44 (53d Cong., 1st Sess.); S. 422 (55th Cong., 1st Sess.)

26

There were twelve bills introduced for the relief of these three men between 1892 and 1899 when they were finally paid for their structures. McGuirk and McCartney had built small cabins and made certain other very modest investments of time and money to accommodate visitors. Baronett built and operated a toll bridge across the Yellowstone near Tower Falls. He contributed to the early days of Yellowstone in a much more substantial way than the others had. (Biographical sketch on pp. 291-292 of the Chittenden 1895 edition quoted earlier.) Of particular interest for the information they furnish about the rigors of travel and construction in the Yellowstone of the 70's are the affidavits accompanying the Congressional Reports on the Claims: Sen. Rep. 810, to accompany S. 2540 (54th Cong., 1st Sess.) is one of several of these reports, all of which were based on the same material.

and the right-of-way measures,²⁷ are tempting side roads, but would not advance the central objectives of this excursion materially. Game management is peripheral but still pertinent. It was a slow but steady growth of the realization that many species of wild life were facing extinction that helped preserve the territorial integrity of the Park and forced Congress to think seriously about a system of law enforcement.

It is with the legislative history of these proposals, as they were presented to Congress, that the balance of this book will be occupied: the bills to permit private enterprise, particularly the railroads, to expand in the Park; the attempts either to contract the boundaries to permit rail access to Cooke City, or to expand the boundaries to forestall pressures from the private sector which were threatening the management of the Yellowstone elk herds; and finally, the development of a pattern of law for the administration and protection of the Park.

Out of this mass of legislative proposals, Congress slowly forged a national park policy between the anvil of private interest and the hammer of the conservationists.

²⁷ These were not aimed at Yellowstone, and in fact usually excluded it by specific reference. Rights of way for railroads or non-utility purposes have not been included in this category.