

2006

# Protecting the Past: A Comparative Study of the Antiquities Laws in the Mid-South

Douglas L. Reed

*Ouachita Baptist University*, reedd@obu.edu

Trey Berry

*Southern Arkansas University*, treyberry@saumag.edu

Follow this and additional works at: <https://scholarlycommons.obu.edu/articles>

 Part of the [Cultural History Commons](#), [Law Enforcement and Corrections Commons](#), and the [Other Legal Studies Commons](#)

---

## Recommended Citation

Reed, Douglas L. and Berry, Trey, "Protecting the Past: A Comparative Study of the Antiquities Laws in the Mid-South" (2006). *Articles*. 125.

<https://scholarlycommons.obu.edu/articles/125>

This Article is brought to you for free and open access by the Faculty Publications at Scholarly Commons @ Ouachita. It has been accepted for inclusion in Articles by an authorized administrator of Scholarly Commons @ Ouachita. For more information, please contact [mortensona@obu.edu](mailto:mortensona@obu.edu).

## **Protecting the Past: A Comparative Study of the Antiquities Laws in the Mid-South**

Doug Reed  
Ouchita Baptist University

Trey Berry  
University of Arkansas, Monticello

*Governmental efforts to protect antiquities can be found in the early twentieth century; however, the most significant policy efforts began in the late 1960s and early 1970s. This manuscript focuses on the properties/items protected under current statutes in Arkansas, Louisiana, and Texas and provides background on major federal policies. Moreover, it addresses the penalties imposed for violating these regulations. The efforts made to enforce these rules are also addressed along with suggestions for improving implementation of antiquities policies in all three states.*

### **Introduction**

In 1911-12 a young Harvard graduate named Clarence Bloomfield Moore traveled up the Red River in Louisiana, Arkansas, and Texas in search of Indian artifacts. Moore, whose background was in English literature, became the first person to describe and unearth artifacts from Caddo and Tunica sites in large numbers in the Red River Region. Without archaeological training, Moore dug pots out of Indian burial mounds and adjacent areas. The early period in which Moore dug these artifacts combined with the fact that Moore eventually donated his entire collection to the Museum of the American Indian (now in Washington, D.C.) makes his methods and discoveries more palatable today (Moore, 1912; Neuman, 1984).

In recent years, professional Indian artifact hunters throughout the United States have carried out their practice primarily for economic reasons. Pot hunting and selling has become a lucrative business in many areas. Most of those engaged in this practice care little, if any, for the scientific and cultural aspects of their finds. It appears the high prices paid for a single pot encourages illegal digging. In addition, some officials express concern over the hobbyists who collect Indian artifacts. They contend that while professional thieves may do a great deal of damage to an individual site, there are several hundred thousand amateurs who contribute to the problem. (Clarke, 1998).

Because of the damage diggers have inflicted in recent years, states in the Mid-South and indeed the nation have felt it necessary to enact laws to protect the artifacts and grave sites of Native Americans. Arkansas, Louisiana, and Texas follow

this pattern. All three states have laws protecting Native American artifacts and sites as well as legal penalties for those violating these areas. These state statutes support several federal actions designed to protect historically significant artifacts and locations. In order to place these state guidelines in context, it is necessary to provide a brief overview of the national policies addressing this arena.

According to Carol Carnett, attorney for the Legal Aid Bureau of Maryland, the major federal legislative actions are: the Antiquities Act of 1906, the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974, and the Archeological Resources Protection Act of 1979. Finally, the Native American Graves Protection and Repatriation Act of 1990 is an additional congressional action designed to protect these artifacts.

Key provisions of the Antiquities Act include:

- is the first federal policy to preserve historic and prehistoric sites on federal lands;
- provides a permit system to study archaeological sites on federal and Indian lands;
- gives the President the authority to create national monuments of federal lands to protect historic landmarks, prehistoric structures, and objects of scientific interest;
- imposes possible criminal misdemeanor charges with fines up to \$500 and/or 90 days imprisonment.

The National Historic Preservation Act provides the following protection tools:

- establishes a policy of cooperation with nations, tribes, states, and local governments to protect historic sites and places;
- creates the National Register of Historic Places;
- develops the Advisory Council for Historic Preservation;
- expands the National Historic Landmarks policy;
- gives consideration to sites with historic, architectural, archaeological, engineering or cultural significance;
- provides procedures for approving state and local government programs; and
- protects sites that have yielded or may yield important information concerning U.S. history or prehistory.

The Archeological and Historic Preservation Act addresses two major areas:

- requires Federal agencies to preserve historic and archaeological data, which might be destroyed due to federal construction projects and other federally licensed projects; and

- provides up to one percent of project funds to conduct archaeological data recovery activities, which is in addition to any monies needed for project planning.

The Archaeological Resources Protection Act is the most important federal policy addressing the removal of antiquities:

- imposes the first significant criminal penalties for vandalizing or destroying an historic or prehistoric site on federal or Indian lands;
- establishes penalties for the sale, purchase, transport, or receipt of any archaeological resource, if the resource was removed from public or Indian lands;
- allows penalties to include fines of up to \$250,000 and imprisonment up to five years;
- requires a permit from a federal land manager before anyone can remove any archaeological item from federal or Indian lands;
- demands those applying for permits establish that the activity will enhance the knowledge of archaeological resources; and
- requires the approval of the Indian tribe before issuing archaeological permits on Indian lands (Carnett, 1991).

Finally, the most recent policy is the Native American Grave Protection and Repatriation Act. Some of the principal regulations of this law are that it:

- gives ownership of human remains and funerary objects to the appropriate tribe;
- provides for ownership or control of cultural items (remains and objects) found on federal or Indian lands;
- requires that anyone discovering historical Native American items on federal or Indian lands report this finding to the appropriate federal land manager (civil penalties for violators);
- specifies if a burial is discovered during a construction project on federal or Indian lands, work at the site must stop for at least thirty days;
- instructs museums and agencies with holdings of Native American remains and funerary items to inventory the items, identify their cultural affiliation (if possible) and notify the affected Native American tribe or organization (may require returning the items to the tribe);
- indicates that a tribe must expressly give up control of sacred items;
- provides civil penalties for museums that fail to return appropriate artifacts; and
- restricts the purchase, sale, or transport of Native American human remains and funerary/sacred items whereby penalties are based upon the value of the objects (Shackley, 1995; Killheffer and Guip, 1995).

Although each legislative effort provides some form of antiquities protection, they all have significant limitations. For example, the Archaeological Resources Protection Act, the most significant of these laws, limits prosecutions to those taking artifacts from public lands. Therefore, collectors contend the items in their possession are obtained from their personal property. The burden rests on federal authorities to prove that the materials came from federal property. Thus, this is a key reason for states to have their own antiquities protections. Potentially, these regulations could fill the legal gaps for those seeking to protect and preserve cultural items.

This paper focuses on four key issues. First, it describes the properties and items protected under current statutes in Arkansas, Louisiana, and Texas. Second, it explains the penalties imposed for violating these regulations. Third, it notes the efforts made to enforce these rules. Finally, it presents suggestions for improving implementation of antiquities policies in all three states.

### **Properties and Items Addressed in Antiquities Laws**

The items covered by the antiquities laws in Arkansas, Louisiana, and Texas are very similar. All of the states list funerary and sacred objects as protected by their laws as well as relics, specimens, and human skeletal remains. Each state statute says that these objects may be prehistoric or historic in nature. This allows such places as battlefield sites and and/or pioneer areas to be covered as well (Antiquities Code of Texas, 1977, 1983, 1987; State Antiquities Act – Arkansas, 1967, 1991, 2007; Treasures on State Lands Act – Louisiana, 1970, 1974, 1989, 2001).

Because of their coastal areas along the Gulf of Mexico, Louisiana and Texas also list sunken ships and treasure troves in their protected purview (Texas, 1977; Louisiana, 1974). Arkansas differs from the other two states in one area concerning the items covered by protection. Only Arkansas includes historical, prehistoric, archeological or anthropological items that are found above or below the surface as protected objects. This prevents arrowhead hunters and other surface relic seekers from being exempt from penalties (Arkansas, 1967; Early, 2007).

The properties that are protected by these laws, on the other hand, do vary from state to state. In the Antiquities Code of Texas (originally passed in 1977), for example, only federal and state lands are protected under the law. This adheres closely to the national Native American Graves and Repatriation Act of 1990, which focuses on regulation public lands. The Texas law was revised in 1983 and 1987, but only for wording clarifications (Texas, 1977, 1983, 1987).

Louisiana's law is similar in scope. The Treasures on State Lands Act was passed in 1970 and amended in 1974, 1989, and 2001. The law mainly protects state lands, but it does include a clause that says that the law is meant "to protect and preserve prehistoric... objects of antiquity which have historical value or which are

of interest to the public...” (Louisiana, 1989). This seems to leave open the option to protect areas outside of state lands if they are deemed significant.

The Arkansas law was one of the first of its kind in the South. Passed in 1967 and amended in 1991 and again in 2007, it is the most specific and inclusive among the three states. The State Antiquities Act protects any archeological site “containing physical remains of human life or human activities that are no less than one hundred (100) years old.” In addition, the law defines an archeological site as any “aboriginal mounds, forts, earthworks, village locations, burial grounds, historic or prehistoric ruins, mines, or caves that are or may be the sources of a significant amount of artifacts” (Arkansas, 1967, 1991, 2007).

In more recent years, Louisiana and Arkansas have taken steps to increase the focus on the protection of burial grounds in each state. In 1991, the Grave Protection Act was enacted in Arkansas. This law and the subsequently amended law in 2007, increased the penalty for displaying skeletal remains and desecrating burial grounds. The law protects these sites on state and private lands. Louisiana passed a similar statute in 1992 entitled, the Louisiana Unmarked Human Sites Preservation Act. Both state laws protect historic and prehistoric sites (Grave Protection Act – Arkansas, 1991; Louisiana Unmarked Human Burial Sites Protection Act, 1992).

### **Penalties Imposed for Violation of State Antiquities Statutes**

The penalties for violating these state laws also vary. However, the trend is for states to increase fines and penalties for these offenses. Arkansas follows this pattern of increasing both criminal classification and fines for violators. The original law passed in 1967 placed misdemeanor penalties for all those guilty of trespass, removal or vandalism of archeological sites and artifacts on private or public lands. A fine of \$50 - \$500 and/or one to six months in jail was stipulated in the law as punishments. In 1989 the penalty was increased to a Class A misdemeanor and in the 1991 Graves Protection Act, the first offense was placed as a Class A misdemeanor and subsequent violations as Class D felonies. In the same law, anyone “knowingly displaying human skeletal burial remains” for profit would be committing a Class B misdemeanor (Graves Protection Act, 1991).

The amended 2007 Arkansas statute designated some sites as “state archeological landmarks” and anyone who removed artifacts from such a designated location that valued more than \$1000 would face a Class D felony for the first offense and a Class C charge for repeat offenders. If the value of the artifacts appraised for less than \$1000, that person could be convicted of a Class B misdemeanor for the first offense and a Class A misdemeanor for subsequent offenses. In addition, a “vandalism” clause was also strengthened in the 2007 amendment to match the penalties previously stated for removing artifacts. According to the Arkansas Attorney General Office no individual has been convicted under these provisions (Arkansas, 2007; Newman, 2000; Early, 2007).

The Louisiana statute, amended in 1989 and 2001, places strong fines on any violators. The law reads that anyone knowingly violating protected sites shall be subject to a fine of “no more than \$10,000 and not more than one year imprisonment, or both.” However, if the commercial value of the artifacts exceeds \$500 than that person could be fined “\$25,000 and face two years imprisonment, or both.” Upon the second offense at this level, Louisiana lawmakers made the fine the heaviest of any Mid-South state: “not more than \$100,000, or imprisonment not more than five years, or both” (Louisiana, 2001; Eubanks, 1999). The state also places heavy civil penalties on violators including the loss of equipment involved in the violation as well as the cost of repatriation and repair of artifacts and/or remains. Since these laws were enacted in Louisiana in 1970, no one has been convicted of violating these standards (Hawkins, 2007).

Texas currently has the lightest penalties among the three states. According to the Antiquities Code of Texas in 1977, violations will result in a misdemeanor charge with a fine of \$50 - \$500 or not more than thirty days in jail, or both. The right is reserved in this law for the Attorney General’s office to bring civil charges against the accused (Texas, 1977). Ironically, the state holding the lightest penalties has been the most successful in prosecuting perpetrators. To date, three individuals have been convicted under the 1977 Antiquities Code of Texas. Two of these occurred in Travis County and one occurred for violations on state park lands (Martin, 2000).

Since 2001, the state of Texas has attempted to take a strong public education/public advocacy approach to protecting archaeological sites and antiquities. Several different groups have been enlisted in these public education efforts. The Indian Burial and Sacred Grounds Watch group maintains a website where citizens may be educated about antiquities laws, archaeological sites and practices, as well as a site to report violations of NAGPRA and Texas antiquities statutes. The Texas Historical Commission (THC) also supports a program called “Visionaries in Preservation.” This program designates communities who are willing to work as partners with state agencies to preserve historic and prehistoric sites. The THC selects up to four Texas communities each year as partners in this endeavor. As a Gulf Coast state, Texas has created an advocacy group to protect marine archaeological sites. The “Marine Stewards” program organizes a group of volunteers to serve as preservationists and watchdogs for important shipwreck locations. These volunteers are organized within the Texas Archaeological Stewardship Network (Indian Burial and Sacred Grounds Watch, 2007; Visionaries in Preservation Program, 2007; Marine Archeology, 2007).

### **State Efforts to Enforce Antiquities Laws**

A common theme among these states and their antiquities laws is a lack of enforcement. These enforcement problems arise for several reasons. First, unlike the fish and game offices or state parks, these archaeological agencies have no

enforcement personnel. They must rely upon state and local law enforcement officials. The violations associated with antiquities protections do not seem to be high priorities for most of these individuals. This is not the subject matter most officers would associate with police work. Moreover, these regulations are added to many other job expectations. This is one reason why Texas has moved toward the public advocacy approach (Early, 2007; Hawkins, 2007; Martin 2000; Newman, 2000).

Enforcement is also affected when local law officers are unaware of state laws. If the state rules are not communicated to those entrusted with enforcing the policy, they will not be carried out in an effective manner. This situation occurred in Arkansas when a suspicious situation came to the attention of law enforcement personnel because individuals were digging on leased property. The local sheriff, after failing to receive information from the Arkansas Archaeological Survey, contacted a university faculty member concerning excavation at this suspected Indian mound. He discovered that these actions were illegal (Tucker, 2000). It is difficult to enforce policies when agencies do not provide clear directives.

Finally, limited resources and public attitudes influence the enforcement process. Local officials are expected to provide a variety of services. These actions cannot be given equal attention due to budgetary and personnel constraints. Moreover, the public places a higher priority on reducing violent crime than preventing individuals from digging for Indian pots. Overall, communication problems and personnel issues reduce the effective enforcement of state artifact protection initiatives.

### **Implementation of State's Antiquities Laws**

Implementation appears to be the major problem with these three states' antiquities laws. The policies are on the books, but enforcement is limited. As noted earlier, no one has been convicted under Arkansas and Louisiana antiquities statutes, and only three individuals were tried and convicted under the Texas laws.

Those groups interested in improving the enforcement of these laws should find it helpful to focus on various education steps (Clarke, 1998). Greater public support and an informed legal community can be a catalyst for these efforts. In addition, states can expand their public outreach programs to meet their particular needs. These states can also engage in several practical activities to increase enforcement.

One such practical activity is for the appropriate state agency to underwrite specialized educational expenses for key law enforcement personnel. For example, the heads of the state sheriffs and prosecutors associations could receive stipends to attend the Archaeological Resources Protection Training Program. This program is offered through the Federal Law Enforcement Training Center. It provides short courses on how to: investigate archaeological crime scenes; engage in undercover



operations; and prosecute looters (FLETC, 2007). Moreover, these training programs are offered at various military installations throughout the country. The agency can encourage the FLETC to offer the course at a nearby military base, thus reducing the agency's expenditures.

Another strategy is volunteering to provide programs at meetings of law enforcement personnel. For example, when state prosecutors or sheriffs gather for their statewide meetings, a seminar could be provided on the status of antiquities laws. This might be an additional reason to provide funds for organizational leaders to attend the federal training program. Once these individuals are aware of problems associated with protecting antiquities, they may be more receptive to this program topic. As noted earlier, these statutes were adopted in the late 1960s, but it appears many law enforcement officers are not familiar with their content.

Seminars in the state law schools would be another method to influence legal personnel. Many of the potential attorneys will practice in these states. In addition, some students will eventually be prosecutors and deputy prosecutors within the legal system. If the agency can make this group more attentive to antiquities concerns, it should prove valuable in the future.

These states should also take steps to improve the knowledge base of local law enforcement. They could provide information packets that describe the key provisions of the state's antiquities laws. Moreover, the information could provide references to additional resources available to legal personnel. Also, the packets could be sent to large private and corporate landowners throughout the state. For example, in south Arkansas, Weyerhaeuser and International Paper have vast land holdings. Private employees of these companies are responsible for monitoring timber growth and other field operations. These workers may be in the best position to discover illegal artifact excavations. Therefore, it seems appropriate to provide them with pertinent information.

The antiquities officials should seek greater cooperation with other state agencies. For example, all three states have rangers who enforce state provisions within the park system. Also, the states have fish and game employees who are engaged in various field operations. These state employees can receive training and information concerning archaeological matters. With greater visibility, it could become part of their job responsibilities.

Public education seems essential for increasing the effectiveness of antiquities protection. Antiquities information brochures at state parks could describe the state initiatives to the general public. This may be one way to improve public awareness of state policies. In another public educational effort, Louisiana has included archaeology with the public school curriculum (Hawkins, 1991). This approach could be adopted by other states. Finally, archaeology workshops would be developed for elementary and secondary teachers.

Agency personnel or trained volunteers could give programs at local civic club meetings. Initially, the focus could be in regions where artifacts are known to exist. Alternatively, the agency could begin their education campaign in areas where suspected violations are occurring. It may be effective to have local law enforcement in attendance at these sessions. As noted earlier, amateurs or hobbyists are considered the principal violators of antiquities laws. This behavior might be dissuaded if it was made clear that such activities are criminal offenses. Moreover, these educational efforts could encourage the public to contact law enforcement when they observe suspicious behavior.

Some of these suggestions would require agency funding. However, most would be part of their on-going public relations efforts. Providing seminars for law schools, law enforcement personnel, agency employees, and the general public fit into the current agency mission.

These suggestions and actions are just a starting place for those who consider antiquities protection a high priority. The ultimate goal is to change the cultural view that minimizes the importance of these archaeological resources. Since this is the objective, change will come very slowly. However, these efforts may serve as initial steps toward this goal.

**References**

- Antiquities Code of Texas. 1977, 1983, 1987.
- Archeological Resources Act (Louisiana). 1989.
- Archeological Treasure Act (Louisiana). 1974.
- Carnett, Carol. 1991. "Legal Background of Archeological Resources Protections." <http://www.nps.gov/archeology/PUBS/TECHBR/tch11A.htm> (visited 7 June 2007)
- Clarke, Wendy Matman. 1998. "Plundering National Treasures." *National Parks* 72 (March/April: 28-33.
- Early, Ann. Arkansas State Archeologist. Interview. June 12, 2007.
- Eubanks, Thomas. Division of Archeology. Interview. December 10, 1999.
- Federal Law Enforcement Training Center. 2007. "Archeological Resources Protection Training Program." <http://www.fletc.gov/training/programs/forensics-and-investigative/archeological-resources-protection-training-program-arptp> (7 June 2007)
- Grave Protection Act (Arkansas). 1991.
- Hawkins, Nancy W. 1991. "Classroom Archaeology: Including Archaeology in Existing Curricula; an Example from Louisiana. In *Protecting the Past*, ed. George S. Smith and John E. Ehrenhard. Boca Raton: CRC Press.
- Hawkins, Nancy. Division of Archaeology (Louisiana). Interview. May 31, 2007.
- Indian Burial and Sacred Grounds Watch. 2007. <http://www.ibsgwatch.imagedjinn.com/learn/lawsstate.htm>
- Killheffer, Robert K.J. and Guip, Amy. 1995. "Reburying the Past." *Omni* 17 (Winter): 30-35.
- Louisiana Unmarked Human Burial Sites Preservation Act. 1992.
- Marine Archeology. 2007. <http://www.thc.state.tx.us/archeology/aamarine.html>.
- Martin, Bill. Texas Historical Commission. Interview. December 9, 1999.

- Moore, Clarence Bloomfield. 1912. "Some Aboriginal Sites on the Red River." *Journal of the Academy of Natural Sciences of Philadelphia*. Vol. 14.
- National Historic Preservation Act of 1966.
- Native American Graves Protection and Repatriation Act. 1990.
- Neuman, Robert W. 1984. *An Introduction to Louisiana Archaeology*. Baton Rouge: Louisiana State University Press.
- Newman, Brad. Arkansas Attorney General's Office. March 1, 2000.
- Shackley, Steven. 1995. "Relics, Rights and Regulations." *Scientific American* 272 (March): 115-7.
- State Antiquities Act (Arkansas). 1967, 1991, 2007.
- Treasures on State Lands Act (Louisiana). 1970, 1974, 1989, 2001
- Tucker, Troy. Clark County Sheriff. Interview. February 7, 2000.
- Visionaries in Preservation Program. 2007.  
<http://www.thc.state.tx.us/visioninpres/vpprogram.html>.