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Justin McBrayer & Sarah Roberts-Cady

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The Case for Preserving Bears Ears

Justin McBrayer and Sarah Roberts-Cady

Department of Philosophy and Political Science, Fort Lewis College, Durango, CO, USA

ABSTRACT

In December of 2017, President Trump reduced the size of Bears Ears and Grand Staircase-Escalante Monuments by 2 million acres. Conservatives rejoiced, and progressives railed. Yet neither side has clearly identified the moral facets of the situation. The crucial moral question is this: How ought public property be regulated to protect landscapes with *cultural* significance? We offer criteria for determining when something has cultural value and argue that the moral merits of the present case turn on whether the reduction adequately addresses the cultural interests at play.

Peer Commentary

In December of 2017, President Trump reduced the size of Bears Ears National Monument by 85% and Grand Staircase-Escalante National Monument by 50%. This action raises serious legal questions. Very few presidents have ever shrunk a National Monument, and the courts have not weighed in on whether doing so is within a president's legal powers. But this action also raises serious moral questions. Ought the land be granted the protection that comes with National Monument status? And if so, why? We answer these moral questions with a focus on Bears Ears in particular.

To date, the public debate has yet to clearly identify the central moral facets of the situation. For example, some conservatives have suggested that the issue at stake is about who controls the land—private as opposed to public control or local as opposed to federal control. Along these lines, President Trump said of the decision to reduce the size of the Monuments, 'Some people think that the natural resources of Utah should be controlled by a small handful of very distant bureaucrats located in Washington. And guess what? They're wrong.'¹

This is a red herring. The land in question is public and federally controlled, regardless of National Monument status. And the US Forest Service has made clear that the designation doesn't negatively impact state or private property.² Further, President Obama's National Monument designation actually *increased* regional control of the federal lands by giving formal decision-making roles to five tribes with historical connections to the land.³ As such, Bears Ears is the first national monument co-managed by tribes. When President Trump reduced the size of the Bears Ears monument, he also reduced this regional, tribal

representation. Ironically, his decision gave more control over the land to bureaucrats in Washington, not less.

On the other hand, because National Monument status limits fossil fuel development, many liberals are tempted to frame the issue solely in environmental terms. That is, some people argue that one ought to keep Bears Ears a National Monument in order to formally preserve a slice of the natural environment. This is not persuasive.

Now progressives are probably right that the United States ought to preserve more of its land. This obligation can be grounded in our duties to future generations of humans,⁴ thought experiments based on Rawls's original position,⁵ or duties to the non-human denizens of our planet.⁶ And no matter the justification, it's plausible that we have yet to discharge our obligation to preserve. As a whole, the world formally preserves about 14% of its land, with the US coming in below average with about 13% of its total land holdings preserved.⁷ How does this compare with the preservation efforts of other countries? Well, if we rank the 217 territories reporting protected land from that with the most land preserved (New Caledonia at 54%) to the least (San Marino at 0%), the United States comes in at number 110, right behind Azerbaijan.⁸ It's not very impressive.

However, the case for protecting the natural environment alone does not provide a reason for protecting Bears Ears in particular. That's because the same environment-based obligation would provide a good reason to preserve any similar-sized plot of land to the north, south, east, or west. While Bears Ears is habitat for diverse species of plants and animals, including some endangered species, concerns for the natural environment alone wouldn't dictate preserving Bears Ears over some other swath of land with more endangered species, higher biodiversity, higher carbon sequestering potential, etc.

If we have an obligation to protect this particular landscape, as opposed to some other tract of land, it is not because of the value of the natural environment alone but the value of the cultural sites it contains. In this case, the crucial interest (though we grant not the only one) is that of protecting items or landscapes with cultural significance. And in this category, Bears Ears is a textbook case with an estimated 100,000 Native American archaeological sites, including cliff dwellings, kivas, granaries, and art panels.

But what makes something a cultural interest? Here's our thought. The sufficient condition for genuine cultural interest is disjunctive. A place or object has cultural value when *either* a significant number of existing people hold it to have such value *or* when future people are likely to hold it to have such value. In either case, there is a cultural interest at stake.

First, consider a case in which a significant number of existing people are convinced of the value of some place or object. Obvious examples include historic Jerusalem, historic Mecca, the Grand Canyon, Uluru, or Liberty Hall. In each case, many people hold those places to be culturally important. The destruction or significant disruption of these places would have negative consequences for these individuals. They have an interest in seeing them preserved.

And notice that the negative consequences would be forthcoming even if their beliefs, worldviews, or assumptions are unreasonable, unproven, or even false. Suppose there is no God. Even so, as long as Christians, Jews, and Muslims *think* there is a God, Jerusalem will retain its sacred aura. Suppose members of the tribes in the American Southwest cannot prove they are actually descendants of the people who once inhabited Bears Ears. Even so, as long as members of those tribes *think* of those people as their ancestors, Bears Ears will have cultural value.

Second, consider a case in which few (if any) *existing* people find an object or place valuable, but it is likely that future people will do so. For example, on June 6, 1944, no one found the D-Day beaches valuable in this way. But given the significance of that day's events, even in 1944 it was clear that future people would likely come to value the beaches for their historic and cultural value.

The case of Bears Ears meets both conditions for establishing a cultural interest. First, there are a significant number of people who find the landscape and Native sites to be rich in cultural value. As Jim Enote, Director of the A:shiwi A:waan Museum recently noted, Bears Ears '...is a place many Native peoples in the Four Corners area continue to define as home, soul, and the cultivation of cultures.'⁹ Second, given what we know about the popularity of other Native sites like Mesa Verde and Walnut Canyon, future people are likely to share this value. Therefore, the landscape of Bears Ears is culturally valuable.

Let's be clear about what we're not saying. We are *not* saying that cultural interests dictate what morally ought to happen with *private* property (indeed, the two of us disagree). And even on public land, we are not saying that cultural interests always outweigh other interests like recreation, protection of the natural environment, or natural resource development. Those things are important, too, and will often outweigh the cultural interests at stake.

However, there is no such competing interest in the case of Bears Ears. For example, many recreation opportunities will be enhanced, and the natural environment will be preserved as well. And while it's true that mining, drilling, and other resource-extraction activities will be curtailed, those activities are not genuinely in our best, long-term interests anyway. Everything we know about fossil fuels tells us that it is in our long-term best interest to use them less rather than more and that a sustainable future is one where they are left in the ground. Further, given the remote, rugged location and current market prices, there is not even a short-term economic interest in fossil fuel development in this area.¹⁰

Given all this, President Trump's decision to shrink the boundaries of the Bears Ears National Monument was a moral mistake. It reduced the total acreage of land under preservation while also exposing a culturally important landscape to significant disruption. In particular, the reduction leaves important sites like Farm House, Fry Canyon, and Tower Ruins unprotected from road and natural resource development. Finally, it does all this while reducing regional control and advancing spurious interests that are at odds with the long-term flourishing of the human species.

Notes

1. As quoted in the *New York Times* December 4, 2017.
2. <https://www.fs.fed.us/sites/default/files/bear-ears-fact-sheet.pdf> In particular, the US Forest Service report notes that 'the national monument designation will not impact the rights of private landowners...'
3. The Navajo, the Hopi, the Ute Mountain Ute, the Northern Ute, and the Pueblo of Zuni all were given representation on a commission governing the Bears Ears National Monument.
4. E.g. Barry (1997).
5. E.g. Norton (1989).
6. E.g. Donaldson and Kymlicka (2011).
7. UNEP-WCMC (2018).
8. The World Bank Data (2018).
9. http://www.bearscoalition.org/wp-content/uploads/2016/03/Bears-Ears-bro.sm_.pdf

10. <http://insideenergy.org/2017/09/01/oil-gas-eyes-bears-ears-fringes/> In particular, the Associate Director of Oil & Gas at the Utah Division of Natural Resources reports that ‘there are dozens of abandoned oil and gas wells within monument boundaries, but none are active, according to Utah’s Division of Oil, Gas & Mining. The last producing well in the monument was drilled in 1984 and stopped producing in 1992. The cost of getting oil and gas to market from such a remote and rugged area could be prohibitive, and experts say the fossil fuel deposits just aren’t economically recoverable.’

Disclosure statement

No potential conflict of interest was reported by the authors.

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