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Author: Smith, Kimberly G.

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100 YEARS AGO IN THE AOU

100 years ago in the American Ornithologists' Union

Kimberly G. Smith

Department of Biological Sciences, University of Arkansas, Fayetteville, Arkansas, USA
kgsmith@uark.edu

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The year 1914 was when the last Passenger Pigeon (*Ectopistes migratorius*), Martha (named after the first First Lady, Martha Washington), died in the Cincinnati Zoo, and a kind of obituary for the species occurred in *The Auk* (31:566–567), presumably written by editor Witmer Stone. Given the premise that “It is rarely possible to state the exact date of the extinction of a species,” the fruitless effort for 10 years to find the Passenger Pigeon in the wild certainly meant that it went extinct with the passing of Martha. As the birds began to decline, “Writers were busy explaining why the birds had left their immediate vicinity and speculating on where they had gone, little dreaming that the disappearance was general and that the supposed “migration” was really extermination.” Apparently, one of the last great slaughters occurred in 1878 during the breeding season in Michigan, as “the pigeon trappers year after year plied their nefarious trade.” Even William Brewster (1889) held out hope for the species when he traveled to Michigan in spring of 1888: “that the Pigeon is not, as has been asserted so often recently, on the verge of extinction, is shown by the flight which passed through Michigan in the spring of 1888 . . . and the birds must have formed a nesting of considerable extent in some region so remote that no news of its presence reached the ears of the vigilant netters.” In other words, everyone assumed that the pigeons were somewhere else, not believing that they were actually disappearing. (To be fair, Brewster was quoted out of context: He didn’t actually see the flight in the spring of 1888, but relied on the reports of others. He concluded his 1889 paper believing that the Passenger Pigeon was headed for extinction.) In what presaged the Allee Effect, where species may go extinct due to the breakdown of social behaviors in small populations (e.g., Stephens et al. 1999), the author speculated that: “The pigeon like the buffalo was a species whose existence seems to have depended upon association in large numbers and once separated and scattered into small flocks and pairs its doom was sealed.”

The other big news of the time was the signing of the Weeks–McLean Act into law by President Wilson in October of 1913. Sponsored by Representative John W.

Weeks of Massachusetts and Senator George P. McLean of Connecticut, it prohibited spring hunting and marketing of migratory birds and the importation of wild bird feathers primarily for women’s hats (Figure 1). It gave the Secretary of Agriculture the power to set hunting seasons nationwide, making it the first U.S. law ever passed to regulate the shooting of migratory birds. The law was enacted in March as a rider to the appropriations bill for the Department of Agriculture, and T. S. Palmer, A. K. Fisher, and W. W. Cooke, all stalwarts of the AOU, drew up the regulations for the President to sign. The country was divided up into 13 districts, with an Inspector with 3 to 7 wardens in each district. States began to challenge this law as unconstitutional under the 10th Amendment that the Federal government had no authority to regulate migratory birds. The Supreme Court had ruled in 1896 (*Greer vs. Connecticut*) that states own their migratory birds, which was the basis of the challenge to the Weeks–McLean Act. The first challenge was in South Dakota in April of 1914, where it was found to be constitutional, but, in the Eastern District of Arkansas (*United States v. Shauver*) in May, Judge Jacob Trieber relied on *Greer vs. Connecticut* to rule that states own their migratory birds and the act was unconstitutional. Realizing that his act was in trouble, McLean immediately introduced legislation that was passed in July of 1913 authorizing the President to negotiate bird treaties. The first treaty was made in 1916 with Great Britain on behalf of Canada and it was ratified in 1918. The State of Missouri, particularly Senator James A. Reed, was the main opponent to the Weeks–McLean Act because it had a tradition of spring duck hunting.

Frank W. McAllister, the attorney general of the State of Missouri, continued to advocate spring duck hunting after the treaty was ratified. In the spring of 1919, United States Game Warden Ray P. Holland (1884–1973) heard that McAllister and his well-heeled buddies were planning a duck hunt near Neosho. When Holland arrived, he arrested the men and confiscated their 93 ducks. Immediately upon arraignment before the U.S. Commissioner in Clinton, Missouri, the local sheriff, under the direction of McAllister, had Holland arrested for having

wild ducks in his possession without a Missouri hunting license. (That charge was subsequently dropped.) The State of Missouri brought suit in the Federal district court at Kansas City, claiming that Holland had acted unconstitutionally in enforcing the Migratory Bird Treaty Act. The Act was upheld in this case in June, 1919, and Missouri appealed to the United States Supreme Court. On April 19, 1920, the Court ruled, in the majority opinion written by Justice Oliver Wendell Holmes, Jr., that the Migratory Bird Treaty of 1916 and the Migratory Bird Treaty Act of 1918 were constitutional. In their opinion, the justices stated that treaties trump just about anything else and that states cannot do anything about it. Holmes further claimed that *Greer vs. Connecticut* was wrong: "To put the claim of the State upon title is to lean against a slender reed. Wild birds are not in the possession of anyone; and possession is the beginning of ownership. The whole foundation of the states' rights is the presence within their jurisdiction of birds that yesterday had not arrived, tomorrow may be in another state and in a week a thousand miles away." Somewhat of a folk hero, Holland would go on to edit *Field & Stream* magazine from 1924 to 1941.

According to a report by T. S. Palmer (*The Auk* 31:143–146), nearly 200 new game laws were passed in 1913 in the United States. The ban on feather importation associated with the Weeks–McLean Act was an immediate success. As soon as the President signed the act, the Treasury Department started stopping anyone wearing feathers or with feathers in their luggage from entering the country. "... notwithstanding vigorous protests, all persons arriving at ports of entry with prohibited plumage either in trunks or on their hats, were compelled to relinquish such trimmings or to return them to the port of shipment." At the London feather market, 368 lots destined for the United States had to be pulled from auction, consisting of "1203 Greater Birds of Paradise, 22810 Kingfishes, 761 Emu, 3381 Pheasants, 54076 wing and tail quills of Condors, Hawks and Eagles, and 2,494 ounces [70.7 kg] of Egret plumes (= to about 14,964 birds)" (*The Auk* 31:290). Miller (1914) reported that prior to the Weeks–McLean Act, one company in Buenos Aires had shipped 34,206 kg of rhea feathers to the United States, primarily to be turned into feather dusters. The owner now had 40,000 kg of rhea feathers in his warehouse, but nowhere to ship them as the United States was the only market for rhea feathers. The owner also had "thousands and thousands" of Black-necked Swans (*Cygnus melancoryphus*) in his warehouse, which were exported to make power puffs (Figure 2).

Other countries soon tried to follow the United States' lead (*The Auk* 31:289). It was reported that Parliament in Great Britain was considering a law banning importing feathers. The great German naturalist Carl Georg Schillings wrote that the United States had found the only solution to the problem and that if Great Britain banned



FIGURE 1. Woman with bird hat circa 1900. The bird is a near complete specimen of either a Great (*Paradisaea apoda*) or a Lesser (*P. minor*) bird-of-paradise (fide Bruce Beehler).

the import, he felt certain that Germany would follow. But it would take Great Britain another 10 years to finally sort out the question of importing bird feathers (see detailed account in Doughty [1975]). The International Congress of Plume Dealers met in Paris in June of 1914 and called for the repeal of the United States act. That elicited the following from William Temple Hornaday, Director of the New York Zoological Park (the Bronx Zoo): "The feather dealers have resolved for the repeal of our law but they can just as easily lift themselves over the Eiffel Tower by their own shoelaces as they can induce the Congress of the United States to repeal its law [on] feather millinery. The idea is so absurd it is not amusing." The plume dealers' solution was to domesticate herons and egrets and offered the Academy of Sciences at Paris \$2000 to start the research. Edmond Perrier, Director of the Museum of Natural History, begged them not to accept the money, stating "everyone knows these birds cannot be so domesticated."

Given the success of the Weeks–McLean Act, Palmer suggested that it was time to turn to the other major bird issue: cats. "There is I think no doubt that for years past the greatest destructive agency to our smaller song and insectivorous birds has been cats." Palmer stated that the cat population was "enormous" and cited a study where it was reported that 53,938 cats had been "put out of existence" in 9 months in New York City in 1905 by the Society for Prevention of Cruelty to Animals. Palmer suggested the following: "The whole question of the economic value of the cat it seems to us would be a valuable line of investigation. If the destruction of mice offsets the destruction of game and insectivorous birds



FIGURE 2. A powder puff made of swan's down.

then the cat deserves consideration but if the keeping of cats is to be regarded as merely a 'luxury' or if they are proven to be more noxious than beneficial to wild-life then their possession should be guarded with stringent restrictions, embodying registration or taxation." He concluded: "Is it not time that the sportsmen, the Department of Agriculture, and the Audubon Societies join forces in giving the cat question serious attention?"

Theodore Sherman Palmer (1868–1955) dedicated most of his life to bird conservation and was responsible for nearly every bird law passed by Congress during his long career at the Bureau of Biological Survey. Elected a Fellow in the AOU in 1901, he served as Secretary for 20 years (1917–1937). Although he had a medical degree, he never

practiced medicine. He was obsessed with the lives of members of the Union and wrote so many obituaries that he earned the nickname "Tombstone" (for T. S.). At his own expense, he reprinted all the nearly 1,200 obituaries from *The Auk* (except the long ones for Fellows) shortly before his death (Palmer 1954). He also was responsible for several of the cumulative indices of *The Auk* that used to appear at 10-year intervals. (The last 10-year index was done for 1981–1990 by Burt L. Monroe, Jr. (1930–1994), a former Treasurer and President of the AOU. By 2000 when I was Editor of *The Auk*, I raised the issue, but the AOU determined that there was no longer a need, given the availability of electronic search engines.) Palmer was also the driving force behind *Fifty Years' Progress of American Ornithology, 1883–1933*, published in 1933 on the occasion of the 50th anniversary of the AOU.

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