

CHAPTER 19

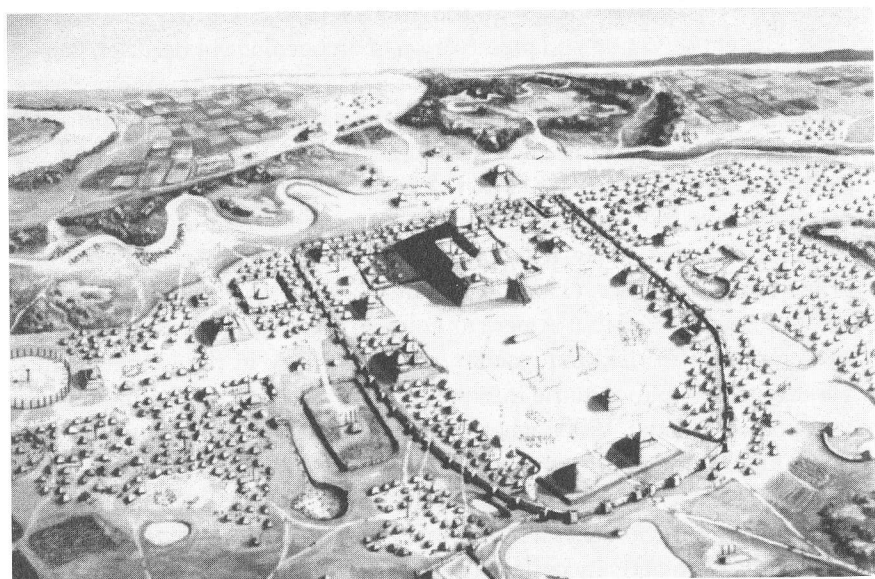
Obstacles to Site Preservation in the United States

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The practice of cultural resource preservation in the United States is markedly different from that found in most countries in the Mediterranean region. Three major obstacles in the history of the United States have affected the conservation and preservation of archaeological heritage, particularly American Indian heritage. The first, and perhaps the most significant of these, is that the United States is a colonial nation with a tragic history of either overlooking, pushing aside, or decimating the first inhabitants of the nation, the American Indians. The colonial backdrop of United States history is pervasive in the nation's heritage management legislation and can readily be observed today in what is considered worthy of preservation. Scholars such as Ferguson (1996), McGuire (1992), Trigger (1980), and Thomas (2000) have noted that America's colonial foundations have affected the entire practice, theories, and teaching of archaeology in the United States. Clear examples of biases in the interpretation of archaeological remains were most apparent in the 1800s when many scholars believed that the large earthen mounds scattered throughout the eastern United States could not have been built by American Indians because the Indians were incapable of such architectural sophistication. In tandem with these beliefs, American Indian skulls were actively collected in an attempt to prove that American Indians were racially inferior (Bieder 1992). Although some would say that these biases have receded, they have existed up to the present in various forms. This history has created a situation of distrust of archaeologists by many American Indians.



a



b

FIGURE 19.1. Cahokia mound sites: a, view of Monk's Mound, Cahokia, in the early 1990s, with a road in the foreground; b, reconstruction of mounds at Cahokia, ca. AD 1150.

The second major obstacle affecting historic preservation in the United States is that cultural resources are protected differentially based on the type of landownership (Elia 1993:427). In the United States, legal ownership of land overrides the significance of heritage sites. Private property owners are afforded considerable rights that are not seen in many other parts of the world, with a distinctive set of rules applying to federal lands that are not applicable to privately owned lands.

The third obstacle is the limited number of sites with architectural features. At least some of the public is familiar with the mound sites in the central and southeastern United States, such as Cahokia, IL (figures 19.1a, b), or the cliff dwellings in the southwestern United States, such as Mesa Verde. Unfortunately, however, prehistoric sites with clear architectural features are relatively rare in the United States. Given the relative dearth of sites with monumental architecture, or any architecture at all, preservationists must overcome great barriers to convince the public that sites with more subtle significance are worthy of preservation. Moreover, because architectural remains are limited in many parts of the United States, conservation issues surrounding the preservation of exposed excavated features are not as pervasive a problem as in the Mediterranean.

The Effects of National Legislation on the Protection of Cultural Resources

The imbalance between the preservation of non-native sites and native sites can be seen in the history of US legislation. In contrast, more recent legislation of relevance to cultural resource heritage reflects a shift in perspective in an attempt to recognize the significance of American Indian heritage sites and to correct the injustices American Indians have experienced. The Antiquities Act of 1906 (16 USC. 431–433) represents the first general law in the United States to provide protection for cultural resources on lands owned or controlled by the federal government. Under this law, an antiquities permit was required for scientific study of sites, artifacts, human remains, or structures on federal properties. Certainly, this law was significant in that, at a relatively early date, archaeological resources were recognized as valuable assets. Nevertheless, the act lacked clarity and did not stipulate the need for permits on any other than federally owned property.

By the 1970s, the law was declared “unconstitutionally vague” and viewed as inadequate (King 1998:197). To strengthen the Antiquities Act of 1906, the Archaeological Resources Protection Act was enacted in 1979. This legislation states that archaeological resources that are at least 100 years old are an irreplaceable part of the American heritage. Furthermore, the law

requires a permit to excavate or remove archaeological resources from federal or Indian lands. As with the Antiquities Act, sites on private properties are not entitled to the same protection.

Although other congressional acts that emerged during the twentieth century were significant in the preservation of national heritage, they continued to emphasize the conservation of archaeological resources on federal lands, while protection of similar resources on private property was primarily left to state and local agencies. Ten years after the Antiquities Act, the National Park Service (NPS) was established. The NPS was the first United States agency to focus on the conservation of natural and cultural resources (King 1998:13). The role of the NPS has evolved over the years. In 1966 the NPS was authorized, as a result of the National Historic Preservation Act (NHPA), to develop and maintain a National Register of Historic Places. This act declared a national policy of historic preservation that includes conservation of structures, sites, and cultural objects, and has been responsible for much of the research that archaeologists conduct on Native American sites in the United States (Ferguson 1996:67). This legislation called for the creation of the President's Advisory Council on Historic Preservation to oversee the review of projects under Section 106 of the law. Amendments approved in 1992 include the formal recognition of "traditional cultural properties" as being eligible for the National Register. These properties include such cultural landscapes as oak groves, fishing spots, traditional gathering areas, and traditional religious areas and sites. Although these types of resources were always eligible for the National Register, many professionals had overlooked them when determining eligibility (King 1998:98).

NHPA represents a significant step in the preservation of historic resources, although it is debatable how effective a listing on the National Register is as protection for a property (King 1998:93-94). Moreover, most of the properties listed on the National Register of Historic Places are historic buildings, some of which are not particularly old. Very few archaeological sites have been determined eligible for the Register, in part because the criteria used to determine eligibility make it easier to recognize historic properties and not archaeological sites. The law (36 CFR 60.4) identifies four criteria for evaluation:

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association.

- A) That are associated with events that have made a significant contribution to the broad patterns of our history; or

- B) That are associated with the lives of persons significant in our past; or
- C) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant or distinguishable entity whose components may lack individual distinction; or
- D) That have yielded, or may be likely to yield, information important in prehistory or history

Generally, properties that are less than fifty years old are not considered eligible for the National Register. There are, however, exceptions for unusual circumstances. Only one criterion is necessary to determine eligibility for any given property. Criterion D is obviously the one most often used to nominate archaeological resources to the Register. Properties listed in the National Register reflect a bias in the United States for recognizing non-Indian sites. For example, of the 2102 sites in California listed in the National Register as of July 2000, only 137, or 6.6%, are significant because they are American Indian archaeological sites, and most of these are recorded in rural counties in the state. Los Angeles County has only four Indian sites in the National Register. Properties that do appear in the National Register for Los Angeles County include a diversity of buildings, including numerous banks, churches, oil wells, and even a Ralph's grocery store on Westwood Boulevard in West Los Angeles. Historic organizations interested in recognizing and preserving buildings and other landmarks in the United States appear to have succeeded in their goals. In contrast, archaeologists have been less successful in recognizing archaeological resources as significant properties in the National Register.

Another policy act of the 1960s that is of particular significance to the preservation of cultural (and natural) resources in the United States is the National Environmental Policy Act of 1969. This act requires agencies to consider environmental impacts on federal projects. At its best, it has the potential to be an open and honest analysis of impacts that balance cultural resource protection with other public issues (King 1998:269). As a result of this act, environmental impact statements are required for any projects that may adversely affect the environment. Cultural resources probably have the highest chance of being protected under this law, but again the law refers only to federal projects, leaving the bulk of projects that may adversely affect archaeological sites under local legislation.

The most recent legislation in the United States that has affected preservation of cultural resources is the widely publicized Native American

Graves Protection and Repatriation Act (NAGPRA) of 1990. The law represents a compromise between American Indian concerns and those of archaeologists and museums. It has provided ownership rights of human remains, grave goods, and items of cultural patrimony to Native Americans—in other words, “awards an equal protection of property rights already extended to other Americans” (Thomas 2000:214). Much of the law is focused on the rights of Native Americans to reclaim ancestral remains that have been stored in museums and academic repositories throughout the country for decades. Museums and agencies that receive federal funds must adhere to the law; therefore, the majority of collections throughout the United States are affected. The law also regulates the excavation of human remains and associated cultural items on federal or Indian land (King 1998:273). Similar to other legislation in the United States, the law has no effect on the excavation of such remains on private lands unless federal oversight is required. Despite its limitations, the law has empowered American Indians to make decisions about their ancestral and cultural remains, a right they had not previously been afforded.

Even though recent legislation has been at least partially successful in providing protection for American Indian ancestral sites on federal lands, approximately two-thirds of all lands in the United States are not protected by federal legislation. This leaves the protection of cultural resources on private properties to local agencies that are usually subject to state laws. These laws vary considerably from state to state and jurisdiction to jurisdiction. A paradoxical situation has arisen in California where state laws provide some of the strongest protection of sites in the nation, but because of corruption within the system, optimal protection is often not afforded (Glassow 1990). In most counties in California, for example, the developer chooses the archaeological consultant. Developers quickly learn and share information concerning which contract archaeologists will provide determination of significance in their favor.

Few jurisdictions have professional archaeologists on their planning staffs. Furthermore, there is no legal system in place that requires archaeologists in the United States to become certified. In some jurisdictions, anyone can hang up a shingle. Underbidding your competition has become commonplace, and, of course, the more limited the excavation and analysis, the more likely that a site will be determined insignificant. This situation has been accurately characterized by Elia (1993) who compared cultural resource management in the United States with the International Committee on Archaeological Heritage Management Charter of 1990. Elia clearly identified underbidding as a problem in contract work and suggested that training at the graduate level be prioritized. Unfortunately, as a result of unscrupulous

archaeologists, research and preservation have been severely hindered, particularly on private properties. Differential preservation of cultural resources according to land status has a long history in the United States that can be seen in the strong principles of private property rights (Elia 1993:426–427).

Private Property Rights and Cultural Resources in the United States

Private property owners in the United States are granted legal rights over archaeological resources that far exceed rights in the Mediterranean and in most regions in the world. Approximately 31% of the 2.3 billion acres in the United States are owned or held in trust by the federal government. State and local governments own 9% of lands. This leaves the majority of property, 60%, privately owned (Wiebe, Tegene, and Kuhn 1998:79) and not subject to federal legislation relevant to cultural resources. Furthermore, private property law contains a clear bias toward development uses that has been built into legislation since the nineteenth century. “This bias is so deeply ingrained in the United States legal culture that it presents itself as a law of nature: the fundamental liberty of private owners to develop their property as they please is the cornerstone of American civil and economic freedom . . .” (McEvoy 1998:94). Concepts of private property rights can be seen in the Fifth and Fourteenth Amendments of the US Constitution. Basically, private property owners are granted ownership rights to all objects embedded in the land, including artifacts and other cultural resources (Price 1991:23). In some jurisdictions, Indian burials are protected by law, but this is not true for all areas. In jurisdictions that do not recognize or protect Indian or unmarked graves, property owners have ownership rights over them. In other words, archaeological resources on private property in some jurisdictions in the United States have not been granted basic protection, even when burials have been encountered.

Probably the most infamous case of looting on private property in the past twenty years occurred at the Slack Farm site in Kentucky, where the property owner leased plots of land for \$10,000 each to looters to dig between the fall harvest and spring planting (Arden 1989). The scale of looting at Slack Farm, a late Mississippian settlement, brought the site to the attention of the Kentucky State Police, who visited the site after receiving a complaint. Unfortunately, this complaint came after two months of destructive digging on the part of the pothunters (Fagan 1988:15). Upon police arrival, looters claimed that no human bones had been encountered. The detective who visited the site observed a very different and disturbing picture. Broken human skeletons were scattered across the farm which now

bled a lunar landscape because of the hundreds of recently excavated. Ten men were charged that day under a state law that made desecrating a human object a misdemeanor punishable by a maximum fine of \$500 or as much as a year in jail. Four of the men were from Illinois and Indiana and could not be extradited for a misdemeanor (Arden 1989). The public outcry and media condemnation over the desecration at Slack Farm, where more than 600 graves were disturbed, brought the site to national attention. In March 1988, the Kentucky Legislature unanimously made desecration of a grave a felony (Arden 1989; Fagan 1988).

In the eastern United States where federal land is particularly limited, many states have followed suit in strengthening existing legislation or enacting new laws that protect unmarked graves (H. Davis 1998). Unfortunately, though, in the Slack Farm case, charges were dropped against the ten men charged with looting. The judge placed them on one-year probation and warned that, if they were caught grave robbing again, they would stand trial on their Slack Farm actions (Scot Free! 1990:14). A Cherokee Indian living in the area remarked that the court's action "just shows the bureaucracy of the state government. It's not what would have happened if it had been a white graveyard" (Scot Free! 1990:15).

Despite recent legislation providing Indian burials the protection that has been afforded non-native burials for hundreds of years, the United States still lags behind most nations in terms of protecting cultural resources on private property. Developing countries in the New World such as Mexico and Peru, at least in theory, offer legal protection of cultural resources whether they are on private or public lands. Part of the problem is that the non-Indian public does not identify with prehistoric Indian sites (Fagan 1988: 100). This situation brings us to the third major obstacle of site preservation in the United States: their low visibility.

How Do You Save a Site When No One Knows It Exists?

Most archaeological sites in the United States lack monumental architecture. Even the larger sites in the southwestern and eastern United States are unfamiliar to much of the public. Lesser-known sites are even more problematic because of their obscurity. Most people are unaware that archaeological sites exist throughout the United States, often within a few miles of where they live. To further complicate efforts to inform the public, archaeologists in the United States have an ethical responsibility not to inform the public of the locations of archaeological sites because of the fear that they will be looted. The State Historic Preservation Officer (SHPO) oversees archaeological site records for each state. In California, twelve regional Information

Centers maintain the site records for the SHPO. Access to these records is restricted to professional archaeologists and landowners. When professional archaeologists want to look at the site records, they must sign an agreement of confidentiality stating they will not disclose information regarding the location of the sites or other sensitive data. Because of this agreement, it can be very difficult for archaeologists to heighten public awareness about sites that are threatened by destruction.

Unfortunately, the vast majority of sites in the United States lack features that the public can readily see. Instead, these sites are marked by small, broken pieces of bone, shell, ceramics, and lithic debitage. In many regions of the United States, including most of California, ceramics were not even used. Most of these sites are, therefore, invisible to the public. Because the archaeologist is required to maintain the confidentiality of site locations, they cannot even heighten public awareness by leading or encouraging site visits. This situation promotes the obscurity of archaeological sites, making it even more difficult to gain public support for the protection of threatened remains. Furthermore, these measures have not been fully successful in curtailing looting, which continues to flourish in many regions of the United States. Any serious looter generally knows the locations of sites and has a library that may rival that of some archaeologists.

It is not just the small hunter-gatherer campsites that are difficult to preserve. One of the most spectacular rock art sites in the United States is Painted Rock (CA-SLO-79) in the Carrizo Plain of central California (D. Whitley 1996:165). The site consists of a massive sandstone outcrop in the shape of a horseshoe situated on the flat plain in eastern San Luis Obispo County. Prior to extensive vandalism, hundreds of painted images covered the interior and exterior walls of the boulder that rises approximately 183 m above the plain (Grant 1993:90). The most extensive paintings were inside the horseshoe that forms a type of natural amphitheater. The site was recognized early on by many, including its Spanish discoverers, who named it La Piedra Pintada, or Painted Rock (Angel 1979). The earliest photographs of this impressive site were taken in 1876. In 1910, Myron Angel wrote a legendary narrative of the rock art site that he called "a temple of the sun-worshippers" (Angel 1979:17). Angel compared the site to the sphinx of Egypt because of its magnitude and significance. In 1967, rock art specialist Campbell Grant wrote:

Today the site is a complete shambles. Beer cans and empty rifle cartridges litter the ground, and the paintings that survived the gunfire are painted over or carved with names and dates. What was the finest rock-painting site in the United States has been completely ruined by senseless vandalism. (Grant 1967:74)

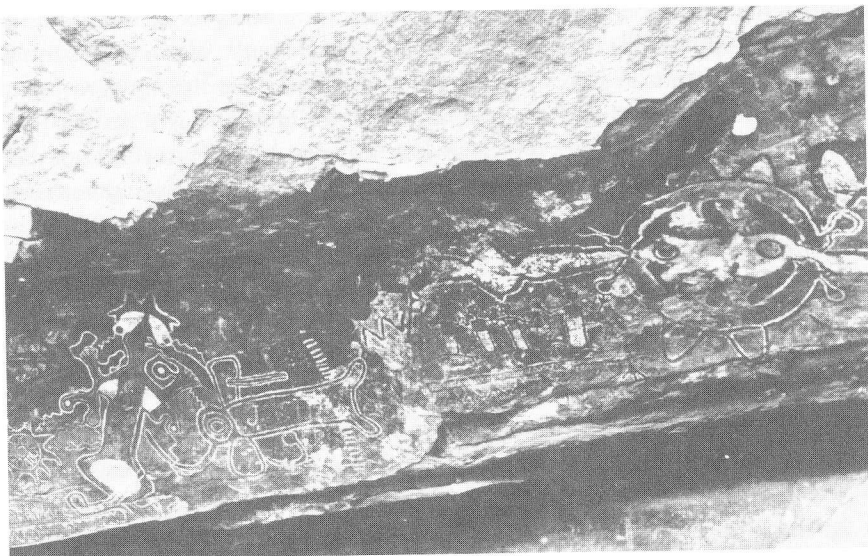
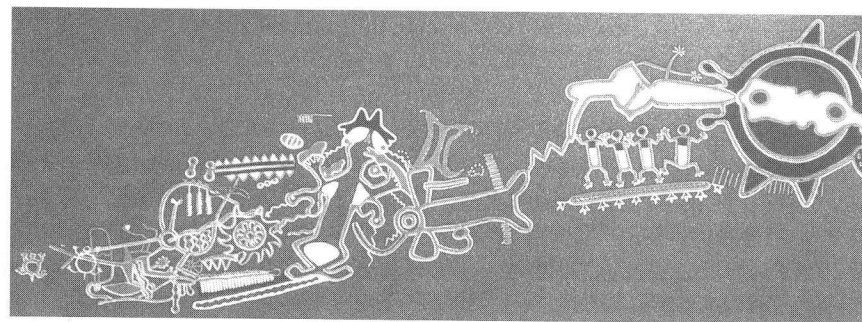


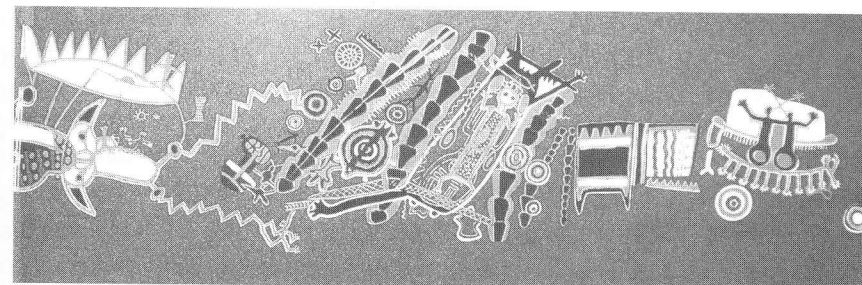
FIGURE 19.2. Photograph, probably from the late nineteenth century, of the main panel at Painted Rock. From the Santa Barbara Museum of Natural History.

Although graffiti can be seen in the earliest photographs (figure 19.2), apparently most of the damage occurred during the oil explorations of the 1920s (Hyder personal communication). Grant (1993: Plates 4, 5) reconstructed some of the rock art based on early photographs and remnants of the paintings that he saw in the mid-1900s (figure 19.3a, b). Monochrome and polychrome pictographs include red, black, and white pigments (Grant 1993: Plate 4). The main panel, over 122 m long (Grant 1993:98), consisted of anthropomorphic and zoomorphic figures, in addition to many other intricately painted images, both abstract and representational. Most of this is now destroyed. Grant (1993:90) suggests that the amphitheater could have easily held hundreds of people. In addition to the main panel, forty-two other painted panels have been recorded on the outcrop, many of which are also quite large. Other features have also been recorded, including twenty-one bedrock mortars and numerous other ground cupules. Surrounding the tremendous rock outcrop is a midden deposit with a wide range of artifacts, including beads, projectile points, stone tools, groundstone, and other artifacts indicating substantial occupation (Johnson, Osland, and Rudolph 1985). A rock art site of this magnitude should have been preserved as a national treasure, but instead is seriously damaged, if not destroyed (figure 19.4). This tragic situation occurred in part because archaeologists have not trusted the public to help with preservation. Until archaeologists educate the public about the significance of a variety of archaeological sites in the

United States, citizens do not even know that we are losing this nonrenewable resource at a rapid pace due to looting and development.



a



b

FIGURE 19.3. Reconstruction of the main panel at Painted Rock: a, left half; b, right half. After Grant 1993.



FIGURE 19.4. Photograph of the main panel at Painted Rock, 1995. The large white patches represent damage.

The Future of Conservation in the United States

Although the United States is the wealthiest nation in the world, it has fallen behind many countries in the Mediterranean and elsewhere in the preservation of cultural resources. Biases concerning what is recognized and preserved in the US clearly exist. Most schoolchildren have heard of such colonial American sites as Jamestown and Williamsburg or mission sites in California and the Southwest. Civil War battlegrounds such as Gettysburg are visited by thousands of schoolchildren. But mention almost any Native American site, even one as imposing as Cahokia, to a grammar school child or their parents, and you probably will get a blank stare in return.

Recent legislation in the United States, such as NAGPRA, has attempted to recognize the significance of American Indian resources and the impact of the destruction of these resources on the American Indian. The loss of resources to the public, however, has not been emphasized. The Sierra Club and other nonprofit organizations have been successful in gaining public support in the preservation of renewable resources. Animal rights activists are frequently in the news in their attempts to subvert indignities against animals. Students in my archaeology classes at San Diego State University are much more likely to speak out against the recent revival of whaling by the Makah Indians than to be concerned about the bulldozing of an archaeological site.

Nevertheless, in the last decade a shift within the archaeological community in the United States can be seen. With the passing of NAGPRA, archaeologists have become aware that they have not taken the time to educate the public effectively about their point of view. The Public Education Committee of the Society for American Archaeology (SAA) was formed in 1990 with a goal to "promote understanding of and respect for other cultures and encourage preservation of heritage resources" (<http://www.saa.org/Pubedu/index.html>). To meet this goal, the SAA prints a newsletter entitled *Archaeology and the Public* that is intended for a wide audience, including educators. A similar emphasis is seen within regional archaeological societies, as well as national preservation groups, that have prioritized public education. The Archaeological Conservancy, the only nonprofit organization in the United States that acquires and preserves archaeological sites in the nation, has bought more than 195 sites. In 1996 the Conservancy printed the first issue of *American Archaeology*, a popular magazine that focuses on significant archaeological sites in the Americas, especially North America. The editors state that the purpose of the magazine is to "help readers appreciate and understand the archaeological wonders available to them, and to raise their awareness of the destruction of our archaeological heritage" (*The Role of the Magazine* 2000:4).

A recent poll regarding the public's knowledge of archaeology reflects the effects of these efforts (Mulvaney 2000:9). The poll was commissioned by the Archaeological Conservancy, Archaeological Institute of America, Bureau of Land Management, Fish and Wildlife Service, US Forest Service, SAA, and Society for Historical Archaeology. The research company, Harris Interactive Inc., randomly selected 1016 adults across the continental United States for questioning. Results of the poll (Ramos and Duganne 2000) indicated that most respondents believe archaeology is important to today's society. Moreover, 99% of the respondents stated that archaeological sites have educational and scientific value, and 96% believed that archaeological resources should be legally protected (Ramos and Duganne 2000:25–26). Those respondents who believed that there should be laws to protect sites were asked additional questions. A majority (85%) thought that there should be laws to prevent the general public from building on a prehistoric Indian village. Finally, about 67% stated that there should be laws preventing the general public from digging up arrowheads or pottery on their own property (Ramos and Duganne 2000:27).

The results of the poll are very promising and indicate that archaeologists and the media have been relatively successful in educating the public about the value of archaeological sites. The archaeological community now needs to provide tools to help the public become advocates of preservation, just as they are for natural resources. More effective protection of cultural resources on private properties will never advance unless there is strong backing among the public. The public is now demanding more professional archaeological reporting and needs tools to determine whether archaeological reporting is adequate. Otherwise, substandard reporting will likely continue to flourish in some areas of the United States. Archaeologists, the public, and American Indians share the common concern that archaeological sites need to be protected. If these groups work together, with professionals providing the legal knowledge on how to attain this goal, we hopefully can curtail the destruction of archaeological sites from development, vandalism, and looting.