Spatial Dynamics of U.S. Cultural Resource Law

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ABSTRACT

The American Antiquities Act, Historic Sites Act, Archaeological and Historic Preservation Act, National Historic Preservation Act, American Indian Religious Freedom Act, Archaeological Resources Protection Act, Abandoned Shipwreck Act, and the Native American Graves Protection and Repatriation Act comprise the basis of our exploration of cultural resource legislation in the United States. Since the passage of the American Antiquities Act in 1906, 1,048 cases have been censored in U.S. courts. We investigate temporal and regional patterns of the case law to establish whether these laws are currently prosecuted throughout the U.S. Our findings suggest that case law is complex and controlled by many factors, including en masse application.

METHODS

Relevant cultural resource management laws were identified, and then a listing of individual cases was created through the use of LexisNexis Academic and Westlaw. Data fields include case name, date, disposition of the resource (i.e., archaeology, architecture, landscape, and other), reason for legal action (i.e., compliance, taking, and other), State, case summary and holdings, U.S. Circuit Court district, and final ruling. This database comprises the foundation of the resulting analysis. Temporal distributions for each statute were plotted alongside the total number of cases. The contingency table was created utilizing the numerical distribution of case law organized by statute and Federal Circuit Court district.

LITIGATION OF CULTURAL RESOURCES

In reviewing the history of litigation, resource-specific trends illuminate the highly variable use of these eight statutes. Legislation was correlated using the highest frequency of challenges by resource (Archaeology, Architecture, Landscape, Shipwreck, and Other) to demonstrate the resource most frequently protected by each statute. In sum, two statutes were found to correlate with archaeology (ARPA and NAGPRA), three with architecture (HIA, ARPA, and NHPA), one with landscapes (AAA), one with shipwrecks (ASAA), and one with other (ABPA). In the case of the ABPA, other is most frequently correlated with religion.

DISCUSSION (CONTD.)

Statistically, it was expected that compliance would be the principal motivator for these statutes, an expectation that was later confirmed during analysis. In general, the amount of litigation within the category of Other was also expected due to the high variability of legal challenges coupled with the ingenuity of litigation strategies. However, it was not predicted that the ARPA would be dominated by litigation focused upon architectural resources or that the AAA and ARPA would have been employed within the framework of shipwreck-based litigation.