

# THE WILDERNESS MYTH: HOW THE FAILURE OF THE AMERICAN NATIONAL PARK MODEL THREATENS THE SURVIVAL OF THE IYAELEMA TRIBE AND THE BONOBO CHIMPANZEE

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## I. INTRODUCTION

The Wilderness Act of 1964 defines wilderness as a place “untrammelled by man, where man himself is a visitor who does not remain.”<sup>1</sup> However, for the indigenous peoples of America and the world, the wilderness ideal at the core of the American national park system is fundamentally flawed. It has resulted time and time again in expulsion of native peoples from their ancestral lands.<sup>2</sup> As chief Luther Standing Bear said, “Only to the white man was nature a ‘wilderness,’ and only to him was the land ‘infested’ with ‘wild’ animals and ‘savage’ people. To us it was tame.”<sup>3</sup> The wilderness myth spans the globe and is predominantly the byproduct of America’s history, crystallizing after its civil war when America established the first national park in the world.

### A. Creating a Wild World

A century after the creation of the first national park, about 1,000 more protected areas, parks, and reserves were added in America and around the globe. Since then, the numbers have exploded to over 100,000.<sup>4</sup> By 2008, more than eleven million square miles, over twelve percent of the land on earth, have been legally designated as a protected area.<sup>5</sup> At the same time, millions of indigenous people have been displaced because human inhabitation was seen as a disturbance of “natural order.”<sup>6</sup> One sociologist has determined that the number of displaced persons in Africa alone exceeds fourteen million people.<sup>7</sup>

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<sup>1</sup> National Wilderness Preservation System, 16 U.S.C. § 1131(c) (2006).

<sup>2</sup> Mark Dowie, *Conservation Refugees*, in *THE FUTURE OF NATURE: WRITING ON A HUMAN ECOLOGY FROM ORION MAGAZINE* 65, 66 (Barry Lopez ed., 2007) (also available at <http://www.orionmagazine.org/index.php/articles/article/161/>).

<sup>3</sup> MARK DAVID SPENCE, *DISPOSSESSING THE WILDERNESS: INDIAN REMOVAL AND THE MAKING OF THE NATIONAL PARKS* 133 (1999).

<sup>4</sup> Dowie, *supra* note 2, at 70.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

This massive displacement is being driven by political and legal pressure from international conservation groups such as the World Wildlife Fund (WWF).<sup>8</sup> In fact, a 1993 lawsuit filed by the WWF demanded that the government of India increase the total percentage of protected areas, specifically designed to conserve tiger populations, by eight percent.<sup>9</sup> As a result of the WWF's lawsuit, the government expelled at least 100,000 Adivasis (the original peoples) from their homes by 2002, and at least two million more people are expected to be expelled over the next decade.<sup>10</sup>

The express mission of the WWF is "the conservation of nature."<sup>11</sup> On its website, the WWF states that to achieve this mission the organization "combines global reach with a foundation in science, involves action at every level from local to global, and ensures the delivery of innovative solutions that meet the needs of both people and nature."<sup>12</sup> The organization is "committed to reversing the degradation of our planet's natural environment and to building a future in which human needs are met in harmony with nature."<sup>13</sup> Ironically, the WWF has even created its own "Statement of Principles" towards harmonious relations between humankind and nature, specifically stating its intentions to fully cooperate with indigenous populations as partners.<sup>14</sup>

The statement lists a number of international agreements and conventions protecting the rights of indigenous people, including Agenda 21, the Convention on Biological Diversity, the International Labour Organization's Convention 169, and the United Nations' Declaration on the Rights of Indigenous Peoples.<sup>15</sup> The sixteen-page document describes the intensity of the WWF's commitment as well as examples and policies enacted towards those ends.<sup>16</sup> The document states that the WWF makes "special efforts to respect, protect, and comply with their collective and individual rights, including customary as well as resource rights, in the context of conservation initiatives."<sup>17</sup> However, the sum of the organization's history and its current practices prove the opposite.

In the Democratic Republic of the Congo (DRC), the WWF, along with other organizations, is quietly leading the charge to expel the Iyaelima people, an indigenous tribe, from their traditional homeland.<sup>18</sup> The Iyaelima reside exclusively within the Salonga National

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<sup>8</sup> John Falk, *Why the Bonobos Need a Radio and Other (Unlikely) Lessons From Deepest Congo*, NAT'L GEOGRAPHIC ADVENTURE, Feb. 2008, at 50, 53, available at <http://www.nationalgeographic.com/adventure/john-falk/bonobos-congo.html>. One official with the Wildlife Conservation Society (WCS) said of the situation, "And the problem is, [Jo Thompson] is giving the Iyaelima the impression that they have the right to live in the Salonga, and they don't." *Id.*

<sup>9</sup> Dowie, *supra* note 2, at 71.

<sup>10</sup> *Id.*

<sup>11</sup> WWF, About WWF, <http://www.worldwildlife.org/who/index.html> (last visited Jul. 7, 2011).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> WWF INTERNATIONAL 2008, INDIGENOUS PEOPLES AND CONSERVATION: WWF STATEMENT OF PRINCIPLES (2008), at 2, available at <http://www.worldwildlife.org/what/communityaction/people/partneringwith/WWFBinaryitem8943.pdf>, IUCN - WORLD CONSERVATION UNION / WCPA - WORLD COMMISSION ON PROTECTED AREAS, WWF - WORLD WIDE FUND FOR NATURE, PRINCIPLES AND GUIDELINES ON INDIGENOUS AND TRADITIONAL PEOPLES AND PROTECTED AREAS, at 2, available at <http://www.worldwildlife.org/what/communityaction/people/partneringwith/WWFBinaryitem6053.pdf>.

<sup>15</sup> WWF STATEMENT OF PRINCIPLES, *id.* at 2.

<sup>16</sup> *Id.* at iii-8.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> Falk, *supra* note 8.

Park, and groups such as WWF justify their expulsion in order to safeguard the bonobo ape, *Pan paniscus*.<sup>19</sup> The WWF characterizes this area, as well as the entire Congo Basin, as “one of the most important wilderness areas left on Earth,” and they aim to stop “the loss of forest and freshwater biodiversity” ostensibly through “conservation partnerships with governments and local people . . . .”<sup>20</sup>

However, the bonobo’s survival to the present day directly correlates to the presence of the Iyaelima.<sup>21</sup> The fate of both the Iyaelima and the bonobo now depends on the new policies and legal structure enacted by the DRC’s government. Their survival depends on turning the tide away from the traditional model of conservation predicated upon the wilderness myth.

Some legal commentators have stated that the “North American Conservation Model” should be used as a template because it was so “successful” in the United States.<sup>22</sup> However, this article aims to prove the exact opposite is the case, and the American model is ill-suited for international application. Further, the domestic “success” of the American conservation model came at the expense of indigenous tribes. Applying the American model across the globe has resulted in the continued decimation of traditional peoples.

## B. Roadmap

This article will provide a detailed analysis of the American model. It begins by explaining exactly what the American wilderness myth is and how it developed through history. It next explains how this myth fueled protection measures via national parks, and then examines the political, economic, cultural, and legal process behind that creation. The results of this national protection system reveal the fundamental flaws with the system, namely that it ignores the environmental history of the landscapes it protects, expels indigenous tribes from ancestral homelands, and engenders a legal system based on fantasy. Some one hundred years after the system began, advocates found it to be insufficient and created the Wilderness Act of 1964 that codifies the wilderness myth into law.

Once America had secured its own wilderness, conservation efforts were exported abroad through both soft and hard measures. After analyzing the formation and results of the American model, this article examines the history of conservation in Africa. Specifically, it deals with the policy measures being implemented for species specific conservation in the DRC, which predictably come at the expense of indigenous people who reside in the parks. This note advocates that the traditional American model, predicated upon the cultural myth of wilderness, must be abandoned for a community based conservation model (which will also be detailed). Effective conservation goes hand in hand with human rights, and both can be ensured through the implementation of the correct policies.

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<sup>19</sup> *Id.*

<sup>20</sup> WWF, Congo Basin, <http://www.worldwildlife.org/what/wherewework/congo/index.html> (last visited May 4, 2011).

<sup>21</sup> Jo Myers Thompson, Lubuta Mbokoso Nestor, & Richard Bovundja Kabanda, *Traditional Land-Use Practices for Bonobo Conservation*, in THE BONOBOS: BEHAVIOR, ECOLOGY, AND CONSERVATION 227, 228 (Takeshi Furuichi & Jo Thompson eds., 2010). I would also like to thank Dr. Thompson for forwarding an advance copy of her chapters, because my research and phone conversation with her came a few months before the book became available.

<sup>22</sup> Andrew E. Kohn & Heather E. Eves, *The African Bushmeat Crisis: A Case for Global Partnership*, 30 ENVIRONS ENVTL. L. & POL’Y J. 245, 247 (2007).

## II. THE AMERICAN WILDERNESS MYTH

The wilderness myth is, simply, that when European colonists arrived on the North American continent they encountered a “virgin wilderness—an unpeopled land of pure nature.”<sup>23</sup> The reality is that the North American landscape was neither “virgin” nor “unpeopled,” but was “an environment already significantly transformed by the natives who lived there.”<sup>24</sup> It would take several centuries for this myth to evolve and achieve dominance, but now it is one of “the most enduring myths of American history.”<sup>25</sup>

### A. A Wild, Desolate Place

The early European colonists took their views of wilderness from the Bible, which in their estimation subjugated wilderness to the will and control of humans. Entrepreneurs and adventurers, like John Smith, came to the New World not “to test their religious convictions,”<sup>26</sup> but because they knew that “natural resources were bountiful . . . in fish, timber, and furs.”<sup>27</sup> Accounts from English reconnaissance trips “read like shopping lists, carefully itemizing everything according to its use and potential value.”<sup>28</sup> This wilderness would provide people with the opportunity to enrich their lives, not as a place worthy of preservation vis-à-vis “legal protection from economic activity.”<sup>29</sup> Trees, wildlife, and fertile ground were all sources of great wealth and prosperity for the early colonists,<sup>30</sup> and early Americans “continually sought territory” towards those ends.<sup>31</sup>

By 1850, American settlers had cleared 460,000 square kilometers of forests stretching from Maine to Florida.<sup>32</sup> By 1910, an additional 800,000 square kilometers of forest were cut down (or intentionally burned to save time).<sup>33</sup> Wilderness was not a place to be preserved.

### B. The “Indian Wilderness”

After the early colonists had secured dominion over their own borders, their view of wilderness changed, for a brief moment, to one that at least nominally recognized the place of indigenous people. This “Indian wilderness” was the result of “a self-reciprocating maxim: forests were wild because Indians and beasts lived there, and Indians were wild because they lived in the forests.”<sup>34</sup> However, this view was based on an equally untrue myth, a romanticized belief in the “noble savage.”<sup>35</sup> The noble savage myth equated the actions of indigenous

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<sup>23</sup> Melanie Perrault, *American Wilderness and First Contact*, in AMERICAN WILDERNESS: A NEW HISTORY 15, 17 (Michael Lewis ed., 2007) [hereinafter AMERICAN WILDERNESS].

<sup>24</sup> *Id.* at 20.

<sup>25</sup> *Id.* at 17.

<sup>26</sup> *Id.* at 20.

<sup>27</sup> *Id.* at 24.

<sup>28</sup> *Id.* at 22.

<sup>29</sup> Steven Stoll, *Farm Against Forest*, in AMERICAN WILDERNESS, *supra* note 23, at 55, 57.

<sup>30</sup> *Id.* at 55 *passim*.

<sup>31</sup> *Id.* at 68.

<sup>32</sup> *Id.* at 61.

<sup>33</sup> *Id.*

<sup>34</sup> SPENCE, *supra* note 3, at 10.

<sup>35</sup> Perrault, *supra* note 23, at 17.

communities as “careful not to alter the natural environment in any way lest he or she disturb nature.”<sup>36</sup> This myth is demonstrably false.<sup>37</sup>

Indigenous cultures shaped their environment just as much as the early settlers, but their preferred method was the controlled use of fire.<sup>38</sup> These controlled burns achieved numerous objectives, such as returning “valuable nutrients to the soil,” clearing “underbrush to facilitate movement” through forests, and removing “vermin and disease from the surrounding area.”<sup>39</sup> Indigenous hunters even used fire to “drive game animals into a confined space” so that they could be killed more easily.<sup>40</sup> Early Europeans knew this fact, and their accounts, from California to Virginia, “noted that the Indians regularly burned forests and fields.”<sup>41</sup>

### C. The Formation of the Wilderness Myth

The shift away from wilderness as a place to either fear or find riches began in the middle of the nineteenth century. At the time, America was a country plagued by “a pervasive sense of national uncertainty and self-criticism,”<sup>42</sup> facing “the growing rift between North and South, the persistence of slavery, and increasingly pronounced divisions between ethnic and religious groups.”<sup>43</sup> During the antebellum period, social critics began to use the idea of wilderness “as a corrective symbol of all that was wrong with America.”<sup>44</sup> People turned wilderness into a “repository of values that people once invested in the monarchy or the church[:] moral purity and social stability.”<sup>45</sup> While the exploitation of America’s natural resources had provided tremendous material wealth, many now looked towards wilderness as an escape from “the dehumanizing excesses of their increasingly urban, increasingly industrial civilization.”<sup>46</sup> Additionally, America was plagued by a “nagging sense of cultural inferiority”<sup>47</sup> to their European forbearers as Americans lacked the great architecture, art, and literature of their mother countries.<sup>48</sup>

Wilderness became the answer to these social concerns, and at the same time, a “source of [America’s] cultural greatness.”<sup>49</sup> America’s “authors and artists began turning to the new country’s wilds” to create a new cultural movement.<sup>50</sup> In 1836, Ralph Waldo Emerson provided “the manifesto of American transcendentalism” with his essay *Nature*.<sup>51</sup> The essence of

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<sup>36</sup> *Id.*

<sup>37</sup> *See id.*

<sup>38</sup> *Id.* at 19.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 20.

<sup>42</sup> SPENCE, *supra* note 3, at 14.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Steven Stoll, *supra* note 29, at 67.

<sup>46</sup> Bradley P. Dean, *Natural History, Romanticism, and Thoreau*, in AMERICAN WILDERNESS, *supra* note 23, at 73, 76.

<sup>47</sup> JOHN WARFIELD SIMPSON, DAM!: WATER, POWER, POLITICS, AND PRESERVATION IN HETCH HETCHY AND YOSEMITE NATIONAL PARK 19 (2005).

<sup>48</sup> *Id.*

<sup>49</sup> Dean, *supra* note 46, at 76.

<sup>50</sup> *Id.*

<sup>51</sup> Mark Stoll, *Religion “Irradiates” the Wilderness*, in AMERICAN WILDERNESS, *supra* note 23, at 35, 44.

Emerson's view was that wilderness existed in a state "unchanged by man,"<sup>52</sup> and only in this unchanged state could Americans discover enlightenment.<sup>53</sup>

While artists and thinkers, like Emerson, led to an artistic and philosophical "American Renaissance"<sup>54</sup> predicated on wilderness, others took a far more utilitarian approach. In 1864, George Perkins Marsh published his groundbreaking work *Man and Nature* that "linked the protection of critical forest areas . . . to the maintenance of water quality and soil fertility."<sup>55</sup> Like Emerson's *Nature*, Marsh's treatise of "forest management practices"<sup>56</sup> became an "immediate international best seller."<sup>57</sup> However, Marsh was concerned with human physical well-being, not spiritual nourishment. Marsh's work established "a major milestone in environmental planning and conservation in the United States, for it dispelled the notion that human action and environmental outcome were separate."<sup>58</sup>

John Muir would bridge the gap between these two worlds, uniting Emerson's philosophy of the spirit with Marsh's critical inquiry of environmental phenomenon. Muir would dedicate his life to exploring, in as scientific a way as possible, the beautiful environment of Yosemite while simultaneously praising its divine character.<sup>59</sup> He would also be instrumental in the first movements to preserve these areas from any perceived threats from white entrepreneurs and indigenous people (whom Muir perceived as the main threats to pristine wilderness).<sup>60</sup> Muir combined Emerson's views of wilderness and Marsh's proposal that humans can negatively affect the environment.<sup>61</sup> Therefore, to keep the essence of wilderness intact, it would require complete removal of anyone in it.<sup>62</sup> Muir's intent was clear, and he often wrote that he could not have a wilderness experience or enjoy its "solemn calm" with indigenous people there.<sup>63</sup>

Muir saw the indigenous people of California as "dirty . . . deadly . . . and . . . lazy."<sup>64</sup> He thought the tribes inhabiting the Yosemite Valley were "mostly ugly, and some of them altogether hideous"<sup>65</sup> with "no right place in the landscape."<sup>66</sup> When Muir initially decided to live in Yosemite, because it was the "one place on earth where God meant him to be," his writings had not yet achieved national prominence, so he had to find gainful employment through other means.<sup>67</sup>

Muir took a job "running a small sawmill for his employer, James Hutchings"<sup>68</sup> who would later be one of the instrumental plaintiffs in a legal dispute over land claims within the

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<sup>52</sup> Dean, *supra* note 46, at 77.

<sup>53</sup> *See id.* at 77-78.

<sup>54</sup> *Id.* at 76.

<sup>55</sup> SIMPSON, *supra* note 47, at 21.

<sup>56</sup> *Id.* at 22.

<sup>57</sup> *Id.* at 19.

<sup>58</sup> *Id.*

<sup>59</sup> *See* AARON SACHS, *THE HUMBOLDT CURRENT: NINETEENTH-CENTURY EXPLORATION AND THE ROOTS OF AMERICAN ENVIRONMENTALISM* 27-29 (2006).

<sup>60</sup> *See id.* at 313-14.

<sup>61</sup> *See id.* at 316.

<sup>62</sup> *See id.* at 313.

<sup>63</sup> SPENCE, *supra* note 3, at 109.

<sup>64</sup> *Id.* at 23.

<sup>65</sup> *Id.* at 109.

<sup>66</sup> *Id.*

<sup>67</sup> SIMPSON, *supra* note 47, at 40.

<sup>68</sup> *Id.*

valley.<sup>69</sup> In his spare time at the mill, Muir wrote scientific treatises that appeared in various East Coast and national publications.<sup>70</sup> Soon, his articles about Yosemite regularly appeared in the *New York Tribune*, the *Overland Monthly*, *Harper's*, *Scribner's*, and others.<sup>71</sup> Eventually, Muir devoted his life to writing full time, and this allowed him to support “federal ownership of wild, mountain lands . . . in order to safeguard their wonders for public enjoyment.”<sup>72</sup>

It became clear to Muir that federal protection was the only solution that could keep “God’s first temples” safe from “the juggernaut of selfish greed,” which protected the spiritual value of nature.<sup>73</sup> Muir once characterized his enemies as “temple destroyers, devotees of ravaging commercialism [who] seem to have a perfect contempt for Nature, and, instead of lifting their eyes to the God of the mountains, lift them to the Almighty dollar.”<sup>74</sup>

#### D. Wilderness Reborn

The paradigm envisioned by Muir became the foundation of the U.S. government’s early conservation actions, in which “the only positive relationship a human being could have with the natural world was as a visitor.”<sup>75</sup> It would establish a precedent that is followed even today. There are a number of flaws with a conservation model predicated on these uniquely American cultural and quasi-religious beliefs. Most obviously, such models are doomed to failure when they are applied in foreign countries and thrust upon citizens who have a completely different belief system or cultural history. Following such a course amounts to cultural imperialism when it is exported internationally, raising a number of concerns.

The U.S. government first faced these issues when creating the initial protected areas in the western United States. As a result, protection came at the expense of numerous Indian tribes. While these tribes occupied the same land as their white neighbors, they lived in a completely different world.

The antebellum period in America had always been marked by periods of conflict between the U.S. government and Indian tribes, which was understandable because both groups were competing for many of the same geographic areas, but there was a substantial shift around the time of the Civil War.<sup>76</sup> When the Plains Wars began, white Americans no longer viewed Indians to be “picturesque and ‘noble.’”<sup>77</sup> Instead, Indians became viewed as “treacherous, blood thirsty savages.”<sup>78</sup> This view, combined with Manifest Destiny, “required the physical or cultural destruction of all native peoples” because these so-called savages no longer inhabited “a distant region.”<sup>79</sup> Instead, the Indians were occupying “coveted lands within the national domain.”<sup>80</sup> A journalist of the time best summed up the new prerogative of the growing nation when he explained that the Indians had to understand that when “the march of empire demands

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<sup>69</sup> *Id.* at 35.

<sup>70</sup> *Id.* at 43-44.

<sup>71</sup> *Id.* at 40, 44.

<sup>72</sup> *Id.* at 47.

<sup>73</sup> Mark Stoll, *supra* note 51, at 45.

<sup>74</sup> *Id.*

<sup>75</sup> SACHS, *supra* note 59, at 330.

<sup>76</sup> SPENCE, *supra* note 3, at 29-30.

<sup>77</sup> *Id.* at 30.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

this reservation of yours, we will assign you another; but so long as we choose, this is your home, your prison, your playground.”<sup>81</sup>

### III. YOSEMITE NATIONAL PARK

#### A. Yosemite Before the Wilderness Laws

When the first white Americans began entering the Yosemite Valley in the mid-1800s, they were confronted with an indigenous society that was remarkably complex and composed of numerous tribes.<sup>82</sup> However, historical evidence shows that the valley was predominantly inhabited by the Ahwahneechee people.<sup>83</sup> The Ahwahneechee were part of a larger tribal group called the Sierra Miwok.<sup>84</sup> The Miwok living west of the valley sometimes called the Ahwahneechee the “johemite,” which translates as “some of them are killers.”<sup>85</sup> The whites would come to call all indigenous people in the valley by their translation of the word “Yosemite.”<sup>86</sup>

Archaeological evidence shows that the Ahwahneechee had inhabited the Yosemite area for at least six hundred years before the mid-nineteenth century and probably replaced another tribe that had been living there long before.<sup>87</sup> They chose to live there not only because they believed that the remoteness of the valley would protect them from invading Americans and rival tribes, but because they viewed it as a unique place made by the Creator.<sup>88</sup> The Ahwahneechee relied on a multitude of resources found in the valley including, but not limited to, “trout, sweet clover, potent medicinal plants, roots, acorns, pine nuts, fruits . . . as well as deer and other animals.”<sup>89</sup> In the 1830s, the first small groups of white explorers came to the Yosemite Valley seeking beaver furs and geographical information.<sup>90</sup>

However, it was the 1849 gold rush that brought white people streaming into the area “like locusts, devouring the landscape.”<sup>91</sup> The stream of white people into the valley also led to outright warfare with the indigenous people in what became known as the Mariposa Indian War.<sup>92</sup> While there were wrongs committed on both sides during the conflict, the whites who came into valley, desperate for gold, thought that “[n]either the land nor the Indians had rights[:] the land was merely property for economic exploitation, and the Indians were merely nuisances to be removed.”<sup>93</sup> The Indians had to combat both miners and state militia battalions whose solution to the conflict was an attempt to forcibly relocate the Indians to the San Joaquin

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<sup>81</sup> *Id.* at 27.

<sup>82</sup> *Id.* at 104.

<sup>83</sup> *Id.* at 103.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *See id.* The Ahwahneechee were actually not hostile to other groups and commonly intermixed with other tribes such as different groups of Sierra Miwok, Paiute, and Yokut peoples. This complexity was probably the main reason why whites who first encountered them called all Indians there “Yosemite” to make it easier. *Id.* at 104.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> SIMPSON, *supra* note 47, at 5. The Indians placed no value on gold and traded it freely with whites. *Id.* at 9.

<sup>91</sup> *Id.* at 6.

<sup>92</sup> *Id.* at 8-9.

<sup>93</sup> SIMPSON, *supra* note 47, at 7.

Valley.<sup>94</sup> While some tribes accepted the government's offer and moved to nearby reservations, the Awahneechee and some others refused.<sup>95</sup> After a few years of war, peaceful relations were established largely due to the efforts of Chief Tenaya, and the tribes co-existed with the white miners.<sup>96</sup>

It was the influx of white miners and entrepreneurs that threatened the pristine nature of the Yosemite Valley, not the Indians who had inhabited it for generations. In fact, when the U.S. government passed the Yosemite Park Act of 1864, there were "nine preemption claims . . . two hotels, and . . . assorted other structures and improvements already in place."<sup>97</sup> Like John Smith, the first whites who came to Yosemite had no use for it as a source of spiritual awakening; they wanted to use it as a source of economic enrichment. Thus, one of the earliest legal fights over wilderness began.

### B. The Yosemite Park Act of 1864

In 1864, President Lincoln signed the Yosemite Park Act that set aside fifteen square miles of the public domain and gave it to the then sixteen year old state of California.<sup>98</sup> This area included the Yosemite Valley and the Mariposa Grove, the home of the giant sequoias.<sup>99</sup> The act specified that the state of California should accept the grant "upon the express conditions that the premises shall be held for public use, resort, and recreation [and] shall be inalienable for all time."<sup>100</sup> This early act of preservation was the result of a "fundamental change in American environmental values" that had begun with Emerson.<sup>101</sup>

The Yosemite Valley and Mariposa Grove were ideal places to preserve because they appealed to a sense of grandeur that evoked a powerful sense of natural wonder and national pride.<sup>102</sup> However, making a part of the landscape untouchable was only conceivable, because "[n]ature and wilderness no longer posed the same physical and moral threat that they did to the early colonists and pioneers."<sup>103</sup> Lawmakers had unwittingly drawn the battle lines that remain to the present day between three distinct groups: indigenous tribes who lay claim to use the land as they had done for centuries before, whites who sought economic enrichment from extracting natural resources, and the whites who sought to preserve the areas as pristine wilderness areas. It would be left up to the American government through the use of its legal system to balance these interests.

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 10.

<sup>96</sup> SPENCE, *supra* note 3, at 102.

<sup>97</sup> SIMPSON, *supra* note 47, at 26.

<sup>98</sup> An Act Authorizing a Grant to the State of California of the "Yo-Semite Valley," and of the Land Embracing the Mariposa Big Tree Grove," 13 Stat. 325 (June 30, 1964) (codified as amended at 16 U.S.C. § 48 (2006)), available at [http://www.cr.nps.gov/history/online\\_books/anps/anps\\_1a.htm](http://www.cr.nps.gov/history/online_books/anps/anps_1a.htm).

<sup>99</sup> See SPENCE, *supra* note 3, at 35.

<sup>100</sup> SIMPSON, *supra* note 47, at 25.

<sup>101</sup> *Id.* at 23.

<sup>102</sup> See *id.* at 29-33.

<sup>103</sup> *Id.* at 23.

### C. Legal Challenge to the New Designation of Yosemite

The Yosemite Act of 1864 gave control and management powers to the government of the state of California.<sup>104</sup> It allowed leases “not exceeding ten years”<sup>105</sup> to be granted on portions of the valley, but all of the income from them would be used in the “preservation and improvement of the property.”<sup>106</sup> However, improvements for tourism were delayed because a number of lawsuits had been filed over private land claims under a conflicting 1841 California state law that was intended to manage the number of white settlers moving into the state.<sup>107</sup>

This 1841 law allowed pioneers to claim up to 160 acres of land, which then required that the claimant “improve and occupy it for six months, at which time they could purchase it.”<sup>108</sup> California’s settlers would frequently make claims on land that had yet to be surveyed, including land inside the boundaries of the 1864 Yosemite Park Act.<sup>109</sup>

The Supreme Court of the United States, in *Hutchings v. Low*, gave a major victory to wilderness preservation when it struck down the claims within the valley.<sup>110</sup> The Court explained that settlers claiming title to land under the California preemption law do “not thereby acquire such a vested interest in the premises as to deprive Congress of the power to divest it by a grant to another party.”<sup>111</sup> It ruled that the plaintiff’s case failed as the land claimed was “excluded from any possible sale by appropriation to perpetual public use, resort, and recreation.”<sup>112</sup> Even though the plaintiff’s claims in Yosemite were held to be invalid, the state government decided that people like Hutchings, who had already built hotels, were important players in creating the new tourism industry.<sup>113</sup> Therefore, the state government gave Hutchings \$24,000 “in exchange for the rights and title to all his properties.”<sup>114</sup> In addition, Hutchings and others were allowed a ten year lease which was permissible under the 1864 Yosemite Park Act.<sup>115</sup> In comparison, the indigenous people received no money, no business interest, and no other deals from the California state government.

In *Hutchings*, the Supreme Court made it abundantly clear that any “Indian title” to the disputed land “had been extinguished” by the 1841 law.<sup>116</sup> Although the Court did note that the 1841 law forbid settlers from laying claim to any land within “any reservation by any treaty, law, or proclamation of the president,”<sup>117</sup> the indigenous tribes of Yosemite had no treaties with the U.S. government.<sup>118</sup> The fate of the indigenous people in the park was left entirely up to the park’s management.

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<sup>104</sup> See An Act Authorizing a Grant to the State of California, *supra* note 98, at § 1.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> SIMPSON, *supra* note 47, at 16, 34-35.

<sup>108</sup> *Id.* at 16.

<sup>109</sup> *Id.*

<sup>110</sup> *Hutchings v. Low*, 82 U.S. 77 (1872).

<sup>111</sup> *Id.* at 78.

<sup>112</sup> *Id.* at 92.

<sup>113</sup> SIMPSON, *supra* note 47, at 35.

<sup>114</sup> *Id.*

<sup>115</sup> *See id.*

<sup>116</sup> *Hutchings*, 82 U.S. at 80.

<sup>117</sup> *Id.*

<sup>118</sup> SPENCE, *supra* note 3, at 121.

#### D. Ultimate Fate of the American Indigenous Peoples

Between 1855 and 1863, only about 406 tourists came to Yosemite.<sup>119</sup> The trip was too difficult for most tourists until the area was more fully developed, but once it had been the numbers rose dramatically.<sup>120</sup> Between 1874 and 1875, the number of tourists had risen to 2711, mainly due to the fact that several roads had finally been constructed.<sup>121</sup> Early visitors to Yosemite expressed “considerable interest”<sup>122</sup> in seeing the traditional ways of the tribes who lived there, and this, in part, helped the tribes remain within the park.<sup>123</sup> The park’s management quickly recognized visitor interest in the tribes and realized the important role they could play as a marketing opportunity.<sup>124</sup> In 1892, the superintendent of Yosemite, A.E. Wood, said that “their long, unthreatening presence gave the Indians a ‘moral right’ to remain,”<sup>125</sup> besides their potential to increase tourism.

Wood’s successors disagreed with his belief that the tribes had a “moral right” to remain.<sup>126</sup> Soon, the lives of the indigenous occupants of the park were completely controlled by the U.S. Calvary,<sup>127</sup> which was responsible for law enforcement in most parks before the National Park Service was created.<sup>128</sup> The U.S. Calvary forbade anyone, but especially the Yosemite, from hunting animals such as deer.<sup>129</sup> By divorcing the indigenous people from any means of supporting themselves, the government ensured that they would either assimilate or vanish.<sup>130</sup>

In the early 1900s, the government relocated the indigenous people into a “native village,”<sup>131</sup> and they were used to attract tourists with field days when park officials forced the Yosemite to conform to “popular white conceptions of how Indians were supposed to look and behave.”<sup>132</sup> Worried about a “public outcry against wholesale eviction,”<sup>133</sup> park officials developed the Yosemite Indian Village Housing Policy, which only allowed those indigenous people who were government employees and their families to stay in the park.<sup>134</sup> After a family left the village, rangers destroyed the family’s cabin and systematically “destroyed or removed each newly vacated cabin.”<sup>135</sup>

Although the Yosemite were tenacious and managed to remain in small numbers, the last would leave in December 1996.<sup>136</sup> Today, over four million people visit Yosemite National Park

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<sup>119</sup> SPENCE, *supra* note 3, at 102.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 103.

<sup>122</sup> *Id.* at 105.

<sup>123</sup> *Id.*

<sup>124</sup> *See id.*

<sup>125</sup> *Id.* at 109.

<sup>126</sup> *Id.* at 112.

<sup>127</sup> *See id.* at 110-11.

<sup>128</sup> *See id.* at 62.

<sup>129</sup> *Id.* at 111.

<sup>130</sup> *Id.* at 111.

<sup>131</sup> *Id.* at 112.

<sup>132</sup> *Id.* at 117.

<sup>133</sup> *Id.* at 129.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 130.

<sup>136</sup> *Id.* at 131.

every year.<sup>137</sup> They go to see an “a priori wilderness, an empty, uninhabited, primordial landscape that has been preserved in the state that God first intended it to be.”<sup>138</sup> However, this is a cultural and historical fiction, and the law was used to create it.

#### IV. Yellowstone National Park

##### A. Yellowstone Before the Wilderness Laws

Like all other national parks in America, the area around Yellowstone had been continuously used or inhabited by indigenous people. Archaeological evidence shows some form of human presence in Yellowstone since the last Ice Age ended,<sup>139</sup> about ten thousand years ago. In 1870, Henry D. Washburn led the first white expedition to survey the Yellowstone area in order to “determine the location of Yellowstone Lake and the falls.”<sup>140</sup> At this time in Yellowstone’s history, the park was inhabited by three main indigenous tribes: the Shoshone, the Crow, and the Bannock.<sup>141</sup> In fact, the Washburn expedition requested a military escort, fearing an “Indian attack”;<sup>142</sup> they “frequently relied on well-used Indian trails,”<sup>143</sup> and actually followed a “hundred or more Crow . . . over the course of a week.”<sup>144</sup> Yet, one member of the expedition began to erase the history of indigenous people almost immediately by writing in a popular magazine of the time that the “unscientific savage[s]”<sup>145</sup> had no interest in the Yellowstone area.<sup>146</sup> The reason he cited was the indigenous people’s fear of the area’s many volcanic features which they took to be a sign that the place was “sacred to Satan.”<sup>147</sup>

Rather than being fearful of the area’s geysers and volcanic features, indigenous tribes were attracted to them both spiritually and practically.<sup>148</sup> Spiritually, they believed that the hot springs had “special healing properties,”<sup>149</sup> and they would often “leave small offerings beside or within the springs.”<sup>150</sup> Practically, the hot water and steam of some of the pools of the park “provided a unique resource for cooking and cleaning and for treating certain materials to make them more pliable.”<sup>151</sup>

Like the inhabitants of Yosemite, the indigenous people of Yellowstone utilized fire in a number of ways to shape and mold the landscape to fit their uses.<sup>152</sup> Ironically, the scenic majesty of the Yosemite Valley and its open vistas were the direct result of controlled burns

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<sup>137</sup> Nat’l Park Service, Yosemite National Park—Park Statistics, <http://www.nps.gov/yose/parkmgmt/statistics.htm> (last visited July 11, 2011).

<sup>138</sup> SPENCE, *supra* note 3, at 131.

<sup>139</sup> *Id.* at 43.

<sup>140</sup> AUBREY L. HAINES, *YELLOWSTONE NATIONAL PARK: ITS EXPLORATION AND ESTABLISHMENT* 92 (1974), available at [http://www.nps.gov/history/history/online\\_books/haines1/iee2d.htm](http://www.nps.gov/history/history/online_books/haines1/iee2d.htm) (last visited June 28, 2011).

<sup>141</sup> See SPENCE, *supra* note 3, at 42.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Walter Trumbull, *The Washburn Yellowstone Expedition*, *Overland Monthly* 6 (1871).

<sup>146</sup> *Id.*

<sup>147</sup> Trumbull, *supra* note 145.

<sup>148</sup> *Id.* at 43-44.

<sup>149</sup> *Id.* at 43.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 44.

<sup>152</sup> *Id.*

started by the indigenous tribes who lived there.<sup>153</sup> In Yellowstone, the tribes started seasonal burns that “not only prevented the sorts of massive conflagrations that now annually plague western forests but also created and maintained important plant and animal habitats.”<sup>154</sup> The tribes of Yellowstone understood that fires would encourage the growth of plant species they valued.<sup>155</sup> Fires would also clear favorite camping areas of brush and insects.<sup>156</sup> The Washburn expedition even observed a group of Crow hunters using a ring of fire to trap game and make the kill easier.<sup>157</sup> Once the indigenous people were pushed off the land and the regular controlled burns ceased, it is likely that certain plants have become completely extinct within the Yellowstone region.<sup>158</sup>

## B. The World’s First National Park

Whereas Yosemite was created under a scheme of state protection, Wyoming was a territory until 1890, making this impossible.<sup>159</sup> Protecting Yellowstone as a park would require a new federal law. In creating the Yellowstone Park Act of 1872, Congress had sown the seeds of a massive paradigm shift in the American landscape. The Act itself would preclude more than two million acres from being settled, occupied, or sold.<sup>160</sup> It was the first national park in the world, and it soon became the ideal protection scheme in America.

However, after the Act’s passage, several Indian tribes balked at this idea and continued to use the land as they had done for thousands of years.<sup>161</sup> Unlike the Yosemite, the Bannock tribe and others in Yellowstone had made treaties with the federal government granting them certain legal rights.<sup>162</sup> In passing the Yellowstone Park Act, Congress had set aside “unoccupied lands” for protection, but Congress was legally challenged by indigenous tribes who continued to assert their sovereign off-reservation treaty rights.<sup>163</sup> Once again, it was up to the Supreme Court to choose which law would prevail.

## C. The Supreme Court Destroys Indigenous Rights

The case of *Ward v. Race Horse*<sup>164</sup> was decided by the Supreme Court in the same term as *Plessy v. Ferguson*.<sup>165</sup> According to the Court’s analysis, Article 4 of the treaty with the Bannocks explicitly stated that “they shall have the right to hunt upon the unoccupied lands of the United States.”<sup>166</sup> However, the Court concluded that the treaty “was intended to confer a

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<sup>153</sup> Benjamin Johnson, *Wilderness Parks and Their Discontents*, in AMERICAN WILDERNESS, *supra* note 23, at 113, 117; *see also* SPENCE, *supra* note 3, at 44.

<sup>154</sup> SPENCE, *supra* note 3, at 44.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *See id.* at 44-45.

<sup>159</sup> State of Wyoming, About Wyoming--Chronology, <http://www.wyoming.gov/chronology.aspx> (last visited Aug. 31, 2011).

<sup>160</sup> SPENCE, *supra* note 3, at 39.

<sup>161</sup> *See id.* at 65.

<sup>162</sup> *See id.* at 67.

<sup>163</sup> *Id.*

<sup>164</sup> 163 U.S. 504 (1896).

<sup>165</sup> 163 U.S. 537 (1896).

<sup>166</sup> *Ward*, 163 U.S. at 507.

privilege of merely limited duration” and was repealed by the subsequent act admitting the territory of Wyoming into the Union with an express declaration that it should have all the powers of the other states.<sup>167</sup>

The court’s rationale centered on the definition of “unoccupied lands.”<sup>168</sup> The majority opinion found that the treaty’s language did not mean “all such lands of the United States, wherever situated, but . . . only lands . . . the treaty denominates as ‘hunting districts.’”<sup>169</sup> The court further stated that when the treaty was made “the march of advancing civilization foreshadowed the fact that wilderness . . . was destined to be occupied and settled by the white man, hence interfering with the hitherto untrammelled right of occupancy of the Indian.”<sup>170</sup> Therefore, the “whole question” was left “entirely to the will of the United States,” and “the right to hunt should cease the moment the United States parted with the title to its land in the hunting districts.”<sup>171</sup> The Supreme Court concluded that this parting occurred when the United States created “Yellowstone Park.”<sup>172</sup>

The government had created the reservation system for the Indian “to protect his rights” and “to preserve for him a home where his tribal relations might be enjoyed under the shelter of the authority of the United States.”<sup>173</sup> However, this was only to be the case “so long as the necessities of civilization did not require otherwise.”<sup>174</sup> The Supreme Court explained that any other interpretation would “necessarily imply that congress had violated the faity [sic] of the government and defrauded the Indians.”<sup>175</sup> As the dissent correctly pointed out, this was the result regardless of the majority’s rationalization.<sup>176</sup>

In his dissent, Justice Brown understood that the majority had taken away the indigenous people’s rights “not because they have violated the treaty, but because the state of Wyoming desires to preserve its game.”<sup>177</sup> The highest court in the land had now given “no limit to the right of the state” to “practically deprive the Indians of their principal means of subsistence.”<sup>178</sup> The majority’s illogical opinion foreshadows a similar view held by Western conservationists regarding the Iyaelima in the DRC. These groups state that they are acting to protect the bonobo, and it is only possible by removing all people regardless of their rights.<sup>179</sup>

#### D. Ultimate Fate of the Indian

With the Supreme Court’s ruling, local officials now had the authority to “arrest any Indians who ventured onto public lands during closed hunting seasons.”<sup>180</sup> It essentially forbade the Bannock, who filed the suit against the government, or any other tribes from using

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<sup>167</sup> *Id.* at 515.

<sup>168</sup> *Id.* at 507-508.

<sup>169</sup> *Id.* at 508.

<sup>170</sup> *Id.* at 509.

<sup>171</sup> *Id.* at 510.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 509.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 510.

<sup>176</sup> *Ward v. Race Horse*, 163 U.S. 504, 516-18 (1896) (Brown, J., dissenting).

<sup>177</sup> *Id.* at 518.

<sup>178</sup> *Id.*

<sup>179</sup> Falk, *supra* note 8.

<sup>180</sup> SPENCE, *supra* note 3, at 68.

Yellowstone and confined them to their Idaho reservations.<sup>181</sup> The fate of the Crow, Bannock, and Shoshone was the same as the Yosemite, but their complete expulsion from the park “both in fact and in the historical imaginings”<sup>182</sup> had been accomplished almost one hundred years sooner.

One of the greatest ironies of the tribes’ removal is Yellowstone’s resultant ecosystem imbalance. After hunting was forbidden, the park’s rangers had to begin to kill game animals, like elk, when the population got too high.<sup>183</sup> In 1995, gray wolves were reintroduced into the park<sup>184</sup> to achieve the same purpose. Rather than being untouched by man, the wild of Yellowstone now requires the constant management of the park’s rangers. Also, it is quite possible that the indigenous population was essential to the evolution and balance of the Yellowstone ecosystem.

## V. WILDERNESS ACT OF 1964

### A. National Parks and National Forests

Even though the indigenous people had been removed from the equation, wilderness advocates still worried about the fledgling park system and the strength of its protection. Yellowstone National Park had been the pilot program and established a federal paradigm to be replicated across the nation. By 1890, political pressure from advocates like Muir grew to the point that Yosemite reverted from state control and turned into a national park.<sup>185</sup> President Harrison signed a bill that created America’s second national park and included almost a million acres surrounding the Yosemite Valley.<sup>186</sup>

After the heated battle over the Hetch-Hetchy valley, where a valley within Yellowstone’s boundaries was dammed to provide water to the growing city of San Francisco, wilderness advocates were galvanized to prevent another such travesty.<sup>187</sup> The problem inherent with both the new national park system and the national forest system was that they “existed only on paper [and] no one was assigned to enforce the rules or regulations.”<sup>188</sup> The national forests would later be managed by the Forest Service, created by Teddy Roosevelt in 1905 as a sub-agency of the U.S. Department of Agriculture.<sup>189</sup> America’s National Parks Service was later created in 1916.<sup>190</sup>

After their creation, these two agencies would spend the next several decades in a “bureaucratic rivalry . . . , with park service officials scheming to cherry-pick national forest properties for new national parks and forest service officials intruding upon the recreational

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> See MICHAEL L. LEWIS, *INVENTING GLOBAL ECOLOGY: TRACKING THE BIODIVERSITY IDEAL IN INDIA, 1947-1997*, at 148 (2004).

<sup>184</sup> U.S. Fish & Wildlife Service, Gray Wolf (*Canis lupus*), [http://www.fws.gov/home/feature/2007/gray\\_wolf\\_factsheet.pdf](http://www.fws.gov/home/feature/2007/gray_wolf_factsheet.pdf) (last visited Aug. 31, 2011).

<sup>185</sup> SIMPSON, *supra* note 47, at 59-60, 62.

<sup>186</sup> *Id.* at 63.

<sup>187</sup> William Cronon, *The Trouble with Wilderness, or, Getting Back to the Wrong Nature*, in *THE GREAT NEW WILDERNESS DEBATE* 474 (J. Baird Callicott & Michael P. Nelson eds., 1998).

<sup>188</sup> SIMPSON, *supra* note 47, at 66.

<sup>189</sup> Char Miller, *A Sylvan Prospect: John Muir, Gifford Pinchot, and Early Twentieth-Century Conservationism*, in *AMERICAN WILDERNESS*, *supra* note 23, at 131,141.

<sup>190</sup> National Park Service, 16 U.S.C. §§ 1-18 (2006).

territory of the park service.”<sup>191</sup> This competition caused “the steady growth of tourists and outdoor lovers” in national forests and national parks to record numbers.<sup>192</sup> The more people that came, the less wild these places became.

### B. Postwar Boom Threatens the Wild

America’s economic development in the nineteenth century paled in comparison to the period following the nation’s victory in World War II.<sup>193</sup> The resulting baby boom “placed a premium on the full development of minerals, timber, fossil fuels, and hydroelectric power deemed to be crucial to the nation’s economy and security” in the Cold War climate.<sup>194</sup> Overcrowding, “natural resource industries”<sup>195</sup> intent on tapping into the huge wealth within protected landscapes, and “government agencies concerned with water development”<sup>196</sup> filled wilderness advocates with fear.<sup>197</sup>

The “pristine” areas, that had taken so much to create and maintain, were under constant attack.<sup>198</sup> These evolving fears, compounded by the damming of sites like Hetch-Hetchy, became a clarion call to “reach the law within the law.”<sup>199</sup> These new threats demanded more protection, and a national wilderness system was the result.<sup>200</sup>

### C. Bill Becomes Law

The Wilderness Society wrote the bill, supported by the Sierra Club, which became the Wilderness Act.<sup>201</sup> Beginning in 1956, these two private organizations, along with dozens of others, underwent a massive campaign to get the Wilderness Bill enacted.<sup>202</sup> It was ultimately signed in 1964, and initially established 9.1 million acres that would be “permanently protected from roads, motorized vehicles, and equipment such as chainsaws.”<sup>203</sup> Today, over 109 million acres are protected in 757 wilderness areas.<sup>204</sup>

### D. Structure of Wilderness

The pertinent part of the Wilderness Act reads:

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<sup>191</sup> Paul Sutter, *Putting Wilderness in Context: The Interwar Origins of the Modern Wilderness Idea*, in AMERICAN WILDERNESS, *supra* note 23, at 167, 171.

<sup>192</sup> *Id.* at 193.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 193-94.

<sup>195</sup> *Id.* at 193.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 194.

<sup>198</sup> *See id.* at 193-94.

<sup>199</sup> Alfred, Lord Tennyson, *The Two Voices*, in THE WORKS OF ALFRED, LORD TENNYSON, POET LAUREATE 30, 32 (MacMillan & Co. 1900) (1892).

<sup>200</sup> Mark Harvey, *Loving the Wild in Postwar America*, in AMERICAN WILDERNESS, *supra* note 23, at 187, 196.

<sup>201</sup> *See id.* at 192-97.

<sup>202</sup> *Id.* at 194, 197.

<sup>203</sup> *Id.* at 199.

<sup>204</sup> Wilderness.Net, Creation and Growth of the National Wilderness Preservation System, <http://www.wilderness.net/index.cfm?fuse=NWPS&sec=fastFacts> (last visited Sept. 1, 2011).

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.<sup>205</sup>

### E. Results

The key to the Wilderness Act was that only Congress could create such areas.<sup>206</sup> Once an area had been designated as a wilderness, human activity was severely limited,<sup>207</sup> and the classification could only be removed by another act of Congress.<sup>208</sup> While concessions were made in the act to allow for mineral resource surveying and extraction, there were no concessions for human habitation of the wilderness areas.<sup>209</sup>

This act was the codification of the wilderness myth. The fatal flaw of the wilderness myth is that it divorces indigenous people from their environments and, instead, preserves it as a place of recreation for those who live elsewhere. It was a law predicated upon a fantasy. To make matters worse, this misconceived notion of wilderness became the philosophical heart of international conservation efforts by America and is ultimately the cornerstone for ill-conceived conservation practices across Africa.

## VI. EXPORTING THE MYTH TO AFRICA

In East Africa, the “abundant wildlife described by nineteenth-century explorers and later shot by game enthusiasts [directly resulted from] social, economic, and ecological disasters.”<sup>210</sup> Early colonists had imported European cattle into the region, causing a massively destructive rinderpest plague that killed almost all African cattle across the eastern and southern parts of the continent.<sup>211</sup> This massive die-off also resulted in “human famine and disease”<sup>212</sup> and created “vast, recently abandoned rangelands”<sup>213</sup> once used by pastoralist tribes like the Maasai.<sup>214</sup> As

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<sup>205</sup> National Wilderness Preservation System, 16 U.S.C. § 1131(c) (2006).

<sup>206</sup> *Id.* § 1131(a).

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* § 1131(b).

<sup>209</sup> *See id.* § 1131(a)-(c).

<sup>210</sup> Christopher Conte, *Creating Wild Places from Domesticated Landscapes: The Internationalization of the American Wilderness Concept*, in AMERICAN WILDERNESS, *supra* note 23, at 223, 236.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

the African cattle were largely wiped out and the tribes were severely weakened, the colonial governments took advantage of the chance to claim these lands.<sup>215</sup>

“[T]he famous wilderness parks of Kenya and Tanzania, like Tsavo, Maasai Mara, Serengeti, and Samburu,”<sup>216</sup> were created out of these emptied landscapes.<sup>217</sup> While these parks are portrayed as an “idyllic and balanced savanna,”<sup>218</sup> they are in fact the byproduct of a complex evolution of “social, economic, and ecological change”<sup>219</sup> instigated by humans. American conservationists have been trying to preserve this aberration of the African landscape as the baseline ever since. Just as in America, the wilderness myth would continue to destroy indigenous rights and expel these people from ancestral lands. The Maasai were just one of the early casualties, and the march to preserve people-less wilderness has now set its sights on the Iyaelima in the DRC.

## VII. THE DEMOCRATIC REPUBLIC OF THE CONGO

### A. Demographics and Geography

The DRC is one of the largest countries in central Africa.<sup>220</sup> Geographically, the country covers just under one-fourth the area of the continental United States.<sup>221</sup> The DRC is a treasure trove of natural resources. In fact, it is one of the world’s largest sources of untapped wealth.<sup>222</sup> Besides containing large caches of oil, minerals, coal, and diamonds, the DRC’s landscape is absolutely breathtaking.<sup>223</sup> Half of Africa’s forests are within the DRC’s borders, six percent of the world’s total forests, and its rivers contain half of the continent’s potential hydro-electric capacity, which is thirteen percent of the world’s total.<sup>224</sup> Instead of these resources benefiting the people of the DRC, the benefits have gone to the few who have controlled the resources through force and misery. The average life expectancy is just over fifty-five years,<sup>225</sup> one in four children dies before the age of five,<sup>226</sup> and the Gross Domestic Product per capita was \$300 in 2010.<sup>227</sup>

The ethnic, cultural, and linguistic makeup of the DRC is remarkably complex. There are over two hundred different ethnic groups residing within the borders of the DRC.<sup>228</sup> The majority of these ethnicities fall within the Bantu linguistic family.<sup>229</sup> Bantu is not an ethnic or

<sup>214</sup> *Id.*

<sup>215</sup> Conte, *supra* note 210, at 236.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> Central Intelligence Agency (CIA), The World Factbook: Democratic Republic of the Congo--Geography, <https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html#> (last visited June 16, 2011) [hereinafter World Factbook].

<sup>221</sup> *Id.*

<sup>222</sup> World Factbook, *supra* note 220, at Economy.

<sup>223</sup> DAN SMITH, THE ATLAS OF WAR AND PEACE 90 (2003).

<sup>224</sup> *Id.*

<sup>225</sup> World Factbook, *supra* note 220, at People.

<sup>226</sup> SMITH, *supra* note 223.

<sup>227</sup> World Factbook, *supra* note 220, at Economy.

<sup>228</sup> World Factbook, *supra* note 220, at People.

<sup>229</sup> *Id.*

cultural category, but merely a linguistic denomination that translates literally as “people;” and it is commonly spoken through sub-Saharan Africa, but most exclusively with the Niger-Congo group.<sup>230</sup>

The total number of languages within the Bantu group is somewhere in the range of three hundred to six hundred distinct languages.<sup>231</sup> Three of the four largest tribes in the DRC belong to the Bantu linguistic family: the Mongo, Luba, and Kongo.<sup>232</sup> The fourth tribe is the Mangbetu-Azande, who are considered Hamitic.<sup>233</sup> About forty-five percent of the DRC’s population belongs to one of these four tribes.<sup>234</sup>

The Iyaelima belong to the Bantu linguistic family, specifically the Mongo group, and have been in the DRC since Bantu speakers first arrived (before written history).<sup>235</sup> However, Bantu-speaking farmers were well-settled in the lakes area of central Africa 2500 years ago and had spread to the southernmost part of their range by the fourth century A.D.<sup>236</sup> This evidence shows that for thousands of years the Iyaelima, like the Crow, Bannock, Shoshone, and the Ahwahneechee before them, had been inhabiting the lands that white Westerners would turn into “pristine” parks.

## B. History of Political Unrest

One man, in control of one of Europe’s smallest nations, began what historians refer to as the “Scramble for Africa.”<sup>237</sup> Leopold the Second, King of Belgium, proclaimed himself the King-Sovereign of the Congo Free State.<sup>238</sup> The European nations of England, France, and Germany had already established colonies within Africa.<sup>239</sup> However, Leopold would decidedly change the nature of the Congo, other European colonies in Africa, and the history of the entire continent.<sup>240</sup>

In May of 1885, Leopold gained international recognition and approval of his claim over the Congo.<sup>241</sup> Fewer than five years after the fight for political control of Africa began, the first international conservation law was created.<sup>242</sup> The Convention for the Preservation of Animals, Birds and Fish in Africa was the first international treaty dealing with the regulation and conservation of wildlife on the continent.<sup>243</sup> Its signatories included the major European powers of England, France, Germany, Belgium, Italy, and others.<sup>244</sup> This treaty was the forerunner of the Convention on International Trade in Endangered Species (CITES), that would replace it seventy years later.<sup>245</sup>

<sup>230</sup> KEVIN SHILLINGTON, HISTORY OF AFRICA 49-51 (2d ed. 1995).

<sup>231</sup> JOHN READER, AFRICA: A BIOGRAPHY OF THE CONTINENT 183 (Vintage Books 1999) (1997).

<sup>232</sup> World Factbook, *supra* note 220, at People.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 232-33.

<sup>236</sup> READER, *supra* note 231, at 184.

<sup>237</sup> *Id.* at 525.

<sup>238</sup> *Id.*

<sup>239</sup> *See id.*

<sup>240</sup> *See id.*

<sup>241</sup> *Id.*

<sup>242</sup> RAYMOND BONNER, AT THE HAND OF MAN: PERIL AND HOPE FOR AFRICA’S WILDLIFE 39 (1993).

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

These early laws had little to do with preserving Africa's landscapes and wildlife for its intrinsic value, but everything to do with Europe's exploitation of them for economic gain.<sup>246</sup> Joseph Conrad would describe the European's activities as "the vilest scramble for loot that ever disfigured the history of human conscience."<sup>247</sup> Under Leopold's reign, Belgium became enormously rich by taking advantage of the Congo's vast natural resources at a terrible humanitarian cost.<sup>248</sup> It would prove to be the status quo throughout the DRC's history.

Belgium's rule over the DRC would last until independence was gained in 1960 following elections for 137 seats in a National Assembly.<sup>249</sup> The newly elected president was soon confronted by a military coup led by Joseph Mobutu.<sup>250</sup> The twenty-nine year old Mobutu declared that he was taking power over the country in the name of the army.<sup>251</sup> By 1965, Mobutu was in complete control of the country, and his first acts following his appointment as president included steps to "reduce the power of parliament, suspend all provincial assemblies, assume command of the police and have a number of suspected rivals executed."<sup>252</sup> As part of his "African authenticity" campaign to rid the nation of European influence, Mobutu renamed the country Zaire and required all citizens, cities and villages to follow suit.<sup>253</sup>

Mobutu's fall came shortly after the Rwandan genocide, which caused a massive flow of refugees and rebel groups into the country's borders.<sup>254</sup> By 1997, a rebellion was launched by Laurent Kabila, and backed by Uganda and Rwanda.<sup>255</sup> Kabila renamed the country from Zaire to the Democratic Republic of the Congo, but another rebellion backed by Rwanda and Uganda came shortly after.<sup>256</sup> Angola, Chad, Namibia, Sudan and Zimbabwe all sent troops into the DRC to support Kabila<sup>257</sup> and started the worst war in the continent's history. In 2001, Laurent Kabila was assassinated and replaced by his son Joseph, but hostilities continued.<sup>258</sup> By 2002, Joseph managed to create a peace agreement, and the war came to an end.<sup>259</sup> However, the devastation of the war was immense. Over two million people died from fighting, starvation, and preventable disease.<sup>260</sup> The International Rescue Committee's figures show that the number is well over 3.9 million, at a rate equivalent to "a 9/11 attack every three days."<sup>261</sup>

This is the political and legal climate in which conservation efforts are forced to operate. The DRC exists today as a fragile democracy with laws that are currently being rewritten and are

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<sup>246</sup> See READER, *supra* note 231, at 525-26.

<sup>247</sup> Joseph Conrad, *Geography and Some Explorers*, in LAST ESSAYS 3, 15 (Harold Ray Stevens and J.H. Stape eds., Cambridge Univ. Press 2010) (1926).

<sup>248</sup> READER, *supra* note 231, at 545-47. For an in-depth discussion of Leopold's reign of the Congo, which would exceed the parameters of this paper, see ADAM HOCHSCHILD, KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA (1999).

<sup>249</sup> READER, *supra* note 231, at 656.

<sup>250</sup> *Id.* at 657-60.

<sup>251</sup> *See id.* at 660.

<sup>252</sup> *Id.* at 661.

<sup>253</sup> *Id.*

<sup>254</sup> World Factbook, *supra* note 220, at Introduction.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> SMITH, *supra* note 223, at 90.

<sup>261</sup> Colleen Hardy: *Mortal Hero*, NAT'L GEOGRAPHIC ADVENTURE, Dec. 2007-Jan. 2008, at 92, available at <http://www.nationalgeographic.com/adventure/best-of-adventure-2008/achievements/adventurers-of-year.html#colleen>.

untested. It is also the only country in the world where the bonobo is found, making their survival precarious at best.<sup>262</sup>

### C. Salonga National Park

Salonga is home to the second largest tropical rainforest national park in the world and the largest in Africa.<sup>263</sup> Salonga is one of few nationally protected areas for the bonobo in the DRC, and “the only one categorized as a national park.”<sup>264</sup> The process of creating Salonga’s boundaries was a distinctly political process, and it took several decades to evolve into its current state.<sup>265</sup> In 1956, the government devised the original concept for the park in order to preserve a large forest area from being harvested for timber.<sup>266</sup> This block was named the Tshuapa National Park, and it was later intended to be a wildlife preserve specifically for the relocation of the nation’s now endangered forest elephants, *Loxodonta africana cyclotis*.<sup>267</sup> Salonga’s current boundaries were created by a 1970 presidential decree from President Mobutu.<sup>268</sup> Mobutu’s motivation for creating Salonga was to create a protected zone whose surface area was larger than its former colonial overlord’s territory.<sup>269</sup> Within Salonga’s park boundaries, Mobutu created an express area of occupation for the Iyaelima tribe,<sup>270</sup> who have remained despite the lines on the maps being changed around them.

After its creation, Salonga was categorized by the International Union for Conservation of Nature (IUCN) as a category II natural area.<sup>271</sup> The IUCN is the major conservation organization in the world, combining the efforts of scientists, private individuals, world governments and non-governmental organizations.<sup>272</sup> The IUCN’s classification as a “natural area” requires management goals to achieve three objectives.<sup>273</sup> The first goal is the protection of the “ecological integrity of the ecosystem.”<sup>274</sup> The second goal is “to exclude exploitation or occupation that might be detrimental to this protection.”<sup>275</sup> Finally, the third goal is “to provide a foundation for spiritual, scientific, educational, recreational, and visitor opportunities that are environmentally and culturally compatible.”<sup>276</sup>

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<sup>262</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 227.

<sup>263</sup> *Id.* at 228.

<sup>264</sup> *Id.*

<sup>265</sup> *See id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.* The elephants were to be relocated into one specific area so that they could be killed in other areas of the country because of the dangers elephants pose to citizens, especially farmers whose crops are often destroyed by the wandering giants. *See also* JOHN FREDERICK WALKER, *IVORY’S GHOSTS: THE WHITE GOLD OF HISTORY AND THE FATE OF ELEPHANTS* 233-36 (2009).

<sup>268</sup> United Nations Environment Program Media Library, available at <http://www.unep-wcmc.org/medialibrary/2011/06/24/d3e1c39a/Salonga%20National%20Park.pdf>

<sup>269</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 228.

<sup>270</sup> *Id.*

<sup>271</sup> Central African Regional Program for the Environment (CARPE), *The Forests of Central Africa: A Preliminary Assessment* 188, available at [http://carpe.umd.edu/resources/Documents/Salonga\\_SOF2006.pdf](http://carpe.umd.edu/resources/Documents/Salonga_SOF2006.pdf).

<sup>272</sup> IUCN, *About IUCN*, available at <http://www.iucn.org/about> (last visited May 16, 2011).

<sup>273</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 228.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* at 228-30.

Salonga was registered as a World Heritage Site by UNESCO (United Nations Educational, Scientific and Cultural Organization) in 1984.<sup>277</sup> World Heritage Sites are granted their status based on any of ten criteria; six are cultural and four are natural.<sup>278</sup> Salonga was granted world heritage status according to categories vii and ix.<sup>279</sup> These two classifications are for “superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance” and “outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals.”<sup>280</sup>

The importance attributed to Salonga National Park by both the IUCN and UNESCO reveals just how powerful the American wilderness myth has become worldwide. The IUCN’s definition is almost a carbon copy of America’s 1964 Wilderness Act. Regrettably, also like the American experience, UNESCO chose categories that recognize no value or importance in the cultures that have occupied the area for centuries. Salonga is certainly worthy of protection, but questions remain about how effective these measures will be, how respectful they are of a democratic process, and why the indigenous peoples’ rights are ignored. The fate of both the bonobo and the Iyaelima rests on the answers to these questions.

## VIII. THE BONOBO

### A. Background

The word “bonobo” most likely “derives from a misspelling on a shipping crate of ‘Bolobo.’”<sup>281</sup> The species is also known by the names of “bonobo chimpanzee” or “pygmy chimpanzee.”<sup>282</sup> Bonobos are roughly the same size as chimpanzees, *Pan troglodytes*,<sup>283</sup> which may have caused some delay in their eventual distinction from that species. On average, an adult male will grow to be less than three feet tall and weigh about eighty pounds.<sup>284</sup> A female will be slightly shorter and weigh about twenty pounds less.<sup>285</sup> Besides walking on all fours, the bonobo is most famous for being able to walk bipedally, just like human beings.<sup>286</sup> Their average lifespan is roughly forty years.<sup>287</sup> While the bonobos’ range may have once been more extensive, today they are endemic to the Congo basin region of the DRC.<sup>288</sup>

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<sup>277</sup> CARPE, *supra* note 271.

<sup>278</sup> World Heritage Centre, The Criteria for Selection, <http://whc.unesco.org/en/criteria> (last visited May 16, 2011) [hereinafter World Heritage, Criteria].

<sup>279</sup> World Heritage Centre, Salonga National Park, <http://whc.unesco.org/en/list/280> (last visited May 16, 2011).

<sup>280</sup> World Heritage, Criteria, *supra* note 278.

<sup>281</sup> FRANS DE WAAL & FRANS LANTING, BONOBO: THE FORGOTTEN APE 7 (1997).

<sup>282</sup> *Id.*

<sup>283</sup> Kristina Cawthon Lang, Bonobo, <http://pin.primate.wisc.edu/factsheets/entry/bonobo> (last visited May 16, 2011).

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *See id.*

<sup>287</sup> *Id.*

<sup>288</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 227.

## B. Behavior

“[I]n everything they do, they resemble us.”<sup>289</sup> Some ethicists point out that bonobos should be afforded legal protection because of the similarities between their psychology and ours, namely that they “seem capable of taking the perspective of someone else.”<sup>290</sup> In the field of cognitive psychology, this ability is an “advanced capacity, which some believe unique to our species.”<sup>291</sup> The bonobo is also one of the only species that “react to a mirror as if they see themselves.”<sup>292</sup> This ability to recognize themselves implies higher brain functions that denote “a degree of self-awareness unprecedented in the animal kingdom.”<sup>293</sup>

These higher brain functions were demonstrated by laboratory tests during which a bonobo used tools in the same way that anthropologists believe the early humans did.<sup>294</sup> Further, scientists have observed the bonobo exhibiting the ability to talk using “more than 360 keyboard symbols” and to understand “thousands of spoken words.”<sup>295</sup> Some researchers even think that the bonobo has the ability to speak English, but they are “just too fast and high-pitched for us to decode.”<sup>296</sup>

Unlike other primates, the bonobo is controversial mainly because of its sexual behavior, having a preference for “face-to-face mating.”<sup>297</sup> The bonobos use sex as a form of conflict resolution within their social groups such as “to promote sharing, to negotiate favors . . . and to make up after fights.”<sup>298</sup> Thus, the bonobos “substitute sexual activities for rivalries,”<sup>299</sup> and the “sex occurs in so many different partner combinations”<sup>300</sup> that they could be described as an “oversexed species.”<sup>301</sup> Visitors to zoos where bonobos are kept may be disgusted by observing bonobo sexual activity, which probably contributes to their low numbers in zoos.<sup>302</sup>

## C. Conservation Status

Under the CITES convention, which is managed by the United Nations Environment Programme (UNEP), species are listed in one of three categories of Appendices that are determined by the threat level posed by international trade.<sup>303</sup> There are over 33,000 species of plants and animals protected by the convention, and the bonobo falls under Appendix I<sup>304</sup>

<sup>289</sup> DE WAAL & LANTING, *supra* note 292, at 1.

<sup>290</sup> *Id.* at 35.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.* at 36.

<sup>294</sup> *Id.* at 37.

<sup>295</sup> Virginia Morell, *Animal Minds*, NAT'L GEOGRAPHIC, Mar. 2008, at 57, available at <http://ngm.nationalgeographic.com/2008/03/animal-minds/virginia-morell-text/1>.

<sup>296</sup> *Id.*

<sup>297</sup> DE WAAL & LANTING, *supra* note 292, at 101. The face-to-face position was long considered culturally advanced and uniquely human. *Id.*

<sup>298</sup> *Id.* at 112.

<sup>299</sup> *Id.* at 110.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* at 105.

<sup>302</sup> *Id.* at 107.

<sup>303</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, The CITES Species, <http://www.cites.org/eng/disc/species.shtml> (last visited May 16, 2011) [hereinafter CITES].

<sup>304</sup> *Id.*; CITES, Appendices I, II and III, <http://www.cites.org/eng/app/appendices.shtml> (last visited May 16, 2011).

(meaning that they are threatened with extinction and completely forbidden from international trade, except for a scientific purpose such as research that is not for commercial use).<sup>305</sup> Every year, the IUCN is responsible for the creation of a database of “Red List species.”<sup>306</sup> An express goal of the IUCN’s Red List of Threatened Species is to “[i]dentify and document those species most in need of conservation attention.”<sup>307</sup> In the IUCN’s language, this list has enjoyed “an increasingly prominent role in guiding conservation activities of governments, NGOs and scientific institutions.”<sup>308</sup> The bonobo is listed by the IUCN as an endangered species,<sup>309</sup> meaning that the species is “considered to be facing a very high risk of extinction in the wild.”<sup>310</sup> Both the CITES and the IUCN’s Red List are highly influential on conservation policy around the world, but the threats facing the bonobo are largely domestic, and these kinds of international regulations will not be effective protective measures.

#### D. Threats to the Bonobo

In general, the threats to great apes, such as the bonobo, remain the same regardless of their location.<sup>311</sup> These threats include, but are not limited to, “the resurgence of armed conflict [and] poaching, mining, and logging activities.”<sup>312</sup> The two biggest threats to the bonobo are the bushmeat crisis and habitat loss due to logging activities (both legal and illegal logging); these two threats are aggravated by one another because “[h]unters use the paths created by loggers and provide food for the workers in the logging concessions.”<sup>313</sup> During the civil war, hunting was somewhat hampered because there was no active logging, but now that the war has ended in the western regions of the Congo, the loggers are returning.<sup>314</sup>

Illegal trafficking in animals is the “third most extensive criminal activity in the world,”<sup>315</sup> just behind illegal arms and drug trading, amounting to \$160 million a year.<sup>316</sup> U.S. Representative Nick J. Rahall, the chairman of the House Committee of Natural Resources, recently described the situation as being the “wildlife version of blood diamonds.”<sup>317</sup>

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<sup>305</sup> CITES, The CITES Appendices, <http://www.cites.org/eng/app/index.shtml> (last visited Sept. 9, 2011),

<sup>306</sup> International Union for Conservation of Nature, The IUCN Red List of Threatened Species, <http://www.iucnredlist.org> (last visited May 16, 2011) [hereinafter IUCN].

<sup>307</sup> IUCN, Red List Overview—Introduction, <http://www.iucnredlist.org/about/red-list-overview#introduction> (last visited Sept. 9, 2011).

<sup>308</sup> *Id.*

<sup>309</sup> IUCN, *Pan paniscus* (Gracile Chimpanzee), <http://www.iucnredlist.org/apps/redlist/search> (last visited Sept. 9, 2011).

<sup>310</sup> IUCN, 2001 IUCN Red List Categories and Criteria Version 3.1, at IV, <http://www.iucnredlist.org/technical-documents/categories-and-criteria/2001-categories-criteria> (last visited May 16, 2011).

<sup>311</sup> See DEMOCRATIC REPUBLIC OF THE CONGO, MINISTRY OF ENVIRONMENT, NATURE CONSERVATION, WATER AND FORESTS, STRATEGY AND ACTION PLAN FOR THE SURVIVAL OF THE GREAT APES IN THE DEMOCRATIC REPUBLIC OF THE CONGO, AT 19 (2005), available at [http://www.unep.org/grasp/docs/DRC\\_NGASP\\_E.pdf](http://www.unep.org/grasp/docs/DRC_NGASP_E.pdf) (detailing the Great Apes Survival Project) [hereinafter GRASP].

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> GRASP, *supra* note 311, at 20.

<sup>316</sup> *Id.*

<sup>317</sup> *Poaching American Security: Impacts of Illegal Wildlife Trade*: Oversight Hearing before the H. Comm. on Nat. Res., 110th Cong. 1 (2008) (statement of Rep. Nick J. Rahall, II, Chairman, H. Comm. on Nat. Res.),

Bushmeat, which is poaching for food rather than any consumer product derived from the animal, is far more nuanced than Representative Rahall's statement makes it out to be. In order to actually address the problem, the situation on the ground must be carefully understood. There are three types of bushmeat harvesting: illegal poaching for commercial trade, poaching by invading rebel groups to sustain themselves, and poaching by local populations to feed themselves.<sup>318</sup> All of these forms of bushmeat harvesting are aggravated by factors on the ground, namely the nearly decade-long war when almost all sectors of the population engaged in the practice, because "food has to be found when there is no other source."<sup>319</sup>

The exact number of great apes killed during the war is difficult to assess, but it is clear that every species except the mountain gorilla has suffered precipitous declines.<sup>320</sup> However, a 2004 wildlife census conducted by the Monitoring the Illegal Killing of Elephants (MIKE) Program in Salonga National Park found few bonobo poaching incidents.<sup>321</sup> Fifty packages of poached meat were analyzed with only one bonobo skull being discovered.<sup>322</sup> However, this number may be the result of sheer luck or neglect, because the same census found that there were ninety-seven poaching encampments located within the park's boundaries.<sup>323</sup>

In order for wildlife to have any real chance at survival, local and indigenous people must be the cornerstone of any conservation policy or program. In the case of the bonobos residing within Salonga, common sense dictates that the Iyaelima would be the ideal "first line of defense to protect bonobos and to maintain the integrity of the national park."<sup>324</sup>

Rather than being the foundation of conservation efforts, indigenous people are being marginalized or outright excluded because of the American model first advocated for by John Muir (who viewed indigenous people as an obstacle to be swept away).<sup>325</sup> Many mainstream American conservation organizations, like the WWF, ascribe to this same belief.<sup>326</sup> Instead, facts on the ground show that the Iyaelima's lifestyle dispels the myth that indigenous people are a destructive or negative influence on the health of the ecosystem in which they live.

## IX. The Iyaelima

### A. History

For most of their history, the Iyaelima were afforded protection primarily due to their reputation within the DRC.<sup>327</sup> The Iyaelima were known by other tribes for "vicious acts of

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available at <http://www.docstoc.com/docs/19963442/POACHING-AMERICAN-SECURITY-IMPACTS-OF-ILLEGAL-WILDLIFE-TRADE-House-Congressional-Hearing-110th-Congress-2007-2008>.

<sup>318</sup> GRASP, *supra* note 311, at 19-20.

<sup>319</sup> *Id.* at 19.

<sup>320</sup> *See id.* at 21.

<sup>321</sup> GRASP, *supra* note 311, at 20; CITES, Monitoring of the Illegal Killing of Elephants (MIKE), available at <http://www.cites.org/eng/prog/MIKE/index.shtml> (last visited May 16, 2011).

<sup>322</sup> GRASP, *supra* note 311, at 20.

<sup>323</sup> *Id.*

<sup>324</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 242.

<sup>325</sup> *See supra* text accompanying notes 63-68.

<sup>326</sup> Falk, *supra* note 8, at 53 ("The NGOs have come to view the Iyaelima as a threat to the park and its wildlife. Led by the World Wildlife Fund, the bingos have challenged a DRC law that . . . has so far allowed the tribe to remain in the park.") *See also infra* text accompanying notes 358-447.

<sup>327</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 233.

intertribal warfare, retribution, menace, and defense.”<sup>328</sup> Belgian colonists reported that they were “‘fearsome cannibals’ [and] “‘unconquerable.’”<sup>329</sup> This reputation was perpetuated by the Iyaelima, in part because it granted them and their land security from those who might otherwise wander into their forest.<sup>330</sup>

Unfortunately, the Iyaelima are no longer feared as they once were. Instead, the Iyaelima are viewed not as fierce warriors, but as “primitive, hostile, and of no value because they have made no progress.”<sup>331</sup> The only legal protection the Iyaelima currently have on the national level is a law in the DRC that categorizes the Iyaelima not as humans, but as a form of “wildlife” like the bonobos.<sup>332</sup> While this law should be viewed as a monstrous transgression on human rights, this “statutory demotion . . . has so far allowed the tribe to remain in the park.”<sup>333</sup>

There are slightly fewer than 2400 Edjiki Iyaelima currently inhabiting Salonga.<sup>334</sup> The Iyaelima employ a traditional form of agriculture that utilizes a varying cultivation pattern with very small fields making minimal impact on the forest surrounding their villages.<sup>335</sup> As with most indigenous peoples, the Iyaelima hunt in order to supplement their diets, but they have never hunted the bonobo.<sup>336</sup> Their preferred prey includes various species of duiker (a kind of antelope) and hogs.<sup>337</sup> Because the government confiscated all guns from civilians during the civil war, the Iyaelima hunt primarily with spears or bows and arrows, aided by specially trained hunting dogs.<sup>338</sup>

These methods are highly sustainable, and they also do not engage in more destructive methods, such as using local toxic plants in river systems or snare traps that will catch anything rather than the animal being specifically hunted.<sup>339</sup> The Iyaelima also restrict the periods of time when they can use parts of the forest.<sup>340</sup> Like most indigenous groups who have inhabited areas for dozens of generations, the Iyaelima consciously shift their use from one area of the forest to another understanding that this practice allows animals to repopulate areas that were hunted during the previous season.<sup>341</sup>

## B. Dr. Jo Thompson Makes Contact

In the early 1990s, Dr. Jo Thompson began her research on the bonobo in the DRC (then still Zaire).<sup>342</sup> Dr. Thompson earned her terminal degree in biological anthropology and

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<sup>328</sup> *Id.*

<sup>329</sup> Falk, *supra* note 8, at 52.

<sup>330</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 233.

<sup>331</sup> *Id.*

<sup>332</sup> Falk, *supra* note 8, at 53.

<sup>333</sup> *Id.*

<sup>334</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 233. Dr. Thompson’s research of the Edjiki was the first major anthropological survey done on the Iyaelima, and is the only one thus far.

<sup>335</sup> *Id.* at 235.

<sup>336</sup> *Id.* at 236-37.

<sup>337</sup> *Id.* at 237.

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> *Id.* at 237-38.

<sup>342</sup> DE WAAL & LANTING, *supra* note 292, at 172. I would like to express my deep thanks to Dr. Thompson for taking time to discuss this with me during a phone conversation between her trips to the DRC.

primatology from the University of Oxford.<sup>343</sup> After completing her degree, she returned to the DRC, where she continued to run the Lukuru Wildlife Research Project (which she founded shortly after her first trip to the DRC).<sup>344</sup> During her many years of field work in the DRC, Dr. Thompson has also become one of the greatest conservation advocates in the region. *National Geographic* recently described her as “a living testament to the power of dreams.”<sup>345</sup> However, those dreams were almost shattered when civil war erupted.

In the conflict, the main research station of the Lukuru Project was “looted to the ground.”<sup>346</sup> Even worse, Dr. Thompson was “arrested several times [and] “condemned to death by a drug-crazed warlord . . . [who] was known to torture his victims by stuffing them into oil drums in the equatorial sun.”<sup>347</sup> Fellow primatologist Frans de Waal said of Thompson, “She must have been one of the few researchers to remain in the Congo during the war . . . . It’s remarkable that she stayed on.”<sup>348</sup> Despite these incredible hurdles, Dr. Thompson still managed to raise \$135,000 for relief efforts while also providing 1600 uniforms for the DRC’s park guards.<sup>349</sup>

Perhaps this is why the Iyaelima chose to make contact with Thompson about their current situation. In 2005, two Iyaelima men came from the jungle and handed Thompson a letter from their chief, Chief Longanga Isako II.<sup>350</sup> In French, the letter requested a meeting with Thompson, making her the first Westerner to actually see the tribe since shortly after the end of World War II.<sup>351</sup>

Following that meeting, Dr. Thompson has become one of the greatest advocates for indigenous peoples within the region, organizing tribes like the Iyaelima and other others in order to protect their rights.<sup>352</sup> More than twenty chieftains trusted Thompson enough to grant her “rights to every tree in the Bososandja, a parcel long coveted by a Malaysian logging company.”<sup>353</sup> However, Dr. Thompson describes herself as a “guest in the DRC”<sup>354</sup> and relies on the “local civil authority”<sup>355</sup> to manage such areas in the best interests of both the people and wildlife.

Thompson has said of her work that, “[T]he bonobos . . . took me to the DRC, but they’re not the only thing that keeps me going back . . . . The people, their communities, now generally exert a far greater pull because I am in fact concerned for the whole environment.”<sup>356</sup> Besides her many years of research on bonobo populations, Thompson also conducted the first true scientific survey of the Iyaelima and their impact on the local environment.<sup>357</sup> This survey is essential to forming a coherent, rational, and just conservation policy in the DRC. Meanwhile,

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<sup>343</sup> Rolex Awards for Enterprise, Rescuing the Bonobo, <http://rolexawards.com/en/the-laureates/jothompson-the-project.jsp> (last visited June 13, 2011) [hereinafter Rolex].

<sup>344</sup> *Id.*

<sup>345</sup> Falk, *supra* note 8, at 55.

<sup>346</sup> Rolex, *supra* note 309.

<sup>347</sup> Falk, *supra* note 8, at 56.

<sup>348</sup> *Id.* at 55.

<sup>349</sup> Rolex, *supra* note 309.

<sup>350</sup> Falk, *supra* note 8, at 52.

<sup>351</sup> *Id.* at 53.

<sup>352</sup> *Id.* at 56.

<sup>353</sup> *Id.*

<sup>354</sup> Rolex, *supra* note 309.

<sup>355</sup> *Id.*

<sup>356</sup> *Id.*

<sup>357</sup> Falk, *supra* note 8, at 53.

new initiatives launched by the U.S. government and strongly supported by groups like the World Wildlife Fund now pose a greater threat to the Iyaelima's home and their very way of life than the ten year civil war ever did.

### C. Iyaelima Culture and Conservation Views

The Iyaelima avoid hunting or injuring bonobos because they believe that the bonobo is protected by the ancestors, and they hold a strong cultural taboo against harming them at all.<sup>358</sup> The Iyaelima also distinguish bonobos from other animals, believing that "they are as intelligent as humans . . . can communicate with each other, [and] walk upright like humans."<sup>359</sup> The Iyaelima essentially view the bonobos as a competing tribe who "like humans . . . can beat you up or will kill you."<sup>360</sup> Because of their history with intergroup conflict, the Iyaelima fear that attacking a bonobo will result in a counter attack, so the Iyaelima will not kill a bonobo when they come across one.<sup>361</sup> Instead, the Iyaelima "pass them quickly or detour to avoid them."<sup>362</sup> In fact, they may abandon a village entirely rather than be faced with a conflict from the bonobos.<sup>363</sup>

These facts explain why concentrations of Iyaelima correlate to bonobo habitation. In fact, field studies show bonobo populations are highest wherever the Iyaelima are found.<sup>364</sup> Surveying across the whole of Salonga, Dr. Thompson's research shows that where a sector of forest is "occupied by the Iyaelima, there may be up to five times more bonobos"<sup>365</sup> than where the Iyaelima have no presence. This runs contrary to the perceived wisdom of Americans who think that indigenous people and wildlife cannot co-exist.<sup>366</sup>

Applying the American model of park conservation, where all indigenous people are expelled regardless of conditions on the ground, would spell disaster not only for the Iyaelima, but also the bonobo. American-based groups, like the WWF, advocate for the traditional American model, which demands the expulsion of the Iyaelima, because of their organizational history and guiding principles. It is a history that has more in common with colonial rule than effective conservation.

## X. WESTERN CONSERVATION IN AFRICA

Across Africa, the protection of wildlife and the environment revolved around European uses. The laws enacted by the colonial governments ensured that their colonists were free to exploit the resources, which often included hunting for sport, while forbidding or severely curtailing resource use by Africans, who often hunted for subsistence only.<sup>367</sup> Most of the national parks in Africa began as game reserves, such as Kruger National Park in South Africa,

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<sup>358</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 237-38.

<sup>359</sup> *Id.* at 239.

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> *Id.* at 228.

<sup>365</sup> *Id.*

<sup>366</sup> *Id.*

<sup>367</sup> Conte, *supra* note 210, at 232.

to ensure that colonials had a steady stream of game.<sup>368</sup> As American conservation groups became more heavily involved in protecting Africa's wildlife, they worked hard to stop all hunting, with disastrous consequences, but also often continued the legacy established by early colonial laws. Formal conservation structures were never necessary to protect the environment from Africans because of the culture of most tribes.<sup>369</sup> Africans would never "hunt wildlife to extinction because they needed the animals."<sup>370</sup>

### A. First Conservationists in Africa

In 1822, the British created the first major law for the protection of game when they passed a law that prohibited shooting an elephant or a hippopotamus in the Cape Colony without a colonial license.<sup>371</sup> These early laws most affected the hunter-gatherer tribes of Africa, and indigenous populations were transformed into easy scapegoats for any ecological damage (ignoring the fact that they often had nothing to do with environmental degradation or wildlife depletion).<sup>372</sup> It became "an article of faith among whites in Africa that if the white man had not brought his conservation laws to the continent the game would have disappeared."<sup>373</sup>

However, credit for the first known extinctions of species on the continent goes not to the indigenous peoples, who had lived amongst and used the wildlife according to their own cultural norms for generations, but to early white settlers.<sup>374</sup> The blaubok was a kind of antelope, also called the bluebuck, which inhabited modern day South Africa.<sup>375</sup> By 1800, the blaubok had been eliminated "primarily because the settlers took over the animal's grazing land for their cattle."<sup>376</sup> The quagga, which looked like a cross between a pony and zebra, was eliminated around the same time not only because it inhabited grazing land for the settlers' cattle, but also because its skin was used by white colonists for grain bags.<sup>377</sup>

### B. The First National Park of Africa

The first national park on the entire continent of Africa was formed in the Belgian Congo in 1925.<sup>378</sup> The American footprint on this event is remarkable. The park was named the Albert National Park after its creator, King Albert of Belgium.<sup>379</sup> Albert reached his decision after having made a tour of the western part of the United States and being impressed by Yellowstone National Park.<sup>380</sup> This example is emblematic of how the American conservation model was adopted globally, perhaps because it was easier to copy the American National Park System than

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<sup>368</sup> *Id.*

<sup>369</sup> BONNER, *supra* note 242, at 82.

<sup>370</sup> *Id.*

<sup>371</sup> *Id.* at 46.

<sup>372</sup> *Id.* at 43.

<sup>373</sup> *Id.*

<sup>374</sup> *Id.* at 45.

<sup>375</sup> *Id.*

<sup>376</sup> *Id.*

<sup>377</sup> *Id.*

<sup>378</sup> *Id.* at 167.

<sup>379</sup> Michael Lewis, *Wilderness and Conservation Science*, in AMERICAN WILDERNESS, *supra* note 23, at 205, 216.

<sup>380</sup> Conte, *supra* note 210, at 226.

create a new model. Perhaps it also occurred because at this time colonial “superiority” to native peoples was of a uniquely American flavor.

The second influence on Albert’s decision was the personal lobbying efforts of an American named Carl Akeley. In 1920, Carl Akeley had gone to the Congo on safari for the express purpose of killing animals that could be stuffed and put on display in various museums around America.<sup>381</sup> One of the major specimens Akeley sought was the gorilla; specifically he sought the species with the classification *Gorilla beringei beringei*, more commonly known as mountain gorillas, which he found in the Congo.<sup>382</sup> After bagging five of the gorillas to be put on display at the American Museum of Natural History in New York— which has now put all of its animal displays collected by Akeley in a part of the museum named after him—Akeley felt a pang of guilt.<sup>383</sup> He wrote that “it took all one’s scientific ardor to keep from feeling like a murderer. He was a magnificent creature with the face of an amiable giant who would do no harm except perhaps in self-defense or in defense of his friends.”<sup>384</sup> Having secured the specimens that he needed, Akeley felt that no one else should be allowed to hunt these great animals. After a concerted lobbying campaign by Akeley with like-minded associates, the Parc National Albert was created by Belgian Royal Decree in 1925 as a “sanctuary for all times” where the “gorilla would be safe from . . . white hunters.”<sup>385</sup>

As time and efforts progressed, the wilderness myth became more entrenched, and colonial fiats were replaced by large fundraising efforts utilizing political action.<sup>386</sup> There are so many non-governmental organizations (NGOs) devoted to conservation in Africa that it would be counterproductive to discuss them all here.<sup>387</sup> Two of the most important and influential, however, merit further discussion. These groups, which today threaten the Iyaelima in the DRC, are the African Wildlife Federation and the World Wildlife Fund.

These organizations are now in the dangerous position of being able to use their influence to ensure that history repeats itself. In order to ensure that the rights of indigenous people are protected and the sovereignty of the fragile DRC democracy is respected, both of which are crucial to the survival of the species these organizations seek to protect, the traditional American

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<sup>381</sup> Paul Raffaele, *Guerrillas in their Midst*, SMITHSONIAN MAG., Oct. 2007, at 2, available at [http://www.smithsonianmag.com/science-nature/guerilla.html?onsite\\_source=relatedarticles&onsite\\_medium=internallink&onsite\\_campaign=SmithMag&onsite\\_content=Guerrillas in Their Midst](http://www.smithsonianmag.com/science-nature/guerilla.html?onsite_source=relatedarticles&onsite_medium=internallink&onsite_campaign=SmithMag&onsite_content=Guerrillas in Their Midst).

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

<sup>385</sup> Jeanette Eileen Jones, *Gorilla Trails in Paradise: Carl Akeley, Mary Bradley, and the American Search for the Missing Link*. 29 J. AM. CULTURE 321, 330-31 (2006). The campaign to create the park was rather heated and took many years. *Id.* at 329-32. Interestingly, Akeley’s original vision for the park contemplated both Belgian officials and a “special native police” to keep the gorillas safe. *Id.* at 331. Akeley believed that the cooperation of local Africans was vital to the gorilla’s survival. In one letter he wrote that the “natives of this region have disturbed the gorillas very little [and] the gorillas got along very well till the white men came along with guns.” *Id.* at 331-32. Akeley died shortly after the park’s creation and so it remains a question as to what impact he might have made towards such a vision being implemented. *Id.* at 332.

<sup>386</sup> Dowie, *supra* note 2, at 69.

<sup>387</sup> GRASP, *supra* note 311, at 6. Some of the NGOs dedicated solely to bonobo conservation include: the Max Planck Institute, AWF, Source de Lomako (SoLo), Pygmy Chimpanzee Protection Fund, Bonobo Conservation Initiative (BCI), Milwaukee Zoological Society, Bleu-Blanc, Wildlife Conservation Society (WCS), Conservation International (CI), WWF, and the Lukuru Wildlife Research Project (LWRP), Dr. Thompson’s NGO dedicated to bonobo research and community conservation work.

model derived from Yosemite and Yellowstone must not be adopted. By implementing this model, the AWF and WWF threaten to repeat America's disastrous history in a foreign land.

## XI. AMERICAN CONSERVATION ABROAD

### A. African Wildlife Foundation

When it was founded in 1961, the African Wildlife Foundation (AWF) was named the African Wildlife Leadership Foundation.<sup>388</sup> It was founded by a group of American men who were passionate big game hunters, including Kermit Roosevelt, the grandson of Theodore Roosevelt.<sup>389</sup> Its principal founder was an American tax court judge named Russell E. Train.<sup>390</sup> Train's impact on American environmental and conservation policy cannot be understated: he would become the first chairman of the White House Council on Environmental Quality, the head of the Environmental Protection Agency, the Under Secretary of the Department of Interior, and the chairman of the United States chapter of the WWF, eventually winning the Presidential Medal of Freedom, one of the highest honors that can be awarded to an American civilian.<sup>391</sup> Train's first trip to Africa was a safari in Kenya where he managed to become a member of the "Hundred Pounder Club," a distinction only given to hunters who shoot an elephant whose tusks weigh more than one hundred pounds each.<sup>392</sup>

AWF's founders decided that they would live up to their name and "engage in conservation work [solely] in Africa."<sup>393</sup> It was a task that Train and his co-founders felt would be best left not to Africans themselves, but to the white Westerners who came to the continent for recreation.<sup>394</sup> In an editorial that appeared in the organization's first newsletter, Train wrote, "In Tanganyika alone, the government recently ordered 100 percent Africanization of the game service,"<sup>395</sup> which Train elaborated to mean that the "replacement of European staff by untrained, unqualified men spells disaster for the game."<sup>396</sup>

Of course, Train ignored the fact that at the time of his newsletter, the majority of current staff managing African wildlife was Europeans who had no formal training (and Train would later admit were merely "dedicated amateurs").<sup>397</sup> The newsletter was published in the early 1960s, but it reveals the Western viewpoint towards conservation that remains ingrained in organizations like the AWF and WWF to this day.<sup>398</sup> It is also a viewpoint that was uniquely American, influenced by John Muir's "ethical notions of preserving wild animals and space for their own sake."<sup>399</sup>

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<sup>388</sup> AWF, AWF's History, <http://www.awf.org/section/about/history#1960> (last visited June 13, 2011).

<sup>389</sup> BONNER, *supra* note 242, at 55-56.

<sup>390</sup> *Id.* at 55.

<sup>391</sup> *Id.*; WWF, Who We Are—Russell E. Train, <http://www.worldwildlife.org/who/russelletrain/> (last visited June 13, 2011).

<sup>392</sup> BONNER, *supra* note 242, at 55.

<sup>393</sup> *Id.* at 56.

<sup>394</sup> *Id.* at 57.

<sup>395</sup> *Id.*

<sup>396</sup> *Id.*

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*

<sup>399</sup> *Id.* at 61.

## B. World Wildlife Fund

The World Wildlife Fund has a distinctly more international genesis than the AWF. Originally, the WWF was created in order to “raise money for the IUCN’s scientific work in the field and conduct public campaigns generating pressure on governments to implement conservation measures.”<sup>400</sup> However, the WWF would soon become heavily influenced by both British and American conservationists operating under the wilderness myth.

WWF was the brainchild of Sir Julian Huxley, the first head of the United Nations Educational, Cultural and Scientific Organization (UNESCO).<sup>401</sup> In 1960, Huxley made a trip to Eastern Africa and “was appalled at what he saw.”<sup>402</sup> He came back to his home country and wrote a series of articles in *The Observer* that warned “habitat was being destroyed and animals hunted at such a rate that much of the region’s wildlife could disappear within the next 20 years.”<sup>403</sup> The articles created a firestorm of interest, and Huxley was soon put in contact with Max Nicholson, who was the Director General of Britain’s Nature Conservancy at the time.<sup>404</sup>

WWF’s base of operations was located in Switzerland, the same place as IUCN headquarters, and it set up global offices called National Appeals, today known as National Organizations (each National Organization was ordered to raise funds in their own country and send two-thirds of any raised monies to the international headquarters).<sup>405</sup> WWF’s launch came in September of 1961 at a conference called by the IUCN with the heads of African governments who had just escaped the shackles of European colonial rule.<sup>406</sup> From the very beginning, there was cooperation between conservation NGOs and international bodies devoted to the same cause. The IUCN said of the newly formed WWF, that “together . . . we will harness public opinion and educate the world about the necessity for conservation.”<sup>407</sup>

However, conservation history has shown that these partnership programs have proved to be based more on competition than cooperation towards conservation goals. As Nicholson worked to create the WWF, he knew that “American conservationists had to be involved,” but when he approached the heads of major American conservation groups in early 1961, they were incredulous.<sup>408</sup> The American groups were keenly aware that “another group would just be a drain on their contributions,” and this animosity “permeates and hinders the conservation movement to this day.”<sup>409</sup>

Those involved in these early years of international conservation realized, in Nicholson’s words, “the full horror that within two years there might be a dozen competing wildlife funds, all going for the same source.”<sup>410</sup> One of the WWF’s earliest fundraising ideas was called the “1001 Club” that consisted of wealthy individuals that donated \$10,000 towards conservation.<sup>411</sup> When the list was first created in the late 1960s, it was a highly secretive virtual who’s who of

<sup>400</sup> *Id.* at 62.

<sup>401</sup> *Id.* at 61.

<sup>402</sup> WWF, WWF in the 60’s, [http://www.panda.org/about\\_wwf/who\\_we\\_are/history/sixties/index.cfm](http://www.panda.org/about_wwf/who_we_are/history/sixties/index.cfm) (last visited June 13, 2011).

<sup>403</sup> *Id.*

<sup>404</sup> *Id.*

<sup>405</sup> *Id.*

<sup>406</sup> BONNER, *supra* note 242, at 64.

<sup>407</sup> WWF, *supra* note 402.

<sup>408</sup> BONNER, *supra* note 242, at 63.

<sup>409</sup> *Id.*

<sup>410</sup> *Id.* at 64.

<sup>411</sup> *Id.* at 68.

world figures.<sup>412</sup> The list also included individuals who owned companies responsible for the destruction of “thousands of miles of the Amazon rain forest,” several financiers who would later be charged with embezzlement or money laundering charges, and businessmen charged with bribing government officials.<sup>413</sup> One of the first members of the “1001 Club” was Mobutu Sese Seko, who had recently taken over the Congo and renamed both the DRC and himself.<sup>414</sup> Money, not integrity, was the main focus.

The launch of the United States chapter of the WWF came in 1962 at a black tie dinner presided over by President John F. Kennedy.<sup>415</sup> The U.S. chapter of WWF remained a “modest organization”<sup>416</sup> until 1978 when Russell Train became its president.<sup>417</sup> When Train began as president, WWF-US had fewer than 50,000 members, but when he stepped down in 1985, membership was over 300,000.<sup>418</sup> Funding became a major source of contention because WWF-US never forwarded two-thirds of the funds it raised, which was organizationally mandated by WWF-International, nor was it willing to give the maximum allowed under U.S. tax laws at the time.<sup>419</sup> The animosity was the result not only of the U.S. chapter’s financial reluctance, but also the firm belief, encouraged by Train, that “international bodies were not needed and if anything was to be done to save African wildlife, Americans could do it best.”<sup>420</sup>

### C. AWF and WWF Program History

On its twenty-fifth anniversary in 1987, WWF conducted an internal study to determine how effective its programs had been.<sup>421</sup> Based on a complex system of scoring, the WWF’s own study determined that seventy-three percent of its programs had accomplished their immediate aims.<sup>422</sup> It was more difficult to determine “the longer-term success rate of projects,” but it was not as high.<sup>423</sup> However, the study also concluded that the “WWF’s attitude engendered accusations of ‘neo-colonialism.’”<sup>424</sup> It is not difficult to understand why this perception amongst indigenous peoples remains to this day. Many did not take these neo-colonial approaches lying down.

For example, when the Maasai, a tribe who are traditionally pastoralists found across Eastern Africa, were evicted from Serengeti National Park for the benefit of tourism,<sup>425</sup> they responded with a violent “campaign against the wildlife.”<sup>426</sup> The Maasai’s warriors speared

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<sup>412</sup> *Id.*

<sup>413</sup> *Id.*

<sup>414</sup> *Id.* As part of his Africanization campaign, Mobutu not only changed the DRC’s name to Zaire, but also his own name from Joseph-Désiré Mobutu to Mobutu Sese Seko Kuku Ngbendu Wa Za Banga which translates as “the all-powerful warrior, who because of his endurance and inflexible will to win, sweeps from conquest to conquest leaving fire in his wake.” *Id.*

<sup>415</sup> BONNER, *supra* note 242, at 72.

<sup>416</sup> *Id.* at 73.

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*

<sup>419</sup> *Id.* at 74.

<sup>420</sup> *Id.* at 63-73.

<sup>421</sup> *Id.* at 75.

<sup>422</sup> *Id.*

<sup>423</sup> *Id.* at 75.

<sup>424</sup> *Id.* at 78.

<sup>425</sup> *Id.* at 228.

<sup>426</sup> *Id.*

leopards, hyenas, and other wildlife, but they reserved the most animosity for killing the “rhino because they were the most popular with tourists.”<sup>427</sup> Tourists themselves, who are seen as preferable to indigenous peoples by conservation groups, have their own negative impact on wildlife. Eager tourists often harass lions for pictures to the point that the lions miss so many kills for food that “lion cubs sometimes starve.”<sup>428</sup> Ironically, by bringing in tourists and expelling the Maasai, conservationists were directly responsible for wildlife deaths on two fronts.

#### D. Current Situation in the DRC

All of this behind-the-scenes political wrangling for control of conservation and rivalry over funds translated to one thing: the organizations “professed to care about what the Africans wanted, but then tried to manipulate them into doing what the Westerners wanted.”<sup>429</sup> Before independence, Africans only had to deal with whichever single European power claimed colonial rule. Now, they are faced with intersecting pressures and strategies from numerous national and international NGOs.

These intersecting pressures and strategies have often resulted in failure and suffering for the people and little to no measurable improvement for wildlife. The WWF believes that groups such as the Iyaelima do not have a right to live in the Salonga.<sup>430</sup> Instead, they believe the Iyaelima should be resettled elsewhere which, the NGOs admit, they have purposefully required in the past.<sup>431</sup> This story should sound eerily familiar to the history of America’s national parks.<sup>432</sup>

In 2004, *World Watch Magazine* published an article entitled “A Challenge to Conservationists,” making the case that the three largest conservation groups, the WWF, Conservation International and the Nature Conservancy, “were increasingly excluding, from full involvement in their programs, the indigenous and traditional peoples living in territories the conservationists were trying to protect.”<sup>433</sup> This article created a tremendous amount of controversy when it appeared, and each organization wrote a letter to the magazine in its defense (which the magazine published in the next month’s issue).<sup>434</sup>

#### E. Rise and Fall of ICDPs

There was a period in the late 1980s and early 1990s when NGOs specifically designed conservation programs focusing on the involvement of indigenous and local peoples.<sup>435</sup> Donors

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<sup>427</sup> *Id.* at 228.

<sup>428</sup> *Id.* at 244.

<sup>429</sup> *Id.* at 85.

<sup>430</sup> Falk, *supra* note 8, at 53.

<sup>431</sup> *Id.*

<sup>432</sup> The history of the formation of America’s national parks discussed earlier in this paper not only bears this fact out, but it was a charge leveled against major conservation groups in 2004 by Mac Chapin. Mac Chapin, *A Challenge to Conservationists*, WORLD WATCH MAGAZINE, Nov./Dec. 2004, at 17, available at <http://www.worldwatch.org/system/files/EP176A.pdf>.

<sup>433</sup> *Id.*

<sup>434</sup> See Worldwatch Institute, Reader’s Response to “A Challenge to Conservationists,” <http://www.worldwatch.org/node/1832>; see also Peter Carlson, *World Watch*, *Kicking Dirt on Three Big Greenies*, WASHINGTON POST, Nov. 23, 2004, at C3, available at <http://www.washingtonpost.com/wp-dyn/articles/A6009-2004Nov22.html>.

<sup>435</sup> Chapin, *supra* note 432, at 20.

supported this new approach, but, as is often the case with conservation programs, it “soon became a bandwagon onto which many organizations jumped” because of the fierce competition over funding.<sup>436</sup> Each organization came up with a different catchword for these programs, but they were commonly referred to as ICDPs, which stands for integrated conservation and development programs.<sup>437</sup>

However, ICDPs, as a whole, were a string of failures because of design flaws. Rather than seeking out indigenous peoples on the ground to work as true partners in collaboration to design and implement the programs, the non-governmental organizations “were designed and run by the conservationists.”<sup>438</sup> There were a few exceptions where ICDPs were successful, but they usually failed because they were “paternalistic, lacking in expertise, and . . . driven largely by the agendas of the conservationists with little indigenous input.”<sup>439</sup>

Another problem was articulated by the president of WWF-International, Thomas McShane, who said that conservation groups were “not suited to work in the social and economic realms” which successful ICDPs rely on.<sup>440</sup> There seemed to be a chasm between the agendas of the indigenous peoples and conservationists and the ability to reconcile “cultural differences between industrialized and indigenous ways of viewing the world.”<sup>441</sup> Indigenous agendas focused on “the need to protect and legalize their lands for their own use” while emphasizing “the importance of finding ways to make a living on the land without destroying those resources.”<sup>442</sup> Conservationists focused, instead, on their perceived “need to establish protected areas that are off-limits to people,” finding the needs of the indigenous people to be “too political and outside their conservationist mandate.”<sup>443</sup> Indeed, conservationists believed that ICDPs “are inherently contrary to the goals of biodiversity conservation”<sup>444</sup> which the conservationists believe “should be based on rigorous biological science.”<sup>445</sup>

Following the failure of the ICDPs, the big conservation groups also started to abandon their partnering activities with indigenous people to focus, instead, on large-scale approaches that centered around massive reserves and parks off limits to everyone but researchers. These new strategies were anchored on “the importance of science, rather than social realities.”<sup>446</sup> However, this return to the old paradigm of large people-less parks is not new, as the history of Yosemite and Yellowstone shows. The new element was that advocates for the American model added scientific theories to support their position, but these theories are unproven at best and are also warped by inherent cultural biases.

The science of ecology “emerged from its traditions in natural history at the beginning of the twentieth century,” and the American scientists who became its adherents “were steeped [in] American cultural dialogues about the importance of wilderness.”<sup>447</sup> Conservationists were still captivated by the wilderness myth, but now they used science to justify the cultural view that

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<sup>436</sup> *Id.*

<sup>437</sup> *Id.*

<sup>438</sup> *Id.*

<sup>439</sup> *Id.*

<sup>440</sup> *Id.*

<sup>441</sup> *Id.* at 20-22.

<sup>442</sup> *Id.*

<sup>443</sup> *Id.*

<sup>444</sup> *Id.* at 20.

<sup>445</sup> *Id.*

<sup>446</sup> *Id.* at 18.

<sup>447</sup> LEWIS, *supra* note 192, at 69.

wilderness landscapes must be devoid of people. This perspective disregards indigenous populations who have their own system of knowledge and erases their influence on the landscape.

## F. Conservation Science

Historically, conservationists and Western ecologists have usually favored one large reserve in order to maintain species populations and landscapes.<sup>448</sup> This theory has dominated conservation policies and “underpinned the establishment of large national park and sanctuaries throughout the world since the early seventies.”<sup>449</sup> The theory of large reserves is predicated on several scientific theories, but most importantly island biogeography.<sup>450</sup> Island biogeography was a novel theory created by Robert MacArthur and E.O. Wilson in 1963 after studying islands in the Caribbean.<sup>451</sup> Their theory attempted to “determine how the size of islands affected the biodiversity they contained and the rate at which species became extinct.”<sup>452</sup> It can be boiled down to a single sentence written by E.O. Wilson, stating that “a reduction in habitat is inexorably followed by a loss of animal and plant species.”<sup>453</sup>

There are a number of problems with the validity of the theories proposed by island biogeography, but most importantly conservationists “made the intuitive leap . . . that what was true of oceanic islands was also true of terrestrial nature reserves.”<sup>454</sup> This was not rigorous science based on critical scrutiny and testing, but nevertheless the theory would be widely popularized by Jared Diamond in a series of articles between 1969 and 1975, eventually being adopted by Thomas Lovejoy in 1973.<sup>455</sup> Thomas Lovejoy, a chief scientific advisor of the U.S. chapter of the WWF since the early 1970s, took the theories of island biogeography to mean that “since large islands hold more species than smaller ones with equivalent environments, it is reasonable to conclude that larger reserves will hold more species than smaller ones.”<sup>456</sup>

The first scientific attack on the “idea that nature reserves should be as large as possible” actually came from Daniel Simberloff (who was a graduate student working for Wilson when the theory of island biogeography was developed).<sup>457</sup> Besides arguing that there had been an “uncritical acceptance and application” of island biogeography “in situations for which it was not designed or tested,”<sup>458</sup> Simberloff also challenged the notion that single large reserves were preferable for conservation as opposed to groups of smaller reserves.<sup>459</sup> The viability of smaller reserves being just as effective as large reserves was proven in a number of studies (including research conducted by Steve Hendrix in prairie ecosystems).<sup>460</sup> Smaller reserves also have a number of strategic advantages compared to a single large reserve, including a greater diversity

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<sup>448</sup> *Id.* at 141.

<sup>449</sup> *Id.*

<sup>450</sup> *Id.* at 141-45.

<sup>451</sup> *Id.* at 141-42.

<sup>452</sup> *Id.* at 142.

<sup>453</sup> *Id.*

<sup>454</sup> LEWIS, *supra* note 192, at 142-43.

<sup>455</sup> *Id.* at 143-44.

<sup>456</sup> *Id.* at 144.

<sup>457</sup> *Id.* at 146.

<sup>458</sup> *Id.*

<sup>459</sup> *Id.*

<sup>460</sup> *Id.* at 147.

of land types, minimization of risk in the event of fire or disease, and freedom of animal movement from one smaller reserve to another in the event of local extinctions.<sup>461</sup>

Just as early advocates of the wilderness myth sought landscapes devoid of people, many conservation scientists improperly view “any human involvement in any ecosystem” as a “disturbance from the normal or ‘natural’ workings of that system.”<sup>462</sup> This ridiculous oversight is partially due to “cultural parallax.”<sup>463</sup> Cultural parallax is a phenomenon whereby outsiders encountering a landscape for the first time are blind to the fact that it has been domesticated by the indigenous group that inhabits it, because the outsider lacks all knowledge of the landscape’s past.<sup>464</sup> “[T]he complexities of indigenous influence on the land [are basically] invisible to them.”<sup>465</sup> This is certainly true of defenders of American parks who virtually extinguished all traces of indigenous tribes in order to accommodate the wilderness myth. Unless this cycle is broken, it seems poised to be repeated with the Iyaelima in Salonga.

## XII. LEGAL STRUCTURE OF CONSERVATION IN THE DRC AND PROPOSED STRATEGIES

### A. National Laws of the DRC

The DRC is currently restructuring all of its national laws, starting with a new constitution passed in 2005.<sup>466</sup> Under the current constitution, the country will be divided into twenty six provinces by 2009, which will act as administrative divisions of the national government.<sup>467</sup> In October 2007, it was announced that the UNEP, the United Nations Environmental Program, would assist the government “in drafting and developing national environmental laws, regulations and guidelines.”<sup>468</sup> As always, these laws must reach a just balance between conservation and the development of the DRC’s forest, mineral and agricultural resources (especially in this time of tremendous international investment in all of these sectors).<sup>469</sup>

The bonobo’s current situation is partially overshadowed by its cousin, the mountain gorilla, whose dwindling population is located in the eastern part of the DRC (formerly Albert National Park, but today known as Virunga National Park).<sup>470</sup> It was “mounting national and international alarm over the slaughter of gorillas and damage to one of Africa’s most famous national parks” that caused the UNEP Executive Director to send a mission to the DRC.<sup>471</sup> The mission had several objectives, but the DRC’s Minister emphasized “the issue of security of the

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<sup>461</sup> *Id.*

<sup>462</sup> *Id.* at 149.

<sup>463</sup> Conte, *supra* note 210, at 227.

<sup>464</sup> *Id.*

<sup>465</sup> *Id.*

<sup>466</sup> CIA, World Factbook, *supra* note 220.

<sup>467</sup> *Id.*

<sup>468</sup> UNEP, Press Release: Sustainable Future for DRC’s Nature-Based Resources Aim of New UNEP Project, Oct. 26, 2007, available at

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=519&ArticleID=5689&l=en> (last visited June 13, 2011).

<sup>469</sup> *Id.*

<sup>470</sup> *Id.*

<sup>471</sup> *Id.*

Virunga Park, the finalization of the policy framework, and the strengthening of the capacity of the Congolese Institute for the Conservation of Nature (ICCN).<sup>472</sup>

### B. Congolese Institute for the Conservation of Nature

The DRC's bureaucratic body responsible for conservation is the Congolese Institute for the Conservation of Nature, the ICCN.<sup>473</sup> However, the DRC government has expressly stated that its top priority is "the sustainable extraction of natural resources," not conservation.<sup>474</sup> The UNEP mission supports four key areas: 1) drafting the regulatory environmental framework; 2) "revising the national environmental action plan;" 3) reforming the conservation institute; and 4) "*establishing public-private partnerships in park management.*"<sup>475</sup>

These public-private partnerships will be founded on the goals and philosophies of NGOs, like the WWF. NGO's already have a tremendous impact on the DRC, but now their views are being legitimized by the UN (which should always remain neutral to maintain credibility).<sup>476</sup> In order to succeed, the UNEP has stated that it "must not be perceived as coming with a top down solution and heavy hand," but it is supporting groups, like the WWF, who do just that.<sup>477</sup> BINGOs, Big International Non-Governmental Organizations, like the WWF are leading the charge of Western conservationists to expel indigenous people from parks around the world, including the Iyaelima from Salonga National Park.<sup>478</sup>

### C. Legislation and Enforcement

There are two major legal challenges facing the ICCN and effective bonobo conservation. First there are the inadequacies in national legislation, because there is no current law that specifically deals with the protection of great apes like the bonobo (such as a parallel to the U.S. Endangered Species Act).<sup>479</sup> The current paradigm deals with providing sanctuaries, via protected areas and reserves such as Salonga and the Luo Scientific Reserve in Wamba, and hunting regulations.<sup>480</sup> The DRC's hunting laws are divided into three categories, and the great apes, which include the bonobo, are classified according to table 1 of the law's annex which forbids "killing, capturing, hunting, pursuing, [or] deliberately disturbing" these animals.<sup>481</sup> This hunting ordinance, which has been on the books since 1969, forbids anyone from taking up "residence anywhere within a reserve," which of course is problematic for populations who reside in the reserve.<sup>482</sup>

The second challenge facing effective conservation is capacity for actual on-site enforcement of any laws. The ICCN is currently responsible for managing seven national parks

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<sup>472</sup> UNEP, UNEP Mission Report to the DR Congo Period 16-26 Sept. 2007, at 2, *available at* [http://www.unep.org/grasp/docs/UNEP\\_report\\_DRC\\_mission.pdf](http://www.unep.org/grasp/docs/UNEP_report_DRC_mission.pdf).

<sup>473</sup> *Id.*

<sup>474</sup> *Id.* at 6.

<sup>475</sup> *Id.* (emphasis added).

<sup>476</sup> *Id.*

<sup>477</sup> *Id.* at 8.

<sup>478</sup> Falk, *supra* note 8, at 53.

<sup>479</sup> GRASP, *supra* note 311, at 9.

<sup>480</sup> *Id.*; Thompson, Nestor & Kabanda, *supra* note 21, at 240.

<sup>481</sup> GRASP, *supra* note 311, at 9.

<sup>482</sup> *Id.* at 10.

within the DRC including fifty seven areas set aside as hunting or wildlife reserves.<sup>483</sup> There are varying opinions about how many guards are required for effective enforcement and protection. The IUCN recommends a ratio of one guard for every nineteen km<sup>2</sup> while others say that three guards for every one hundred km<sup>2</sup> is sufficient.<sup>484</sup> Generally, the ICCN has about 1,329 guards per sixty-two km<sup>2</sup> of protected area.<sup>485</sup> Of these guards, close to sixty percent are near retirement age.<sup>486</sup>

Salonga National Park covers 36,000 km<sup>2</sup>, but only has a total of 137 guards and effective enforcement would require at least 1,080 guards by most calculations.<sup>487</sup> Another common sense reason the Iyaelima should not be expelled is because they could be ideal surrogates for park rangers given their sustained presence in the park and “knowledge of the region.”<sup>488</sup>

#### D. Congo Basin Forest Partnership

A renewed impetus for conservation in the DRC stems from the U.S. government passage of the Congo Basin Forest Partnership (CBFP) Act. The CBFP’s stated objective is “the improvement of the effectiveness of technical and financial contributions for the conservation, sustainable management of forest ecosystems, and alleviation of poverty in Central African countries.”<sup>489</sup> The listed partners include the United States, the EU, Canada, Germany, Belgium, South Africa, Cameroon, France, Equatorial Guinea, Japan, Gabon, the Democratic Republic of the Congo, the United Kingdom, the Republic of the Congo, and many other world governments.<sup>490</sup> The list of partners also includes a number of BINGOs, including the AWF and WWF.<sup>491</sup> The WWF issued a press release stating that the passage of CBFP “is one of the most significant achievements during WWF’s 30 years of work in the Congo Basin.”<sup>492</sup>

The same press release stated that “the widespread slaughter of wild animals in the Congo Basin creates ‘empty forests,’ which diminish opportunities for local communities and threaten the forests’ long-term viability.”<sup>493</sup> The United States has currently pledged at least \$53 million dollars to the CBFP, with most of the money funneled into programs run by the AWF and WWF.<sup>494</sup> While these organizations pay lip service to the claim that they are dedicated to local concerns and indigenous rights, their track record indicates otherwise.

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<sup>483</sup> *Id.* at 11.

<sup>484</sup> *Id.*; Thompson, Nestor & Kabanda, *supra* note 21, at 241.

<sup>485</sup> *Id.* at 14.

<sup>486</sup> *Id.*

<sup>487</sup> Thompson, Nestor & Kabanda, *supra* note 21, at 241.

<sup>488</sup> *Id.*

<sup>489</sup> Congo Basin Forest Partnership (CBFP), Cooperation Framework for Partner Members of the Congo Basin Forest Partnership, available at <http://www.pfbc-cbfp.org/workingstructure.html> (last visited June 13, 2011).

<sup>490</sup> CBFP, Partners, available at <http://www.pfbc-cbfp.org/membercountries.html> (last visited June 13, 2011).

<sup>491</sup> *Id.*

<sup>492</sup> *Id.*; WWF, Press Release: WWF, WCS, and CI Applaud Passage of Congo Basin Forest Partnership, Feb. 9, 2004, available at <http://worldwildlife.org/who/media/press/2004/WWFPresitem685.html> (last visited June 13, 2011).

<sup>493</sup> *Id.*

<sup>494</sup> Falk, *supra* note 8, at 52.

### XIII. CONCLUSION

#### A. A Better Way

There are a number of examples around the world where indigenous peoples are involved from the very beginning in conservation design and implementation.<sup>495</sup> Unlike the majority of failed ICDPs, most of which never really gave any appreciable level of control to the indigenous tribes, these programs did not fail. One of the earliest examples is the hugely successful community-based conservation program developed by Garth Owen-Smith and Margaret Jacobsohn in Namibia.<sup>496</sup>

When this program began, Namibia's "ecosystems were rapidly deteriorating in the north, with rampant poaching of elephant ivory and rhino horn and severe over-use of drought-prone land."<sup>497</sup> Owen-Smith approached traditional leaders and proposed a new solution. The first idea was a "community game guard program."<sup>498</sup> The community game guards were not empowered to apprehend a poacher, but "only to detect his presence" and notify the authorities.<sup>499</sup> Early detection is a critical function that greatly reduces the number of animals killed once a poacher enters a protected area (and is seen as a more important goal than punishing the poachers).<sup>500</sup> Owen-Smith realized that for these measures to be truly successful "there would have to be something positive . . . some benefits" for the tribes.<sup>501</sup>

In 1996, Namibia's government passed the Nature Conservation Act.<sup>502</sup> This act established the country's Community Based Natural Resource Programme and created a series of conservancies across the country to be managed and headed by local indigenous communities.<sup>503</sup> These conservancies were "legally gazetted areas within the state's communal lands," and the law gave the same rights to these local communities that had previously been given only to "white-owned freehold farms."<sup>504</sup> This codified the right of communities to reap benefits from the use of "hunnable game."<sup>505</sup>

However in order for a local community to qualify, they had to first define the conservation area's "boundary, elect a representative conservancy committee, negotiate a legal constitution, prove the committee's ability to manage funds, and produce an acceptable plan for equitable distribution of wildlife-related benefits."<sup>506</sup> As of 2006, forty-four "communal area

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<sup>495</sup> Dowie, *supra* note 2, at 75.

<sup>496</sup> World Resources Institute [hereinafter WRI], A New Idea for Wildlife Management, [http://archive.wri.org/item\\_detail.cfm?id=3843&section=markets&page=pubs\\_content\\_text&z=?](http://archive.wri.org/item_detail.cfm?id=3843&section=markets&page=pubs_content_text&z=?) (last visited June 13, 2011). Garth Owen-Smith is a South African wildlife specialist and Margaret Jacobsohn is an anthropologist effectively bridging the two disciplines which seemed to be a major challenge of other ICDPs in the past. *Id.*

<sup>497</sup> *Id.*

<sup>498</sup> BONNER, *supra* note 242, at 22.

<sup>499</sup> *Id.* at 26.

<sup>500</sup> *Id.* At the time when the Namibian program was being created, the AWF and WWF were directly funding and promoting a shoot-to-kill policy towards a poacher which raises a plethora of legal and ethical issues itself. *Id.* at 18.

<sup>501</sup> *Id.*

<sup>502</sup> WRI, *supra* note 496.

<sup>503</sup> *Id.*

<sup>504</sup> *Id.*

<sup>505</sup> *Id.*

<sup>506</sup> *Id.*

conservancies had been gazetted” with more currently engaged in the registration process.<sup>507</sup> These conservancies cover over 100,000 square kilometers, and have more than 210,000 people involved in the program.<sup>508</sup> The success of this program was due not only to the dedication and enthusiasm of the local people, but also because that spirit was bolstered by “a strong commitment from support organizations . . . including the University of Namibia and 12 national NGOs.”

Today, many of these programs are economically self-sufficient and provide local communities with a sustainable livelihood while achieving conservation goals at the same time.<sup>509</sup> This example is not intended to propose that some sort of hunting program should be developed in regards to the bonobo. Instead, it shows that indigenous and traditional people are capable of creating highly effective conservation programs. There is no logical reason why programs like this one should not be encouraged in the DRC.

## B. America at Its Best

In November 2007, it was announced that the DRC had set aside 11,000 square miles of land specifically for the bonobo.<sup>510</sup> While this amount of land is only one percent of the DRC’s total land mass, it is bigger than the state of Massachusetts.<sup>511</sup> Startup funding for the new park, called the Sankuru Nature Reserve, will be provided by the U.S. Fish and Wildlife Service (as well as private donors).<sup>512</sup> The question remains whether people within this newly created reserve will remain, or whether they will be removed as is typically required by the traditional American model. The Bonobo Conservation Initiative, which was instrumental in the park’s creation, has stated correctly, “the people of Sankuru rely on the forest for every aspect of their livelihood” and “helping them to develop economic alternatives to the bushmeat trade is one of the most urgent priorities.”<sup>513</sup>

Didace Pembe Bokiaga, the DRC’s Minister of the Environment, stated that Sankuru “is being created in the framework of community participative conservation . . . and will be zoned to guarantee the rights of the local population.”<sup>514</sup> This is an important step that recognizes human needs and the needs of conservation are not mutually exclusive, and in order for conservation to work it must be done on a local level. In 1907, Winston Churchill went on a safari in East Africa and wrote, “In the end Africa belonged to the Africans.”<sup>515</sup>

Namibia’s program, a highly successful ICDP, works.<sup>516</sup> It works because it was created, managed, and enforced by Africans by their own means.<sup>517</sup> The law decides whether these

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<sup>507</sup> Integrated Rural Development and Nature Conservancies, Conservancies, available at <http://www.cfa-international.org/NGO%20directory/DFA-534.htm> (last visited June 13, 2011).

<sup>508</sup> WRI, *supra* note 496.

<sup>509</sup> *Id.*

<sup>510</sup> Eddie Isango, *Congo to Form Nature Reserve for Bonobos*, National Geographic News, <http://news.nationalgeographic.com/news/2008/02/071121-AP-congo-bonobos.html> (last visited June 13, 2011).

<sup>511</sup> *Id.*

<sup>512</sup> *Id.*

<sup>513</sup> *Id.*

<sup>514</sup> *Id.*

<sup>515</sup> PATRICIA O’TOOLE, *WHEN TRUMPETS CALL: THEODORE ROOSEVELT AFTER THE WHITE HOUSE* 62-70 (2005).

<sup>516</sup> WWF, *Namibia: Empowering Communities to Manage Their Natural Resources*, available at <http://www.worldwildlife.org/what/wherewework/namibia/> (last visited June 20, 2011).

<sup>517</sup> *Id.*

programs are enacted or not. The WWF recognizes that these programs can be successful, when properly designed and mandated by law.<sup>518</sup> Because of the 1996 law passed by Namibia's government, BINGOs were forcibly kept from implementing the traditional American model based on the wilderness myth.<sup>519</sup>

In Brazil, Conservation International has "formed a co-operative conservation project" with the Kayapo, a group of indigenous people inhabiting the Amazon.<sup>520</sup> Conservation International was forced to develop this program because the Kayapo, in a political coalition with other indigenous tribes, organized a movement during the formation of a new Constitution that resulted in indigenous "rights to land and to social and cultural autonomy."<sup>521</sup> The indigenous tribes of Brazil "began resorting to the courts to force invaders out of their lands," a shot across the bow to any conservation program in which indigenous people were not full and complete partners.<sup>522</sup> Before this new constitution the tribe had the same legal status in Brazil as "children and the mentally ill," but now they are "full citizens with all rights to the land they had occupied for millennia" allowing them to choose to invite Conservation International's support as equal partners.<sup>523</sup>

It may be too late for the Awahneechee, Crow, Bannock, and Shoshone to ever fully regain or be compensated for what was taken from them. Neither America's parks nor its tribes were ever the same after being forcibly separated by the law. However, American lawmakers can ensure that they are not responsible for repeating this process on a distant land and its people. Lawmakers can protect the legal rights of the Iyaelima by changing the U.S. government's own actions on this side of the Atlantic Ocean. For example, the U.S. government could mandate that the CBFP funds it contributes go towards establishing community-based conservation programs like those in Brazil and Namibia.

It is without dispute that remarkable species like the bonobo and primitive areas, that are not totally developed, should be protected for their own sake. However, the same is true of the Iyaelima people and their culture. Pulitzer Prize winning author Wallace Stegner wrote, "National parks are the best idea we ever had. Absolutely American, absolutely democratic, they reflect us at our best rather than our worst."<sup>524</sup> For this to be true, the traditional American model must be abandoned. New programs must be adopted. Correcting the course towards this end ensures conservation that is more democratic and truly reflects America at its best.

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<sup>518</sup> *Id.*

<sup>519</sup> IRDNC, History, <http://www.irdnc.org.na/history.htm> (last visited July 11, 2011).

<sup>520</sup> Dowie, *supra* note 2, at 75.

<sup>521</sup> Maria Guadalupe Moog Rodrigues, *Indigenous Rights in Democratic Brazil*, 24 HUMAN RIGHTS Q. 487, 494 (2002), available at <http://www.umass.edu/legal/Benavides/Fall2005/397U/Readings%20Legal%20397U/13%20Moog%20Rodrigues.pdf>.

<sup>522</sup> *Id.* at 495.

<sup>523</sup> MARK DOWIE, CONSERVATION REFUGEES: THE HUNDRED-YEAR CONFLICT BETWEEN GLOBAL CONSERVATION AND NATIVE PEOPLES 201-205 (MIT Press 2009). As Dowie notes, the Kayapo have an "undying ferocity" which, combined with their legal status, makes it problematic for groups like Conservation International to treat them the same way as some other indigenous people who may share the same tenacity but lack equivalent legal power. *Id.*

<sup>524</sup> Wallace Stegner (1983), Nat'l Park Service, Famous Quotes Concerning the National Parks, available at <http://www.nps.gov/history/history/hisnps/NPSThinking/famousquotes.htm> (last visited July 11, 2011).