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Present at the Creation: The 1910 Big Burn and the Formative Days of the U.S. Forest Service

Michael C. Blumm[1]

A review of Timothy Egan's *The Big Burn: Teddy Roosevelt and the Fire That Saved America* (Houghton Mifflin Harcourt, Boston, 2009).

Timothy Egan's *The Big Burn* is a gripping story of one of the largest wildfires in recorded North American history, beautifully written and artfully told. The tale involves luminaries like Teddy Roosevelt and Gifford Pinchot and antagonists like Senators Weldon Heyburn (R-Idaho) and William Clark (R-Montana) and President William Howard Taft as well as forgotten heroes like Forest Service rangers Ed Pulaski and Joe Halm. Egan claims, with some justification, that the big wildfire cemented the recently established U.S. Forest Service in the mind of the American public, enabling the agency to enjoy one of the most respected reputations of any federal entity throughout the twentieth century. Unfortunately, it also left the Forest Service with an aversion to fire that damaged the ecological integrity of federal forests while serving the needs of the timber industry.

The Big Burn (also known as The Great Fire) was an explosive wildfire that erupted in August 1910 due to a summer-long drought, lightning, and hurricane-like winds. Spreading from the Bitterroot Mountains along the unroaded Idaho-Montana border as far as Washington and British Columbia, the fire killed roughly 100 people and consumed 3.2 million acres of trees, enough wood to satisfy the nation for 15 years.[2] In all, it consumed 50% more land than Yellowstone National Park until late August rains finally put the fire out.[3]

Egan's account features heroic efforts of rangers like Pulaski, who saved many lives in an abandoned mine tunnel by holding some

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1. Professor of Law, Lewis and Clark Law School. My thanks to Erica Doot, 3L, Lewis and Clark Law School, who got me interested in this book.

2. Timothy Egan, *The Big Burn: Teddy Roosevelt and the Fire That Saved America* 240 (Houghton Mifflin Harcourt 2009).

3. *Id.* at 174, 227–228.

at gunpoint;[4] and Halm, who protected his men by ordering them into a creek deep in the unroaded area of the St. Joe River's headwaters.[5] Whole towns perished, like saloon-filled Grand Forks, Idaho,[6] and Taft, Montana, where a fifth of the population was prostitutes.[7] Only through the valiant efforts of the Buffalo Soldiers, the black Twenty-Fifth Infantry,[8] was the railroad town of Avery, Idaho, evacuated and saved.[9]

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4. *Id.* at 163–168. Pulaski, an Assistant Ranger hired by William Wiegle, head of the Coeur d'Alene National Forest, was badly burned in the fire and embittered by congressional failure to compensate him and his colleagues for their injuries, and tended the graves of those whose lives were lost in the fire. *Id.* at 211–212, 223–226, 234, 252–255. While he recovered from his injuries, he designed what is now known as "the Pulaski," a half-hoe, half-ax still in use, although he was not able to patent it. *Id.* at 255, 259–260. Two years after he died and a quarter-century after the fire, Congress, in 1933, appropriated money to establish a memorial burial ground for those who perished. *Id.* at 259.

5. *Id.* at 214–224. Halm, a record-setting, three-sport athlete at Washington State College, had been a Forest Ranger for only a year before the fire. *Id.* at 217. He led 70 men into the unroaded western flank of the Bitterroots on the Montana state line, successfully fought a fire, and was about to return when the Big Burn ignited. He returned to his men, led them to rescue, and then immediately returned to the still-smoldering burn to photograph it for Washington and the newspapers. *Id.* at 251–252. He remained a Forest Service survey engineer for three decades, wrote an account of the Big Burn in 1944, and had the creek where he saved his men named after him. It is now listed in the National Register of Historic Places. *Id.* at 261–262.

6. *Id.* at 75, 77 ("...a town that made Deadwood seem tame."), 201, 283.

7. *Id.* at 119 (noting that Taft had 500 prostitutes and 30 saloons but only one drugstore and one grocery store), 283.

8. *Id.* at 125–128, 201–210. The so-called Buffalo Soldiers, named by Indians because of their hair, were sent by the government to fight Indians throughout the West from Texas to the Dakotas, and were also employed to put down civil strife during labor unrest and sometimes served as park rangers in Yellowstone and Yosemite before those reserves were designated as national parks. *Id.* at 125–126.

9. Avery was named after a grandson of William Rockefeller, the financier of the transcontinental railroad that
surmounted the Bitterroots. *Id.* at 85. Rockefeller, brother of John D. Rockefeller, the founder of Standard Oil, was also an owner of the Anaconda Copper Company, which operated the world's largest copper mine outside of Butte, Montana. He funded construction of a railroad line from Puget Sound through the Bitterroots to the Midwest, known as the Milwaukee Road, the nation's sixth transcontinental railroad and its most expensive. *Id.* at 46–47, 76. Surmounting the roadless

Some 1,800 men were enlisted to fight fires in the tinderbox that was the Bitterroot Mountains in August 1910, where there were some 500 small fires two weeks before the Palouse winds catalyzed the Big Burn.[10] Included among the firefighters were immigrants, vagabonds and prisoners, as well as the black soldiers.[11] Rangers like Ellers Koch paid for their services out of his own savings.[12] But this manpower was unable to contain the Big Burn; only the late August rains doused the fire.[13]

Egan's story is only partly about the first large-scale battle against wildfire and its combatants. He also provides the context in which the fire influenced national policy. In 1910, the U.S. Forest Service was only five years old, created by the irrepressible duo of President Roosevelt and Pinchot, the first chief of the Forest Service.[14] Roosevelt had left office in 1909 and in 1910 was on an

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Bitterroots required the construction of 21 bridges and 16 tunnels in a stretch of 22 miles. *Id.* at 76. Construction of the line also required relocation of the town and ranger station named after Pinchot, to Avery. *Id.* at 83–85.

10. *Id.* at 145 (1,800 men in the Coeur d'Alene National Forest), 123 (2,500 fires). Throughout the states of Idaho, Montana, and Washington there were some 10,000 people on wildfire duty in some two dozen national forests during the summer of 1910. *Id.* at 149.

11. *Id.* at 145; *see also id.* at 121–122, describing the emptying of the Missoula jail of 60 prisoners to fight fires.

12. *Id.* at 121. Pinchot regularly compensated for the low pay of forest rangers out of his own pocket. *Id.* at 94.

13. *Id.* at 227. Egan waxes poetic about the onset of the rain: "Water, the master architect of the Pacific Northwest, was here again from the sky, here to the rescue of the people who thought their world was at an end. Rising over the blackened, still-burning Rockies, the clouds bunched, cooled, and opened up, the bottoms shredded. It was what people had wished for all summer, what artillery from ships at sea and cannons from the ground had tried to induce—rain." *Id.*

14. Although Egan does not go into detail, the U.S. Forest Service was created when Congress agreed to transfer the Forestry Department from the Department of the Interior to the Department of Agriculture in a 1905 statute, 16 U.S.C. § 472, one of the fruits of Roosevelt's landslide election in 1904. *The Big Burn*, *supra* n. 2, at 50. Pinchot, who had been head of the Forestry Division in the Department of the Interior (appointed by President McKinley), *id.* at 35, became the new agency's first head, originally charged with managing 60 million acres, an amount soon to triple. *Id.* at 50, 70–71.

extended trip to Africa and Europe.[15] Pinchot, a champion of Roosevelt's Progressive Conservationism, abhorred giveaways of public land to miners, loggers, and corporations.[16] He had been fired in early 1910 by President Taft for his criticism of Secretary of Interior Richard Ballinger, who objected the Roosevelt/Pinchot program to preserve the western landscape.[17] The Pinchot-Ballinger dispute became a political football, eventually encouraging Roosevelt to challenge Taft's reelection bid in 1912.[18] The primary contest split the Republican Party, led to Roosevelt's running as the Progressive Party's nominee after he lost the Republican nomination, and led to the unlikely election of Princeton president Woodrow Wilson.[19]

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15. *Id.* at 89, 97–100.

16. *Id.* at 28 (explaining that Pinchot viewed nineteenth century public land policy as "a fire sale in Eden"); *see also* Michael C. Blumm, *Pinchot, Property Rights, and Western Water (A Reply to Greg Hobbs),* 24 Envtl. L. 1203, 1204 (1994) (explaining that Pinchot's abhorrence of monopoly power led him to endorse centralized, federal regulation of waterways, forests, and other natural resources that would promote basinwide, scientific planning by nonpolitical experts and only limited private rights).

17. *The Big Burn, supra* n. 2, at 98–99, 124–125. Other than Ballinger's opposition to the Roosevelt
Administration's notion of conservation, Egan suggests that the basis of the Pinchot-Ballinger dispute had to do with Ballinger's improper assistance to corporations seeking access to Alaskan coal lands. *Id.* at 94–95. Egan quotes Ballinger's congressional testimony to the effect that he aimed to reform the Interior Department agenda to prevent "certain overzealous persons from converting the public domain into a national preserve." *Id.* at 124. According to Richard White, President Taft also allowed Ballinger to "reduce federal supervision of hydroelectric development and to advocate ceding water power sites to the states." Richard White, *"It's Your Misfortune and None of My Own": A New History of the American West* 412 (U. Okla. Press 1991) (also suggesting that while Pinchot was willing to allow private development in federal forests subject to federal rules, something to which large corporations reconciled themselves, Ballinger represented "smaller entrepreneurial interests" that opposed federal conservation entirely).

18. *The Big Burn, supra* n. 2, at 256–257.

19. *Id.* at 257 (noting that the 1912 electorate voted overwhelmingly for three left-of-center candidates: the Democrat, Wilson; the Progressive, Roosevelt; and the Socialist, Eugene V. Debs. The conservative Republican, Taft, collected only 25% of the vote and carried only two states, Utah and Vermont, the worst showing ever by an incumbent president).

In the wake of the Big Burn, Pinchot and the enemies of Roosevelt's conservation program spun competing narratives about its lessons. Senators Heyburn and Clark blamed Pinchot and Roosevelt for locking up land and inhibiting settlement they believed would have confined the wildfire.[20] Pinchot blamed the enemies of conservation who failed to sufficiently fund the Forest Service and who clamored for more public land giveaways.[21]

Pinchot's version became the "master narrative."[22] Within a year Congress doubled the Forest Service budget, defeated a Heyburn bill that would have privatized much of the burned land, and enacted the Weeks Act, which authorized acquisition of land for national forests in the Eastern U.S.[23] Ballinger soon resigned, Taft became a

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20. *Id.* at 242–243. Senator Weldon Heyburn, who participated in the drafting of the Idaho constitution in 1889, was elected senator by the Idaho legislature in 1902 and served until he died in 1912 from the effects of a stroke at the age of 60. *Id.* at 248. He opposed the Roosevelt Administration's agenda wholesale, *id.* at 41 (explaining Heyburn's opposition to national forests, the 8-hour work day, and direct election of senators), opposed funding for the Forest Service on states' rights grounds, *id.* at 135, and blamed the forest rangers for the Big Burn. *Id.* at 242. He lived in Wallace, Idaho, the headquarters of the Coeur d'Alene National Forest, which was at the center of the Big Burn. *Id.* Mount Heyburn, overlooking Redfish Lake in the Sawtooth Mountains, is named after him. Senator William Clark, "the meanest" and "richest" man in Montana, *id.* at 39, was a placer miner, a trader, a banker, and president of the Montana constitutional conventions in 1884 and 1889 before being elected senator by the Montana legislature in 1899. The Senate refused to seat him, however, due to the bribery that got him elected. He was re-elected in 1901 and served until 1907 as a close ally of Heyburn. Mark Twain considered him the "most disgusting creature that the republic has produced since Tweed's time." Clark reportedly said, "I never bought a man who was not for sale." *Id.* at 39–40. Like Heyburn, he dismissed Roosevelt's conservation as nonsense. *Id.* at 42. After his senate term, Clark helped found to Las Vegas, Nevada, and Clark County is named for him. He died at the age of 86 in 1925 in his Manhattan mansion as one of the richest men in America. *Id.* at 263.

21. *Id.* at 239–241 (claiming that with adequate funding forest fires were preventable).

22. *Id.* at 240. Pinchot's version was published in popular magazines like *Everybody's*, *Colliers*, *Harper's*, and *American Forestry*. *Id.* at 241.

23. *Id.* at 247–248. The Weeks Act of 1911, which authorized federal purchase of "forested, cut-over, or denuded lands" in the East, 36 Stat. 961 (1911), was passed over the objection of Speaker of the House Joe Cannon, an ally

one-term president, and the popular writer Zane Grey even featured a forest ranger as a hero in one of his novels.[24] As Pinchot said, "I have fought for many years for conservation, and conservation has won."[25]

Egan spins an engrossing tale and draws large conclusions. He may have mistitled the book, however, for at the center of the book is the remarkable Pinchot,[26] not Roosevelt. Pinchot wrote many of Roosevelt's speeches, encouraged his campaign to unseat Taft, and his family fortune endowed the Yale School of Forestry, which gave his new agency its top personnel.[27] Pinchot was the larger-than-life chief who inspired his men to work for low wages amid the considerable hostility of Western miners, loggers, and brawlers who resented the Eastern-educated newcomers.[28] While an overstatement

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of Senators Heyburn and Clark, who once famously proclaimed, "not one cent for scenery." *Id.* at 68. The Act led to the creation about 50 national forests in 23 Eastern states, now about 13% of the total national forest acreage, although only about one-half of the land within Weeks Act forests is federally owned. George Cameron Coggins et al., *Federal Public Lands & Resources Law* 136 (6th ed., Found. Press 2007).

24. *The Big Burn*, *supra* n. 2, at 246–248 (explaining that Grey's 1910 novel, *The Young Forester*, centered around "a well-educated Pinchot progressive who saves the day from timber thieves and flame in territorial Arizona.").

25. *Id.* at 246.

26. Pinchot was a confidant and hiking partner of John Muir's before they split over the damming of the Tuolumne River in Hetch Hetchy Valley. *Id.*at 30–34, 92. He boxed, swam, and rode horseback with his political fellow traveler, Roosevelt. *Id.* at 17–20, 24–25, 35–38, 64–67, 97–100, 134–36. After Roosevelt's death, he served two terms as governor of Pennsylvania. *Id.* at 265, 267. Long thought to be one of the most eligible bachelors in Washington, the aristocratic Pinchot apparently carried on a two-decade long relationship with his dead fiancée, Laura Houghteling, through apparitions. *See id.* at 61–64, 91–92. Egan suggests that while the reputations of Roosevelt and Muir grew after their deaths, Pinchot was "an afterthought" in the story of the fight for conservation at the time of his death from leukemia in 1946. *Id.* at 277.

27. *Id.* at 66 (wrote speeches), 256–257 (encouraged Roosevelt to run in 1912), 54 (family money endowed the Yale School of Forestry). Pinchot often entertained the Yalies at his family's estate, Grey Towers, in Pennsylvania. *Id.* at 97. Most of the principals in the story of the Big Burn had Yale pedigrees. *Id.* at 11, 97.

28. *See id.* at 89 (low wages, barely $1,000 a year), 11 (rangers "scorned as Teddy's boy scouts). The rangers were known as "little GPs." *Id.*

to suggest Pinchot invented the idea of conservation,[29] along with Roosevelt he made conservation a political crusade, one carried out by the executive branch with remarkably little approval from Congress.[30] Yet in less than two presidential terms they set aside some 230 million acres as national forests, parks, monuments, and wildlife refuges,[31] an acreage 50% larger than the state of Texas.[32] These efforts induced Congress in 1907 to pass an appropriations rider that eliminated the president's authority to establish national forests most western states.[33] Yet Roosevelt and Pinchot still managed to add sixteen million acres of midnight reserves in the week before Roosevelt signed the bill.[34]

The Big Burn may have solidified the Forest Service as an enduring federal agency, but Egan suggests that it had an unfortunate legacy as well. In ensuing years, fire-fighting came to dominate the

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29. Egan acknowledges that "[w]hether Pinchot and Roosevelt actually invented conservation is debatable." *Id.* at 67. However, Pinchot thought "he invented the idea of conservation as an overarching theme" of the Roosevelt Administration on a horseback ride in February 1907. *Id.* at 66 (suggesting that the term tied together the Administration's efforts concerning forests, wildlife, clean water, irrigation, and fire suppression). Egan rightly explains that among the many fathers of conservation was John Muir, who published "a powerfully argued book, *Our National Parks*, a popular cry for true preservation," in 1901. *Id.* at 67. Muir and Roosevelt hiked together on a four-day trek through Yosemite in 1903. *Id.* at 43.

30. *Id.* at 67. In addition to using the authority of the 1891 act to establish national forests, Roosevelt invoked the Antiquities Act of 1906, 16 U.S.C. § 431, to reserve areas like the Grand Canyon and the Teton Mountains as national monuments. Although there was no legislative authority to set aside wildlife refuges, Roosevelt invoked implied authority, a position later ratified by the Supreme Court. *U. S. v. Midwest Oil Co.*, 236 U.S. 459 (1915) (upholding presidential power due to congressional acquiescence).

31. *The Big Burn*, *supra* n. 2, at 247.

32. *Id.* at 88.

33. *Id.* at 69. Egan explains little on the legislative origins of the rider, except to suggest that it was the handiwork of Senator Heyburn and his allies. *Id.* This bill did not affect Antiquities Act authority to reserve national monuments or the president's implied authority to set aside wildlife refuges. *See supra* n. 30.

34. *The Big Burn*, *supra* n. 2, at 70.

agency's mission and its budget.[35] One policy adopted in the 1930s instructed rangers to have fires extinguished by ten o'clock the next morning.[36] Egan claims that Pinchot would have not approved but offers little supporting evidence that he recognized fire as an ecological necessity,[37] a view the Forest Service did not embrace until the late twentieth century.[38] More certain is that Pinchot was appalled that the principal beneficiaries of the agency's fire-fighting priority were timber companies, who's logging also benefitted from taxpayer-funded roads.[39]

The Big Burn is a captivating read of the formative era of modern public land policy. The conflicts over conservation between Roosevelt, Pinchot, and their enemies were center-stage in the national political arena as they had never been before and haven't been since.[40] A century later, with the nation and the world facing an immediate crisis over oil pollution in the Gulf of Mexico and a congressional stalemate over greenhouse gas emissions, their

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35. *See id.* at 269–270 (describing how former Pinchot disciple William Greeley, who became Chief of the Forest Service in 1920, elevated fire prevention as the chief agency mission), 274 (firefighting took up nearly half the agency's budget).

36. *Id.* at 273.

37. *See id.* at 52 (Pinchot promised his foresters "could whip fire"), 71 (Pinchot saw his role as both subduing and preserving nature), 138 (Pinchot's 1914 book, *The Fight for Conservation,* described forest fires as "wholly within the control of man"). Egan does cite one source, from 1899, suggesting that Pinchot understood the beneficial effect of fires. *Id.* at 291 (citing a quote from *National Geographic,* October 1899). And in his posthumously published 1947 book, *Breaking New Ground,* adopted a much more humble tone toward wildfire. *Id.* at 275 (Pinchot acknowledging that a "forest was 'a complex community with a life of its own'" that included fire).

38. *See id.* at 274; *see also* Robert B. Keiter, *The Law of Fire: Reshaping Public Lands Policy in an Era of Ecology and Litigation,* 36 Envtl. L. 301, 303, 325, 366 (2006) (noting that while the Forest Service began allowing backcountry wildfires to burn in the 1960s, the agency did not adopt prescribed fires as a management tool until the mid-1990s).

39. *The Big Burn, supra* n. 2, at 270–271 (noting that Pinchot considered his former protégé, William Greeley, to be a traitor because of his cozy relationship with the timber industry), 275 (Pinchot "appalled that the public forests had become mere commodities").

40. *See id.* at 66–71, 86–88,138; *see also* Douglas Brinkley, *The Wilderness Warrior: Theodore Roosevelt & the Crusades for America* (HarperCollins Publishers 2009).

trailblazing political success, particularly their use of executive authority,[41] may be worth closely reexamining.[42]

But perhaps the lasting thought from *The Big Burn* should be just how much we in the twenty-first century owe to Pinchot and Roosevelt. Too much has been made of the relatively small differences between John Muir and Pinchot.[43] The larger lesson is that their combined efforts, with the political muscle of the great Theodore Roosevelt, produced a legacy of publicly owned lands that almost no other county on earth possesses. Although Egan's claim

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41. For a review of one recent administration's use of executive authority similar to Pinchot and Roosevelt's, see John D. Leshy, *The Babbitt Legacy at the Department of the Interior: A Preliminary View*, 31 Envtl. L. 199 (2001). For a more generic look at executive authority, see Elena Kagan, *Presidential Administration,* 114 Harv. L. Rev. 2245 (2001).

42. For example, Senator Heyburn, *supra* n. 20, thought "[t]he very idea of forestry was a joke—it had no bearing in science...fostered as a policy to uphold the leisurely, lazy dignity of a monarch," referring to Pinchot. *The Big Burn*, *supra* n. 2, at 69. This resembles the attitude of those who deny anthropocentric induced climate change in the twenty-first century. *See e.g.*, Massimo Pigliucci, *Why do libertarians deny climate change?* http://rationallyspeaking.blogspot.com/2010/05/why-do-libertarians-deny-climate-change.html (accessed June 10, 2010).

43. Of course, the split between Muir and Pinchot over Hetch Hetchy, *supra* n. 26, is well known, and there are legions of papers contrasting Pinchot's utilitarianism with Muir's preservationism. But as Egan shows, Pinchot's utilitarianism was laced with large doses of preservationism. *See The Big Burn*, *supra* n. 2, at 67, 138, 255, 275; *see also supra* n. 37. And Muir's defense of Hetch Hetchy was based in part on utilitarian arguments. Coggins, *supra* n. 23, at 134; *see also* Jedediah Purdy, *The Politics of Nature: Climate Change, Environmental Law, and Democracy*, 119 Yale L.J. 1122, 1159 (2010) (claiming that followers of Muir and Roosevelt both "rejected what they saw as the materialism, selfish individualism, and lack of high principle in American life at the close of the nineteenth century" and shared "an ambivalent relationship to utilitarian public policy, seeing it on the one hand essential for conservation of public lands, but on the other hand deeply implicated in the same values they decried."); *see also id.* at 1152–1155 (noting that the early Sierra Club was a branch of Progressive culture, which deplored selfish individualism and sought public land management by experts to achieve utilitarian ends), 1156 (noting that both the Sierra Club and Roosevelt thought that "utilitarian public policy was not self-sustaining but required support from the virtues of patriotism, boldness, and initiative.").

that the 1910 fire gave the Forest Service the political cover that allowed the agency to survive may be unassailable, the truth is that Americans have never appreciated the great legacy stemming from the election of 1904.[44] No election ever meant more to Americans in terms of public resources. Over a century later, one might think that that legacy ought to resonate with the American electorate. If only they knew.

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44. In 1904, Roosevelt defeated Democrat Alton B. Parker, Chief Judge of the New York Court of Appeals, 336 electoral votes to 140, with Parker winning only the states of the old Confederacy. Roosevelt's popular vote margin of 7.6 million (56.4%) to 5.0 million (37.6%) was the largest recorded to that time. *See The Big Burn*, *supra* n. 2, at 49. The election was the first in American history in which an "accidental" president succeeded to a full electoral term.

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