2002

Medicine men of the anti-progressive party: sacred sites, public lands, and the construction of religious liberty

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Medicine Men of the Anti-Progressive Party:

Sacred Sites, Public Lands, and the Construction of Religious Liberty

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Waterville, Maine
May 2002
I am interested in the way that a man looks at a given landscape and takes possession of it in his blood and brain. For this happens, I am certain, in the ordinary motion of life. None of us lives apart from the land entirely; such an isolation is unimaginable. We have sooner or later to come to terms with the world around us—and I mean especially the physical world; not only as it is revealed to us immediately through our senses, but also as it is perceived more truly in the long turn of seasons and of years. There is no alternative, I believe, if we are to realize and maintain our humanity; for our humanity must consist in part in the ethical as well as the practical ideas of preservation.

— N. Scott Momaday, Kiowa

The basic issue here isn’t legal. The issue here is respect for other human beings—How we must co-inhabit this planet and make accommodations for each other.

— Deb Liggett, U.S. National Park Service
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Introduction

On December 29, 1890 the United States Seventh Calvary descended upon a group of practitioners of the blossoming Ghost Dance religion and killed more than 300 Indians belonging to multiple Northern Plains nations. The massacre at Wounded Knee Creek was the apex of the United States government’s violent campaign to win the American west from its original inhabitants, and it marked a transition in strategy in the young republic’s assault on Native America. Having essentially won the land battles to annex the bulk of the economically valuable Native territory, the United States turned its attention away from the physical disposal of Native bodies towards an organized persecution the Native cultures and consciousness. The massacre at Wounded Knee was more an attack on the potentially subversive Ghost Dance religion than an attack on its actual practitioners, marking the ideological transition from genocide to ethnocide in the ongoing effort to solve the “Indian problem.”

Although “ethnocide” implies a more violent crusade to subjugate or eliminate a culture, the seemingly more placid term “assimilation,” which is commonly used to describe the U.S. hegemony’s warm invitation to cultural minorities to conform to the dominant sense of reality and social norms, essentially works to the same affect. “An assimilationist policy is one that attempts to integrate a distinct people into a mainstream society, to make them disappear—,” explains Ronald Niezen. “Not through massacre but a bloodless process of education and “development,” often crouched in terms of “equal rights” for all citizens” (Niezen 8). In discussing the prohibition of the Peyote religion at the beginning of the Twentieth Century, Niezen notes that the opposition to the religion was not simply founded in a moral objection to the use of hallucinogenic drugs, “but their
motives seem to have run deeper than this, into the dangerous currents of national and tribal identities and the need of those in power to impose a uniform standard of truth” (Niezen 141). This new standard of truth, the retelling of history and the reformation of reality, has been the driving force behind federal Indian policy since it became apparent that killing them all was not really a viable option. This mentality continues to limit American Indians’ freedom of cultural expression today.

Despite the dominant myth that it conducts itself as a secular institution, American jurisprudence, like mainstream American culture, is founded in, and indeed reflects, the Protestant worldview and value system. Recognizing that, as Vine Deloria puts it, “a legal victory devoid of moral or ethical satisfaction, although absolutely correct on legal grounds, would be the ultimate disaster” (Deloria 1999 88), one could argue that law exists to enforce a society’s prevalent moral code, which of course is founded in the collective sense of metaphysics and identity. Do the math and it becomes clear that socially oppressive political mechanisms theoretically exist to ensure the dominance of the moral order of the majority, and therefore law and cosmology (i.e. religion) are in a sense one and the same. Therefore, American jurisprudence, which we have established is founded in Protestant thought, is in reality the American civil religion.

This rather simplistic smoke screen eliminates the potentially glaring hypocrisy from the dichotomy of promoting equal rights and cultural diversity in a political system that is inherently discriminatory and conformist. By diverting the responsibility for social subjugation away from the hegemonic discourse that operates in the favor of the cultural and political power elite, this line of thought places blame in the faceless and more pragmatic field of legal interpretation. The role of the judiciary is to reinforce the
status quo through “morally satisfying” legal victories that affirm the validity of the law of the land. The arena of legal interpretation acts as a buffer between the power elite and the socially disempowered because judges, courts, and politicians are ultimately human and are therefore entitled to make some mistakes, or in some cases to even be explicitly biased if they can conjure up enough mainstream support. The Constitution, on the other hand, is the divine source of American law (i.e. the civil religion) and therefore the sacred document itself and the precedents which have determined the way in which it is defined are unchallenged in its origins or its intentions. Consequently, it is able to continue to reinforce the status quo and uphold the ironic American tradition of forced conversion while projecting the myth of equal protection under the law. This is merely the continuation of a long and unrelenting history of ethnocide.
Chapter 1: The Interface Between Two Worlds

From the time the Indian first set foot upon this continent, he centered his life in the natural world. He is deeply invested in the earth, committed to both in his consciousness and in his instinct. The sense of place is paramount. Only in reference to the earth can he persist in his identity.

—N. Scott Momaday (quoted in Basso 35)

"Could it be . . . that what is sacred to one person is in essence sacred?" asks geographer Jane Hubert (Carmichael 9), raising a list of relevant questions in regard to sacred landscapes. Is a holy place simply a cultural construct, a product of the human imagination? Can a theoretically objective judicial system lend credibility to newly designated sacred places in the context of "ancient" religions? How can we account for places that are sacred to multiple cultures for different reasons, such as the disputed area in central Arizona that the Hopi, Navajo, and San Juan Paiute all consider integral to their spiritual orientation?

The importance of land and the sense of place in a culture's spirituality certainly is not a concept exclusive to Native American religious traditions. Spanish philosopher Jose Ortega y Gasset once wrote, "Tell me the landscape in which you live and I will tell you who you are" (Lane 51). The collective sense of cultural ontology is founded in the metaphysical rationalization of where we are and why, a concept intimately imbued with how we interact with our environments in our everyday lives. In the words of geographer Belden Lane, "religion isn't always a matter of otherworldly transcendence. It continually sets up camp in the ordinary" (Lane 48). Or at least, one could argue, we subconsciously place it the ordinary. "Place-making" is the process of geographically orienting ourselves through the melding of history and the collective imagination. In the case of most indigenous people, this convergence of two types of remembering lies at the
heart of the oral tradition—a representative of the cultural consciousness in which there is no differentiation between land, culture, and spirituality. "If place-making is a way of constructing the past, a venerable means of doing human history, it is also a way of constructing social traditions and, in the process, personal and social identities," writes Keith Basso. "We are, in a sense, the place-worlds we imagine" (Basso 7).

Correspondingly, a culture or community's collective sense of where they are and why carries cosmological implications.

Whether viewed through a scientific or spiritual lens, our sense of being appropriately oriented and maintaining an organic existence is a derivative of our placement relative to the totality of Creation. Life literally "takes place," appropriating visual markers of landscapes and celestial bodies as the foundation and subsequent affirmation of a greater cultural memory. A legitimate sense of place is psychologically critical to one's metaphysical understanding of the self. Through a collective sense of place, and subsequently through tradition and the transmission of culture, we construct and maintain spatial categories that determine social relationships. Personal and communal identities spring forth from our relationships with familiar landscapes, constructing cultural and political barriers that locate the communal sense of place as the one true center of the universe. "Land has the ability to short-circuit logical processes; it enables us to apprehend underlying unities we did not suspect," writes Vine Deloria, Jr. (1999 251). Landscape and identity intimately coexist at the nexus of the communal conception of the universe, which in turn orients the cultural memory. Remembering where we came from, we remember who we are and where we are going.
Born, Reborn, and Born Again

"Being properly 'placed' with respect to the holy is a concern central to Indian piety," explains geographer Belden Lane (Lane 55). The histories of most American Indian nations commence with the emergence of the people into a new place, often thought to be a "new world," following an apocalyptic catastrophe or an immense natural disaster. The destruction of the former world is usually followed by a mass exodus, a cultural migration that passes over thousands of miles and immeasurable time, or simply climbs through a log or a hole in the sky. Newly reborn and totally disoriented, the people make the transition from the old world to a new way of life by reinventing themselves in relation to a new place. With their emergence into a new world they become a people united by the bond of a common landscape and a shared spiritual geography. The cyclical nature of the Native American conception of time dictates that the nation is continuously reborn in harmony with its most revered places, from which they emerge time and again, perpetually renewing the familial relationship of the nation with the Earth.

"Not until they could find a viable relationship to the terrain, the landscape they found themselves in, could they emerge," explains Laguna Pueblo laureate Leslie Marmon Silko, about the origins of her people. "Only at the moment the requisite balance between human and other was realized could the Pueblo people become a culture, a distinct group whose population and survival remained stable despite the vicissitudes of climate and terrain" (Silko 256). To be Pueblo means to be an extension of the physical and spiritual ecology of the high plateau of central New Mexico—the visual, tangible axis of community that unites and nurtures the people of a common
origin. To be born a Laguna Pueblo means to be created in the image of one's forbearers, who were born of a relationship between man and nature and between Earth and Sky. The geographical location of Native homelands is not arbitrary or coincidental, but rather a critical element in the natural order of the universe, purveying a sense of correct placement that is central to the effective participation of the "two-leggeds" in the greater animate community of Creation.

Deloria expounds on the ephemeral experience of placement in relation to the Earth with a quote from a conversation between a Crow chief and a representative of the Rocky Mountain Fur Company: "The Crow country is a good country," told Chief Arapooish. "The Great Spirit put it exactly in the right place; while you are in it you fare well; whenever you are out of it, whichever way you travel, you fare worse . . ." (Deloria 1999 235). Native American cultural histories hold that the Great Spirit arranged the traditional homelands of the various nations in respect to maintaining the balance of the universe. Migration stories impart that Indian nations did not pass the period of time immediately following their emergence by shopping for real estate, but rather they were led by the experiences and revelations of tribal holy men to the landscape with which they were expected to conform. The moment at which the people "discovered" their preordained places was the moment that the people came together as a coherent nation, bonded by their common need to conform their lives to the requirements of their natural surroundings. For the Laguna Pueblo, this meant an eight mile journey from the spring of their emergence at Paguate to their new home at Laguna Hill. For the Sioux nations it meant a longer journey through space and time, traveling in accordance with the vision of
their spiritual leaders, to the “sacred island hill—the Black Hills of South Dakota” (Deloria 1999 235).

It was the primal task of Native nations in the early days of their existence to morally meld with the non-human community of their lands, an obligation that required their adherence to specific mandates from the land, which could only be understood and incorporated into their budding cultures over the course of numerous generations. Deloria quotes the great Sioux orator Luther Standing Bear as once remarking that “a people had to be born, reborn, and reborn again on a piece of land before beginning to come to grips with its rhythms” (Deloria 1999 253). Most Indian oral traditions hold that through careful attendance and the transcendent power of the drum, the heart beats of the people conformed to the rhythms of the land.

The concept of resource management is peripheral in the Indian conception of conservationism, which is founded in the collective need to fulfill existential responsibilities and obligations as egalitarian members of a spiritual ecology. Kinship structures, not exploitation opportunities or aesthetic values, intertwine the Amerindian worldview with the totality of Creation to form the Native American land ethic. Plains Indians built their lives around the role of the buffalo as the “tribal department store” and Northwest Coast tribes revered the salmon as people, relying extensively upon the fish’s predictable migration cycle. The landscape and the plentitude of non-human “people” that it supports demand a certain respectful humility for the incomprehensible nature of existence, a concept which can only be understood the Great Spirit. “A rock has being of spirit, although we may not understand it,” explained Silko. “The spirit may differ from the spirit we know in animals or plants or in ourselves. In the end we all originate from
the depths of the earth. Perhaps this is how all beings share in the spirit of the Creator. We do not know" (Silko 249). And most Indian peoples would maintain that a complete and total comprehension of the natural world, and its varied animate personalities, is a degree of understanding that is either unattainable or intrinsically too powerful to have a rightful place in an earthly structure of wisdom. The desire to possess such knowledge would amount to a desire to elevate the individual over the rest of Creation and to intentionally rival the Great Spirit itself. The result would be nothing less than to turn the perpetual balance of Creation onto its head, bringing forth a catastrophic change in the harmonious lifeways of the Earth and resigning humanity to a state of self-indulgent evil.

Preserving the Middle Way

Beyond the phenomenological credence that certain places are inherently blessed, the participation in site-specific ritual acts of devotion transforms a seemingly ordinary landscape’s social functionality into a venerated environment bearing spiritual significance. In a 1978 speech before the Senate Select Committee on Indian Affairs, Mr. Barney Old Coyote, a Crow Indian from Montana, explained

The area of worship cannot be delineated from social, political, culture, and other areas of Indian lifestyle, including his general outlook upon economic and resource development . . . Worship is . . . an integral part of the Indian way of life and culture which cannot be separated from the whole. This oneness of Indian life seems to be the basic difference between the Indian and the non-Indians of a dominant society (Stambor 1).

The communal propitiation of the natural world is integral to preserving the balance and order of the Earth. Worship and ritual are incorporated into the ordinary individual actions of everyday life and serve as the practical manifestation of the cosmological link
between the humanity and the rest of life. Ceremony, be it in an individual or tribal context, acts as a demonstration of humility necessary to stay the Earth's potential for vengeance that could result from the human exploitation of their relations or from disrespectful and spiritually incongruous actions that seem to designate non-human life forms as inferior "others." This can take the form of the simple, mundane post-hunt or post-harvest prayer of thanksgiving or as larger, all-encompassing seasonal world renewal ceremonies.

In general, sacred sites in Native American religions are points of intersection between the spiritual and physical worlds, the material locales of metaphysical links that connect the banal and profane material world to a "numinous, normally unseen, qualitatively superior realm" (Vecsey 14). A clear example is the common Amerindian concept of soul duality amongst the Mescalero, for whom "the interface between the two [worlds] can be conceived of as a mirror; the physical, material world is merely a reflection or shadow of the real world, the spiritual dimension behind the mirror" (Carmichael 91).

Native American sacred sites essentially serve a dual function, as regenerative locations for the physical healing of the individual and the maintenance of the spiritual well-being of all life forms. The vision quest has conventionally been a requisite experience in ridding the body of the physical manifestations of a sickly spirit, again indicative of the prevalence of the phenomenon of soul duality amongst traditional Indian cultures. "The process of human spiritual regeneration, of healing, depends most immediately not on articulation, but rather on conforming individual visions to the reality of a physical landscape" (Nelson 8), a formula usually combining in some capacity self-
induced hallucinations or superconscious meditation. “Sometimes dreams are wiser than waking,” urged the legendary Oglala holy man, Black Elk, alluding to the personal requirement that one not distance himself from the omnipotent, numinous quality that pervades and guides life by focusing exclusively on the practical experiences of the ephemeral world.

The concept of a divine realm superimposed over the perceptible physical world and accessible only through certain places accounts for the inability of Indian religious practitioners to simply pack up and move their operation elsewhere. “Accessing this sacred attribute... entails actually entering sacredness rather than merely praying to it or propitiating it,” a custom that is integral to maintaining humanity’s position in the “Middle Way” and the resulting condition of spiritual balance (Walker 104). World renewal ceremonies are performed annually, along with seasonal thanksgiving rituals, as a mandatory way of preserving the harmony of the universe. The absence of a symbolic demonstration of the Native nation’s recognition of themselves as “miniscule members of a vast universe” (Fixico 207) could potentially result in the total destruction of the life as we know it. Abenaki author Joseph Bruchac explains,

> Human self-importance is a big part of the problem. It is because we human beings have one power that no other creatures have—the power to upset the natural balance—that we are so dangerous to ourselves. Because we have that great power, we have been given ceremonies and lesson stories (which in many ways are ceremonies in and of themselves) to remind us of our proper place (Bruchac 263).

A large-scale failure to maintain humanity’s status as existing somewhere between the mountain and the ant, as the Iroquois philosopher Oren Lyons put it, could beget catastrophic retribution from the Earth. As tribal histories have shown us, such actions
result in the culmination of the cycle of creation and necessitate the people’s emergence into a new collective identity; an identity that more appropriately fulfills humanity’s rightful place in relation to their nurturing landscape.

**Place, the Final Frontier**

Geographer Belden Lane writes, “A sacred place is most readily defined, culturally at least, as a site over which conflicting parties disagree—a place about which people are willing to fight and even die” (Lane 43). Native American land is last of the great American Frontier, the only remaining land in the United States that is neither public nor private, and the legacy of the colonial mentality that zealously promoted Indian removal in the name of national progress remains. Indian Country—the reservations, the physical place of the Indian in post-colonial North America—is plagued by corporate greed and lopsided laws and jurisdictions that protect the natural resource exploitation interests of private and often times government subsidized industries. Indian sovereignty is not recognized on any federal land that has not been specifically set aside to be bureaucratically managed by the government. First through sales and settlements—and now, half a millennia later, with asphalt and urban sprawl, with logging and damming and mining, with Disney’s Pocahontas and a theme-park like mentality to managing many Native American sacred sites—Europeans in North America have sought to recreate Turtle Island, to appropriate the landscape as the “original” home of a dispossessed and displaced nation. The result is the rape of a continent; large-scale ecological destruction and a history of aggressive conquest and genocide. The evidence lies in the mountains scarred by mining, the fish poisoned by paper mills, the burial
grounds inundated behind hydroelectric dams, all honored by towering monuments of toxic waste on the outskirts of impoverished reservation communities.

Deloria points out that Indians also felt like strangers in a strange land upon their emergence into a new world, "but they had one great virtue which many of the other people lacked—they were able to listen to the Earth" (Deloria 1999 236). Europeans were obsessed with constant progress, with exploring and trailblazing. Adhering to a myth of discovery and fundamentally alienated by the "wilderness" of the continent, they imposed their constructed place on the American landscape. Indians relied on revelations and self-reflection, on becoming part of the land rather than owning it. The Stoney Indian Walking Buffalo once asked

Did you know that trees talk? Well they do. They talk to each other, and they'll talk to you if you listen. Trouble is, white people don't listen. They never learned to listen to the Indians so I don't suppose they'll listen to other voices in nature. But I have learned a lot from trees: sometimes about the weather, sometimes about animals, sometimes about the Great Spirit (Lane 80).

Left deaf and blind by centuries of capitalist greed, United States imperialism pushes forward, in North America and around the world, to possess and control land, fearful and resistant to the compromises and obligations inherent in submitting itself to the possession of the land. "We have been disoriented, I believe; we have suffered a kind of psychic dislocation of ourselves in time and space," writes Kiowa novelist N. Scott Momaday, about the American public (1996 298). Euroamerica has yet to be born and reborn spiritually in this soil and its cultural roots run shallow. Feeling displaced and insecure, they want to become the new keepers of this continent; they want to mold and manage the bureaucratic future of the planet. But as long as the languages and cultures of the
original caretakers endure, their original connections to their place shall remain, somewhere between the mountain and the ant.

Indian cosmology holds that the desire for power, the want to control the lives of other beings, to transform and conform those lives to one's own desires or a self-indulgent view of what Creation should be, is inherently evil. "Do we ask the white man, 'Do as the Indian does?" a Kwakiutl man asked of anthropologist Frans Boas in 1886. "No, we do not," he continued. "Why then do you ask us, 'Do as the white man does?" (Nabokov 227).
Chapter 2: Storming In To Rescue Civilization

"It was the fourth day after Christmas in the Year of Our Lord 1890. When the first torn and bleeding bodies were carried into the candlelit church, those who were conscious could see Christmas greenery hanging from the open rafters. Across the chancel front above the pulpit was strung a crudely lettered banner: PEACE ON EARTH, GOOD WILL TO MEN" (Brown 418).

On December 29, 1890 the United States Seventh Calvary perched four Hotchkiss guns on a hill above a small creek on the Pine Ridge Reservation. Fearing the explosive potential of a reconciliation of Big Foot’s band of Ghost Dancers, followers of the new prophetic religion sweeping the west, with the followers of the defiant Crazy Horse, who had recently settled at Pine Ridge, the military unit once commanded by George Armstrong Custer had surrounded the camp of 350 unarmed Hunkpapa, Oglala, and Minneconjou. Only one-third of them were men. “And then the big Hotchkiss guns on the hill opened upon them, firing almost a shell a second, raking the Indian camp, shredding the tepees with flying shrapnel, killing men, women, and children” (Brown 417). A short time later, 300 of the 350 Ghost Dancers lay dead in crimson snow.

The massacre at Wounded Knee Creek was the apex of the United States government’s violent campaign for territorial expansion, and it marked a transition in strategy in the young republic’s assault on Native America. “The frontier was officially closed in 1890” (Deloria 1969 57) and having won the 100-year “Indian wars” to win the American west from its original inhabitants, the United States had turned its attention away from the physical disposal of Native bodies towards an organized persecution the Native cultures and consciousness. The massacre at Wounded Knee was more an attack on the potentially subversive Ghost Dance religion than an attack on its actual
practitioners, punctuating the ideological transition from genocide to ethnocide in the United States' dynamic strategy to solve the "Indian problem."

"Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killing of all the members of a nation," explains Ralph Lemkin, who coined the term in regards to the Nazi occupation of Europe during World War II. "It is intended rather to signify a coordinated plan of different actions aimed at destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves" (Churchill 1993:75). Though the ideological persecution of Native nations by North American colonial powers was monumental, the physical disposal of Native bodies, indeed entire nations, has led numerous American Indian scholars to compare the ethnic cleansing of the continent to the Holocaust of Nazi Germany.1 Having fled Europe at a relatively low point in the continent's history, European colonials in the New World associated liberty with land ownership and piety with slaughtering the infidels who had yet to receive the Word of Christ. Repeatedly throughout history, these pilgrims and conquistadors physically and ideologically outgrew their existing political boundaries and set out to acquire more turf, relying heavily upon their "shoot first, ask questions later" attitudes towards the indigenous peoples who had so defiantly occupied the land for preceding few millennia.

In 1542, a mere fifty years after Columbus first landed on the island of Hispaniola and laid claim to the entire hemisphere in the name of God and the Queen, an island-wide Spanish census recorded the indigenous Taino population at two-hundred (Churchill 1994:30). Columbus set a New World record for expediently wiping out the

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1 Churchill in Indians Are Us? and Jaimes in "Sand Creek, The Morning After" in State of Native America, to name a couple
resident population to make way for a wave of foreign invasion. Two centuries later, as Pontiac's powerful Algonkian Confederacy had aligned themselves in opposition to the early Americans in the French and Indian War, the British crown took note. "You will do well to [infect] the Indians by means of blankets as well as to try every other method that can serve to extirpate this execrable race," wrote an emphatic Lord Jeffery Amherst in a letter to a subordinate in 1763 (Churchill 1994:34). The subsequent biological warfare commenced a smallpox epidemic that liquidated entire nations in the Ohio River Valley and inspired a similar campaign by the United States one hundred years later targeting various Plains peoples. Creek/Cherokee Metis land rights activist Ward Churchill also argues that "the so-called "King Philip's War" of 1675-76 was fought largely because the Wampanoag and Narragansett nations believed English traders had consciously contaminated certain of their villages with smallpox" (Churchill 1994:34). In 1755, a secretary of the House of Representatives included the following in a proclamation to the Council Chamber in Boston: "I do hereby require his Majesty's subjects of the Province to embrace all opportunities of pursuing, captivating, killing and destroy-all and every of the aforesaid [Penobscot] Indians . . . For every scalp of a male Indian brought in as evidence of their being killed as aforesaid, forty pounds" (Deloria 1969:14). When all is accounted for, between the intentional inoculations of Indians with infectious diseases, countless massacres by military force (many of them unprovoked) and the very conservative estimate of more than 300,000 state-endorsed homicides by private citizens in the settling of the west, estimates at the rate of reduction of the indigenous population of the continent north of the Rio Grande range from seventy-five to ninety-nine percent. The United States certainly achieved its aim of annihilating entire native nations through
extermination, but physical genocide was just one battle in the war to eliminate Native America. “Ethnocide,” the systematic killing of a culture, as opposed to the actual people who live it, would prove to be, as Lempkin suggests, little more than a longer road to the same destination.

In his 1892 *Official Report of the Nineteenth Annual Conference of Charities and Correction*, the Carlisle Indian School’s first President, Richard H. Pratt formed his infamous words, “Kill the Indian in him, and save the man” (Niezen 46). Although the terms “cultural genocide” or “ethnocide” imply a violent crusade to subjugate or eliminate a culture, the seemingly more benevolent term “assimilation” works to the same affect. “An assimilationist policy is one that attempts to integrate a distinct people into a mainstream society, to make them disappear—,” explains Ronald Niezen. “Not through massacre but a bloodless process of education and “development,” often crouched in terms of “equal rights” for all citizens” (Niezen 8). At the very heart of the United States’ relationship with Native America in its entirety, be it federal Indian law or bureaucratic management, lies the existential struggle that preserves the legacy of colonialism; that is, the ongoing war to colonize minds by recreating the cultural memories of the politically disempowered. The systematic acculturation of American Indians was not concerned with the abolition of indigenous material culture, nor with Native delusions of their preservation of sovereign autonomy under the colonial yoke. Rather, “their motives seem to have run deeper than this, into the dangerous currents of national and tribal identities and the need of those in power to impose a uniform standard of truth” (Niezen 141). This new standard of truth, the retelling of history and the
reformation of reality, has been the driving force behind federal Indian policy since it became apparent that killing them all was not really a viable option.

"From the very beginning, the federal government's effort to convert Indians to Christianity became a cornerstone of its federal Indian policy," explains Niezen of the proselytization process that was official and overt until 1934 and the passage of the Indian Reorganization Act (Niezen 141). The proportions of the evangelical ethnocide that accompanied the American drive west are well exemplified by the extreme measures taken by the government to execute their acculturation efforts. From local missionary schools and distant boarding schools to Buffalo Bill Cody and the government's commission to eliminate the entire buffalo population from the plains of North America, the United States whole-heartedly embarked on an effort to erase the traditional identity by undermining the most vital institutions in Native American cultures.

The determinate mainstream religious philosophy regarding Indians evolved over the first two hundred years of the European occupation of the continent. Originally viewed as savage heathens or the spawns of Satan by colonial missionaries, traders and settlers, by the turn of the nineteenth century this popular perception of Native culture as inherently evil had been replaced by the empathetic conceptualization of Indians as innocently primitive, desperately in need of the saving graces of Western culture. Pratt best captured this enduring mentality one hundred years later.

It is a great mistake to think that the Indian is born an inevitable savage. He is born a blank, like all the rest of us. Left in the surroundings of savagery, he grows to possess a savage language, superstition, and life. We, left in the surroundings of civilization, grow to possess a civilized language, life, and purpose (Niezen 53).

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2 Niezen quotes James Axtell, "the Indian shaman was the missionaries' number one enemy because he seemed to hold their potential converts in the devil's thralldom through errant superstition, hocus-pocus, and fear" (108).
Now seen as helpless empty spiritual vessels, though finally recognized on the most basic level as actual human beings, "the enemy of the true faith became perceived less as Satan or his minions on earth and more often as 'superstition,' the very antithesis of the rationalism and frugality that would make the Indians true citizens" (Niezen 41).

However, this mentality too would soon come to haunt Indians in the nineteenth century, as the government's line of reasoning dictated that if Indians were without a religion, than their ceremonial gatherings were actually a guise for gatherings founded in resistant cultural solidarity and political subversion (Niezen 129). The government's incessant need to convert Indians for the sake of security was an unwelcome stranger in most Indian communities, and perhaps it still is today. "Soon the only social activity permitted on reservations was the church service," says Vine Deloria, explaining the legacy of state-supported missionization efforts on the Sioux reservations of South Dakota. "Signs of any other activity would call for a cavalry troop storming in to rescue civilization from some non-existent threat" (Deloria 1969 110).

Broken in Good Faith

On September 3, 1783 the Treaty of Paris ended the American Revolution and the United States was recognized by the international community as an independent sovereign nation. The new nation inherited from Great Britain the grave duty inherent in the Doctrine of Discovery; the responsibility of proselytizing and governing the native peoples. The United States had signed its first treaty with an Indian nation with the Delaware in 1778, and immediately following independence the Continental Congress initiated treaties to maintain the peace and demarcate political boundaries with the
nations of the frontier. By the time treaty making with indigenous nations was indefinitely suspended in 1871, the federal government had signed approximately 400 treaties with the Indians, of which many were falsified, and most have since been broken in some capacity. This same post-revolutionary period of American history also first gave rise to the military force that was necessary to negate very clear language regarding the sovereign nation status of those tribes whose lands were acquired through the Northwest Ordinance and later the Louisiana Purchase. “The utmost good faith shall always be observed towards the Indians, their land and property shall never be taken from them without their consent; and in the property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress . . .,” read the Ordinance of 1787. The Louisiana Purchase, Ward Churchill reports, “pledged itself to protect ‘the inhabitants of the ceded territory . . . in the free enjoyment of their liberty, property and religion they profess’” [emphasis added] (Churchill 1993 40).

However, the trade-based economic relationship between the Americans and the Indians outside of the original colonies took on a new political tone as the young nation focused its sights on massive campaigns for land acquisition. God Almighty Himself had bestowed upon the United States the potency and might necessary to conquer the wilderness. The church and the state were whole-heartedly on the same page and the doctrine of “Manifest Destiny” was born. “Once the United States had established and consolidated itself to the point where it could tip the balance of military power to its own advantage, it began a 100 year series of armed conflicts popularly known as the ‘Indian Wars’” (Robbins 91). The status of Indian autonomy was quickly reduced from the sovereign nations upon whom the Continental Army had relied heavily in the War for
Independence to the unfortunate state of being the colonized wards of a more sovereign and more heavily armed political majority. "Our views of Indian interests, and not their own, ought to govern them," wrote Secretary of War John Calhoun in 1818 (Irwin 2).

Through the first few decades of the nineteenth century the young republic remained in the international spotlight as the government attempted to prove their adherence to the country's professed libertarian ideals while continuing to displace the occupants of the continent west of the Mississippi River. In affect, the United States needed a legal way to seize Indian land in a manner that appeared beneficial to the Indians themselves. In 1819, Congress instituted the Indian Civilization Fund Act, "the primary intent of which was to create a fund to reform and 'civilize' Indian peoples in accordance with alien cultural norms imposed on them by a conquering majority" (Irwin 2). The theory behind federal Indian policy at the time was that if North America was to be declared "ripe for the picking" then somehow its prior tenants would simply have to be made to disappear. Ironically, having liberated the country of the European colonial powers that had kept them oppressed, Indian sovereignty was the first obstacle of American imperialism and "autonomy" and "resistance" were fightin' words.

Acculturation, not missionization, would be the new cornerstone of federal Indian policy.

The Marshall Doctrines

With impressive resolve, Chief Justice John Marshall, the godfather of federal Indian law, played his role as conqueror to perfection, handing down a succession of Supreme Court opinions that would abrogate any recognized Indian autonomy in the higher courts.
for the next 150 years. According to Churchill "Marshall's singular task, then, was to forge a juridical doctrine that preserved the image of enlightened U.S. furtherance of accepted international legality in its relations with Indians on the one hand, while accommodating a pattern of illegally aggressive federal expropriations of Indian land on the other" (Churchill 1992, "The Earth is Our Mother" 42).

First using the term "vacant" to describe Indian lands in *Fletcher v. Peck* (1810), Marshall would contradict himself in ensuing cases over the following quarter of a century in which he declared that the United States held "plenary" power over all Native Americans as indicated in the Doctrine of Discovery and its inset Rights of Conquest (Churchill 1992, "Table" 18). In June of 1830, gold was found in the hills of Cherokee country and Governor George G. Gilmer proclaimed it to belong to the state of Georgia, inciting a gold rush onto Cherokee land that violated any existing legal basis for the relationship between the Cherokee and the federal government (Deloria and Lytle 28). Later that year, after receiving inconsiderable compliance with his request that the Five Civilized Tribes of the south voluntarily vacate their land, President Andrew Jackson signed into order the Indian Removal Act, a documented demonstration of the government's decision to disregard human rights and legally binding treaties in favor of compelling national interests. The tribe sued the state of Georgia to keep prospectors out and the ensuing legal mess ultimately led to the *Cherokee Nation Cases* (*Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832)), in which Marshall was obliged to interpret existing laws to define the status of tribal sovereignty in relation to that of the United States. According to Churchill, "he hammered out the thesis that native nations

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3 The next Supreme Court case to acknowledge tribal sovereignty being *Merrion v. Jicarilla Apache Tribe* (1982), save for *The Reserved Rights Cases* (1905-1908), which recognized sovereign rights "not expressly removed from them by Congress" (Churchill 1992, "Table" 19-20).
within North America were "nations like any other" in the sense that they possessed both territories they were capable of ceding, and recognizable governmental bodies empowered to cede these areas through treaties" (Churchill 1993 43).

But Marshall also drew on his ruling from the 1823 Johnson v. McIntosh case in which he had single-handedly eliminated the concept of aboriginal title from American law by justification of the Doctrine of Discovery, and the resultant verdict of the Cherokee Nation Cases created a new legal status for Indian tribes: domestic dependent nations. 4 "Indians, he declared, resided in a state of pupilage and their relation to the United States resembles that of a ward to a guardian" (Deloria and Lytle 30). As such, explains Churchill, "it became arguable that indigenous nations acted unlawfully whenever and wherever they attempted to physically prevent exercise of the U.S. "right" to expropriate their property. Resistance to invasion of indigenous homelands could then be construed as "aggression" against the United States" (Churchill 1993 45). The flip side of the coin, though much to Andrew Jackson's dismay, provided that it was the duty of the federal government to protect its wards from outside aggression, even if it be from one of the republic's own states. On hearing of the Worcester decision, in which Marshall ruled that it was decidedly unlawful for the residents of the Georgia to run the Cherokee out of the state (thereby expediting Jackson's process of removal), President Jackson is said to have remarked, "John Marshall has made his decision: now let him enforce it" (Deloria and Lytle 33). In 1835, having exhausted all legal recourse, the Cherokee embarked upon the forced march known as the Trail of Tears. Roughly forty-

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4 This doctrine included all Indian tribes, including those west of the Mississippi River, with most of whom the federal government had established no formal relationship at all. Churchill suggests that this was a legal set-up to justify the future seizure of Indian lands as the nation perpetually outgrew its existing boundaries. See Churchill 1993, p. 44.
five percent of them made it to Oklahoma (Churchill 1993 47). In keeping with the theory of Indian law at the time, Jackson remarked that relocation “will . . . perhaps cause them gradually, under the protection of the government and through the influence of good counsels to cast off their savage habits and become an interesting, civilized Christian community” (Loftin 49).

Fifty years later, the once seemingly endless expanses of the American west were filling up with gold diggers, frontiersmen, and displaced Indians, causing the pioneering government to be increasingly concerned with marking territorial boundaries. And like the immense black clouds of buffalo that would saunter over the newly built tracks, Indians and their land were obstacles to the trans-continental railroad and the coveted ideal of American progress. Reluctantly realizing that Indians were not going to fade away and that the country would have to solve the Indian problem rather than simply killing it, the United States reverted to its original philosophy that it was in Native America’s own best interest to be “civilized,” if not by induced acculturation than by imposed cultural prohibition. In United States v. Kagama (1886), Justice Samuel Miller stated that Congress, in its role as self-appointed guardian to all of Native America, had an “incontrovertible right’ to exercise its authority over Indians as it saw fit— for ‘their own well being,’ of course— and Indians lacked any legal recourse in the matter” (Churchill 1992, “Table” 18). If the Marshall doctrine had left any practical claim to indigenous sovereignty, Miller abolished it in Kagama, simultaneously legitimizing any existing and future ventures to sweep the Native American way of life off the map once and for all. Among these was the Indian Religious Crimes Code written three years earlier.
Prohibited Prophecies

Developed by the Secretary of the Interior Henry Teller, the Code defined all medicine men as “always found in the anti-progressive party . . . to compel these impostors to abandon this deception and discontinue their practices, which are not only without benefit to them but positively injurious to them” (Irwin 2). Indians found practicing their traditional religions, particularly those leading the ceremonies, were imprisoned for up to ten years. The “Rules for Indian Courts,” established by Commissioner of Indian Affairs Thomas J. Morgan in 1892, officially banned most manifestations of tribal religions, focusing largely on the Potlatch and Sun Dance ceremonies, and lasting until the Indian Reorganization Act of 1934. During this period federal agents unabashedly sabotaged Native cultures, arresting Indians for possession of sacred objects, preventing access to public lands, disrupting ceremonies in progress, and destroying countless holy sites.

“These laws not only abrogate First Amendment rights in a conscious and well documented policy of religious oppression . . .,” demands Irwin, “They also represent a determined policy to reconstruct Native religions in conformity with dominant Protestant majority values in a myopic vision of what constitutes ‘civilized’ religious behavior” (Irwin 2). To the frustration of the United States, Indians had beaten them to the punch, reorganizing their own religions in response to the government’s repression in the very image of subversive solidarity that the government feared most. A resistant spiritual revivalist movement rose “for the preservation of core indigenous values and beliefs as a basis for cultural survival, a survival that might include a diverse synthesis of alternative religious ideas or practices” (Irwin 3).
Nevada Paiute Wovoca, son the “dreamer-prophet” Wodziwob, founded the Ghost Dance, a prophetic spiritual movement that spread across the plains preaching the return of the buffalo and the divine annihilation of the European race. Unfortunately, though not necessarily coincidentally, in the same year Commissioner Morgan wrote in his Annual report:

The Indians must conform to ‘the white man’s ways,’ peaceably if they will, forcibly if they must . . . The tribal relations should be broken up, socialism destroyed, and the family and the autonomy of the individual substituted. The allotment of lands in severality, the establishment of local courts and police, the development of a personal sense of independence and the universal adoption of the English language are the means to this end (Irwin 5).

Early December 1890 saw the assassination of Lakota spiritual leader Sitting Bull and Minneconjou Chief Big Foot fled south with his band to the Pine Ridge Reservation to regroup with the already established camps of Red Cloud and Crazy Horse. Two weeks after the death of Sitting Bull, 350 Ghost Dancers, holding steadfast to their belief that if they continued to dance the bullets would be unable to penetrate their “ghost shirts,” were shot down in cold blood as the U.S. Seventh Cavalry stormed in to, as Deloria put it, “rescue civilization from some non-existent threat” (Deloria 1969 110).

In 1934, President Franklin D. Roosevelt offered the United States a “New Deal,” and Native America’s piece of the pie came in the form of the appointment of John Collier, “probably the greatest of all Indian commissioners” (Deloria 1969 54), as Commissioner of the Bureau of Indian Affairs. Shortly after taking office, Collier initiated the Indian Reorganization Act (IRA), which sought to move bureaucratic control of Indian affairs out of Washington and onto the reservations.
The IRA did more to restore a degree of tribal self-determination than any single act in American history. Shortly thereafter Collier issued a report stating that, "no interference with Indian religious life or ceremonial expression will hereafter be tolerated," representing the government’s first specific policy to protect Native American religious rights (Irwin 6). Things were finally beginning to look up for American Indians.

But Native America’s limited good fortune was nothing if not short-lived. Following the Second World War, fear of a Red Tide sweeping over the globe consumed the American public and their politicians, and who better to suspect than America’s own communal-living Red Man. Collier’s radical approach toward Indian affairs was in direct opposition to America’s political ideals, and in 1945 Collier stepped down from his post under the charge that he was attempting to institute socialism on the reservations (Deloria and Lytle 16). The hints at tribal sovereignty that had been revived by the Indian Reorganization Act were dissolved in a sea of McCarthyism and all federal support for tribal governments was officially terminated. The Termination policy would last for almost two decades before it was formally repudiated by President Richard Nixon in 1970.

"If the policy did not completely destroy Indian culture," writes Deloria, "it encroached substantially upon Indian attempts to remain Indian" (Deloria and Lytle 20).
Chapter 3: Medicine Men of the Anti-Progressive Party

When they ask what we feel our basis is in regard to title, I don't think that there is any question. The title is very clear. The ownership has never changed. It is only the definition in the law in regard to ownership that has changed (Miuulak, hereditary chief of the Gitskan, quoted in Weaver 222).

"The restoration of the Blue Lake lands to the Taos Pueblo Indians is an issue of unique and critical importance to Indians throughout the country. I therefore take this opportunity wholeheartedly to endorse legislation which would restore 48,000 acres of sacred land to the Taos Pueblo people" (Gordon-McCutchan 7). Richard Nixon found himself in an interesting political bind when he addressed the United States Congress on the eighth day of July, 1970. Having procured scarce Native support for his new policy of Indian self-determination, which would finally put an end to the disastrous Termination policy implemented by an earlier Republican administration (Eisenhower's) twenty years prior, "the politics of the matter were simple. If the Nixon Administration did not support the Blue Lake Bill, Indians would not support self-determination" (Gordon-McCutchan 7). The bill to transfer the title of the "cobalt blue mountain tarn" from the U.S. Forest Service to its original caretakers had been unanimously endorsed by the House of Representatives two years earlier and had since been caught up in a political tug-of-war that could only be relieved by an opinion from the President himself.

Ma-wha-lo, or "Blue Lake," is the alpine source of the Rio Pueblo, the river of life that splits the two massive adobe structures of New Mexico's northernmost Pueblo. The Taos oral tradition maintains that a powerful cacique led the people up a stream into
the mountains to the lake out of which the original people emerged from an catastrophic subterranean world countless generations earlier. The waters of the sacred river are said to have fed the Corn Mothers and the Squash maidens, the fertile deities who have sustained the agricultural practices of the Taos Indians for the entirety of their tenure on this Earth, making the river's source the spiritual center of the Taos Indian universe. "It seems, when you go up there to Blue Lake, you thank God for the lake, which is blue like turquoise stone," said Pueblo resident Reyesita Bernal. "It is twenty miles and takes two days by horseback. It gives me a feeling of being closer to the Spirit and Nature. When it is time to come home, I want to thank God" (Keegan 49).

Taos Pueblo shares with other southwestern tribes a history of colonial bastardization. In 1689, following the establishment of the Territory of New Mexico as a Spanish province, the small village at the foot of the Sangre de Christo Mountains that would later share the name of a nearby Catholic mission was incorporated into one of the many land grants given to the indigenous people of the area by King Charles I. This particular grant included Blue Lake and a large tract of wilderness immediately surrounding it. The property rights originally drawn by the Spanish Crown endured the Mexican Revolution and were typically inherited by the new independent government by virtue of the Doctrine of Discovery. In 1846, the United States invaded New Mexico in one of many battles in the successful military surge to procure from Mexico the lands north of the Rio Grande. Two years later, the 1848 Treaty of Guadalupe Hildalgo annexed the Territory and the United States was theoretically compelled to honor all existing property rights in the region, native or otherwise. However, in 1906 President Theodore Roosevelt incorporated a 50,000 acre parcel of Taos Indian land, including
Blue Lake, in establishing Carson National Forest. Anticipating that the federal seizure would protect Blue Lake from commercialization (Keegan 49), the Indians gave their practically inconsequential consent to the Department of Agriculture's seizure of their aboriginal land under a federal promise to preserve their exclusive rights to the sacred lake. However, new logging roads quickly opened up the area to human traffic, Blue Lake was desecrated with litter and "ritual objects placed by Indians near the site were maliciously or carelessly destroyed by the public. The sanctity of the Indians' holy shrine was destroyed" (Keegan 17).

Left spiritually dislocated and legally helpless by the governmental betrayal, the Pueblo pursued local politicians and national Indian agents for the ensuing six decades, gaining little political support for their efforts. But in 1965, "the tribe achieved a major legal and political breakthrough when the Indian Claims Commission ruled in their favor" (Gordon-McCutchan 3). The Commission was founded in 1946 "by a Congress anxious to put the best possible moral face on the government's past dealing with American Indians," due to the country's recent announcement that it planned try Nazi Germany and Imperial Japan for having engaged in War Crimes and other "Crimes Against Humanity" (Churchill 1993 122). Vine Deloria, Jr. and co-author Clifford Lytle write,

During the life of the Indian Claims Commission, lawyers for the Department of Justice had to defend the United States against some six hundred claims by Indian tribes. Their task was extraordinarily difficult because it was apparent that they would lose most of these cases since the claims of the Indians were in most instances well-documented cases of fraudulent dealings by the United States (147).

Despite its presumed good intentions, the Indian Claims Commission failed to adhere to the cultural needs of dispossessed Native America in a manner
consistent with the bulk of bureaucratic Indian management policies initiated by
the federal government. Though, as Deloria and Lytle suggest, the Commission
found in favor of the Indians in a considerable majority of the claims brought
before them, it was incapable of restoring the title of the disputed lands, a power
reserved exclusively to the Congress. Instead, they offered monetary
compensation. The popular Native frustration towards the Commission’s
commodification of their land claims is best captured by a quote from a
headstrong Blackfoot chief who, in refusing to sign a treaty, stated:

"Our land is more valuable than your money. It will last forever... It is
put here for us by the Great Spirit and we cannot sell it because it does not
belong to us. You can count your money and burn it within the nod of a
buffalo’s head, but only the Great Spirit can count the grains of sand and
the blades of grass of these plains. As a present to you, we will give you
anything we have that you can take with you; but the land, never (quoted
in Loftin 46)."

The 1965 ruling in favor in the Taos Pueblo was actually the second time around
for the Commission, having offered to pay off the same claim in 1926 for a sum of
$297,684.67. The second case yielded exactly the same dollar amount, but no land, and
the Pueblo continued to hound the federal government for the restoration of their sacred
lake. According to Marcia Keegan, a white photographer who documented the eventual
return of the lake,

"Between 1966 and 1969, five bills were introduced in Congress to settle
the Blue Lake issue. Objections were raised by the United States Forest
Service, which was willing to release to the Indians the barren rocks of the
western slope, but wanted to retain as large a portion as possible of the
fertile eastern slope with its springs and valuable timber. This effort
followed the long-standing pattern of United States Government dealings
with Indians, in which the government allocated to the Indians land it did
not want (Keegan 50)."
The final bill passed through the House of Representatives by a unanimous vote, only to have New Mexico's senior Senator Clinton P. Anderson stall the bill in a Senate Subcommittee for the next two years, until his ideological roadblock was overrun by the media following Nixon's pronouncement that the land title should be restored to its original owners. Tribal Council secretary Paul Bernal appeared before the House Subcommittee on Indians Affairs in 1969 and gave a testimony that arguably sealed the eventual victory.

The presence in a part of the watershed of a Forest Service crew, recreationalists, or trespassers will require the Indian group which needs to be in that part of the watershed to detour or to discontinue its ceremony to avoid detection by outsiders... In all of its programs the Forest Service proclaims the supremacy of man over nature; we find this viewpoint contrary to the realities of the natural world and to the nature of conservation. Our tradition and our religion require our people to adapt their lives and activities to our natural surroundings so that men and nature mutually support the life common to both. The idea that man must subdue nature and bend its processes to his purposes is repugnant to our people (quoted in Gordon-McCutchan 6).

An increased understanding of the principles of ecology had ridden the liberal wave across America over the course of the 1960s (Gordon-McCutchan 6) and by the end of the decade such words as those spoken by Paul Bernal carried considerable political weight. The United States Senate met on December 2, 1970 and ratified the Blue Lake Bill by a tally of seventy to twelve. According to Keegan, "the news of the success was announced at Taos on the mission bell. As the people gathered, crying and laughing, the ninety-year-old Cacique Juan de Jesus Romero spoke for all when he said, 'We are going to enjoy a happy New Year every year!'" (Keegan 52).
Centrality Overruled

Though the restoration of Blue Lake was certainly a monumental victory for Indian Country, it has since become an anomaly in the ongoing saga of Native American demands for the necessary legal provisions to freely exercise their religions. Undoubtedly influenced by the hype produced by the Blue Lake affair, the 1978 American Indian Religious Freedom Act (AIRFA) was supposed to be the next step in ensuring justice in future sacred land claims, ending the tribal reliance on the Indian Claims Commission as the only arena through which they could pursue claims to wrongfully appropriated sacred land. Rather, AIRFA would provide Native Americans the legal foundation necessary to assert their entitlement to the protection of their First Amendment Free Exercise of Religion clause, a legal umbrella which would theoretically shield those specific sites deemed integral to the perpetuation of their respective religions. Or at least that’s what the Indians were supposed to believe.

According to historian Lee Irwin, the American Indian Religious Freedom Act was “passed as an attempt to redress past wrongs by the federal government or its agents” (Irwin 1). In most sincere and empathetic-sounding legal jargon the document read, “Henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express, and exercise their traditional religions . . .” (Churchill 1992, “Table” 17).

Since its passing, the word most commonly used to described the Act has been “toothless,” as its wording served more as window dressing than as a mandate of any legal import. Acting essentially as a pledge of goodwill in supporting the free
practice of Native religions with no foundation for legal action, the bill was immediately recognized as being a nothing more than an impotent admonition of guilt on the part of the United States for a 500 year history of aggressive religious proselytization. In the resultant backlash that pervaded free exercise litigation, “almost unanimously . . . the federal courts ruled that the resolution contained nothing in it that would protect or preserve the right of Indians to practice their religion and conduct ceremonies at sacred sites on public lands” (Deloria 1999 204).

As an extension of the federal government’s trust responsibilities to its “discovered” indigenous nations, AIRFA now obliged the courts to lend credibility to Indian testimonies about the holiness of sacred sites. In order to qualify for the legal shelter provided by AIRFA, the burden of proof fell onto the plaintiffs to demonstrate the critical nature of the specific locations relative to their respective religions. To determine the validity of the claim the court would decide these cases by the standard of “centrality” outlined in Wisconsin v. Yoder (1972), in these cases meaning the relative importance of the specific place or ritual to the traditional tribal religion. However, in subjecting such specific cases to a test of centrality, the courts resolved to rely primarily on the erroneous distinction between the Native American land-based religious systems and their respective worldviews in general. If this distinction were to be eliminated, the courts would ultimately be sitting in judgment on the site-specific ritual’s centrality to the tribal culture as a whole. Consequently, the plaintiffs have consistently submitted the same argument articulated by Taos Pueblo Cacique
Juan de Jesus Romero during the Blue Lake affair. “If our land is not returned to us, if it is turned over to the government for its use, then that is the end of Indian life,” Romero pleaded a decade earlier. “Our people will scatter as the people of other nations have scattered. It is our religion that holds us together” (Keegan 61). Evidently, to raise a wall between Indian religions and Indian lives is not only founded in cultural ignorance, it is also potentially genocidal.

The post-AIRFA era opened with two similar federal court cases filed against government water inundation projects in historically sacred places. In both cases the plaintiffs failed the centrality test, thus disqualifying them from filing a Free Exercise claim and qualifying for the protection provided by AIRFA. In 1979, a group of Cherokee led by 78 year old medicine man Ammoneta Sequoyah petitioned for an “injunction to restrain the Tennessee Valley Authority from closing the floodgates of Tellico Dam on the Little Tennessee River” (Stambor 63), attempting to block the TVA’s proposed plan to create the Tellico Reservoir by flooding Cherokee burial grounds and ceremonial sites. *Sequoyah v. Tennessee Valley Authority* produced two decisions that would prove indicative of AIRFA’s future practical impact (or lack thereof) on Indian Country.

First, the court preempted the plaintiffs’ First Amendment claim by drawing upon eight Supreme Court free exercise decisions and summarizing them in two sentences: “An essential element to a claim under the free exercise clause is some form of governmental coercion of actions which are contrary to religious belief” and “This governmental coercion may take the form of pressuring or forcing individuals not to participate in religious practice” (Stambor 64). Having
founded that the government is legally entitled to destroy Indian religions as long as they do not do so intentionally, the court then concluded the plaintiffs were unable to meet the standards of the centrality test, and were consequently rendered ineligible to stake a First Amendment claim. In his testimony to the court, Sequoyah, who had purportedly been gathering his medicine at Tellico for years, stated, “if this land is flooded and these sacred places are destroyed, the knowledge and beliefs of my people who are in the ground will be destroyed” (Stambor 63). After examining twenty affidavits submitted by the Indians, the court decided that while the Little Tennessee River valley was of considerable cultural significance to the Indians, its religious import to the Cherokee nation as a whole did not outweigh the property interests of the federal government, thereby refusing the injunction.

The second “drowned gods” case, Badoni v. Higginson (1980), brought similar disappoint to a group of Navajo medicine men suing the Bureau of Reclamation, the National Park Service, and the Department of the Interior to prevent the agencies from “continuing to act in such a manner as to destroy and desecrate the Navajo gods and sacred sites threatened by the rising waters of Lake Powell and by the influx of tourists” (Stambor 73). Rainbow Bridge, a natural sandstone arch on the northern border of the Navajo Reservation, “had been a remote site where Navajo gods were thought to perform protective and rain-giving functions for generations of Navajo singers” (Lane 51). The 1963 construction of the Glen Canyon Dam fifty-eight miles down the Colorado River had created a massive aquatic playground in the middle of the Arizona-Utah
desert that would enable tourists of all shapes and sizes to access the ceremonial site with anything from an inner-tube to a houseboat.

The Navajo medicine men also failed the centrality test, seemingly because the court shared the opinion of former Secretary of the Interior Henry Teller. Upon drafting the 1883 Indian Religious Crimes Code, Teller insisted that Indian agents take steps in regard to all medicine men “who are always found in the anti-progressive party . . . to compel these impostors to abandon this deception and discontinue their practices, which are not only without benefit to them but positively injurious to them” (Irwin 2). The Badoni court decided that the Rainbow Bridge ceremonies were too infrequent to qualify for protection and dismissed the case by inferring that the plaintiffs had lied in their testimonies about their traditional religion: “There is nothing to indicate that at the present time the Rainbow Bridge National Monument and its environs has [sic] anything approaching deep, religious significance to any organized group, or has in recent decades been intimately related to the daily living of any group or individual” (Stambor 75). For the second time in as many years the court ruled that an Indian religious ceremony differed from the understanding of religion as protected under AIRFA and the First Amendment. Again, the gods were drowned.

Outweighed by Compelling Interests

The next case to seek AIRFA’s protection in a federal court was an off-shoot of one of the ugliest legal struggles in recent Native American legal history. United States v. Sioux Nation of Indians (1980) handled arguably the largest aboriginal
land claim to appear before the U.S. Supreme Court, filed by the Lakota Nation for the return of lands illegally appropriated by the 1868 Treaty of Fort Laramie. Included in the claim was the *Paha Sapa*, the sacred Black Hills region that constitutes most of South Dakota and serves as the worldly locale of the spiritual heart of the Lakota identity. The Supreme Court upheld the earlier decision of the Indian Claims Commission and awarded the Sioux $122.5 million in compensation for the land. Still refusing to indelibly part with the geographic center of their religious universe, the Lakota declined to sell their Black Hills for *any* sum of money,³ and their reward continues to accrue interest today.

However, because the Supreme Court had refused to return the title of the land to its rightful owners, the Lakota were severely hampered in their own free exercise case.

Having failed to reclaim the ownership of all of the Black Hills, the spiritual leaders of the Lakota and Tsistsistas Nations filed *Fools Crow v. Gullett* in an attempt to use AIRFA to take back the single most important of the Black Hills, the holy Bear Butte. The state of South Dakota had established Bear Butte State Park in 1962, constructed maintenance facilities and a visitor’s center, and then connected the buildings by paving roads across the heart of the Sioux religion. Upon a proposal by the Manager of the State Park to construct an observation area for prying eyes to voyeuristically peer into the very private religious ceremonies held at the butte periodically by various Sioux nations, the

³ This doesn’t necessarily mean the Lakota were not interested in monetary compensation *in addition to* the return of their lands. The following year the Oglala Sioux sued the federal government and the state of South Dakota for the recovery of their land, in addition to $11 billion in damages. See Churchill 1993, p. 125.
Lakota and Tsistsistas submitted a request for an injunction and damages for distress caused by the repeated disruption of ceremonies central to their worldview. Native environmental activist Donald Fixico expounded on the court’s ruling.

The Court acknowledged that Bear Butte was the most sacred ceremonial site for the Lakota and Cheyenne in the Black Hills, although it stated that the Indians’ religious freedom was not violated under the First Amendment of the U.S. Constitution. In ruling that the tribes did not possess a property interest in Bear Butte, the Court said its decision was based on a distinction between the tribes’ religious belief and their religious practice (Fixico 132).

The ruling ignored the precedent set by *Cantwell v. Connecticut* (1940), which reversed the conviction of a group of men detained for inciting a breach of peace by soliciting donations in a Roman Catholic neighborhood while blaring a record attacking Catholicism. In deciding that the right to practice one’s religion is inherent in the right to believe, Supreme Court Justice Roberts declared, “such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth” (Fixico 132). In a manner consistent with the previous AIRFA claims, the *Fools Crow* court ruled that because the Indians could not prove the religious centrality of the site, “the plaintiffs’ interests are outweighed by compelling state interests in preserving the environment and the resource from further decay and erosion, in protecting the health, safety, and welfare of park visitors, and in improving public access to this unique geological and historical landmark” (West Group 2002).

Just three years after it had been ratified by the Congress, the American Indian Religious Freedom Act appeared to be nothing more than another document in the United
State's government’s extensive history of enforcing the Marshall doctrines. If the courts could dismiss every free exercise claim as being a cultural construct rather than a religious obligation, the government could maintain the illusion of fulfilling its wardship responsibilities while exerting its plenary power over American Indian land claims with the “principle of highest use.”

The principle of highest use shone brightly when a group of Navajo and Hopi medicine men tried to block the construction of a ski resort on their sacred San Francisco Peaks in *Wilson v. Block* (1983). The court recognized the cultural significance of the religious ceremonies that took place in the San Francisco Peaks, but traditional Hopi law forbade the Indians from disclosing the specific locations of the ceremonial sites.6 Ignoring the standard of cultural sensitivity mandated by AIRFA, the court refused to concede that a religion could revere an entire mountain (Loftin 56). “Again, the Native Americans lost,” writes geographer Belden Lane, “because they could not (or would not) point to a particular site in the mountains where sacred power was concentrated and because the court ruled that preventing ski runs there would be an ‘unconstitutional establishment of religion.’” (Lane 52). The San Francisco Peaks case brought AIRFA’s count of failed free exercise claims to a perfect four for four, all of which failed for the same reasons. As Indian religions scholar Christopher Vescey suggested, “perhaps judges think that tourism, dams, or physical exercise are more weighty that Indian religions, or Indian themselves” (Vecsey 22).

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6 Deloria writes, “Since some ceremonies involve the continued food health and prosperity of the ‘other peoples,’” discussing the nature of these ceremony would violate the integrity of these relationships” (1999 209).
Outright Prohibitions and Indirect Coercion

The landmark case of the post-AIRFA era, Lyng v. Northwest Indian Cemetery Protective Association, was decided by the Supreme Court in 1988. The U.S. Forest Service had planned to construct a new logging road through a location in Six Rivers National Forest that was central to the Karok, Yurok, and Tolowa nations for "religious purposes, communing with spirits, attaining spiritual and curative power, and performing ceremonies of 'world renewal'" (Lane 154). When the road was first proposed in 1979, the Theodoratus Research Associates, under contract with the Forest Service, produced a 450-page report outlining the traditional religious importance of the area and the nature of the rituals performed there. Citing the Associates' "600-person days" of field research, the report concluded, "the nature of Northwest Indian perceptions of the high country and the requirements of their specific religious beliefs and practices associated with the high country make mitigation of the impact of construction of any of the proposed routes impossible" (Emenhiser 2001). In light of the test of centrality spawned by AIRFA, the Theodoratus Report provided the one piece of evidence that the Indians needed for the Supreme Court to court to rule in their favor—this particular tract of land between Gaskett and Orleans, California was imperative to the ceremonies performed there, and the construction of a new road in the area would prohibit the Yurok, Karok, and Tolowa nations from effectively practicing their religion. However, the Court drew a similar conclusion to that of the previous appellate court; that the report provided an unacceptable definition of religion. The United States Court of Appeals for the Ninth Circuit decided:

The report states, "Because of the particular nature of Indian perceptual experience, as opposed to the particular nature of predominant non-Indian,
Western perceptual experience, any division into ‘religious’ or ‘sacred’ is in reality an exercise that forces Indian concepts into non-Indian categories, and distorts the original conceptualization in the process.” The report then suggests that hunting and fishing are religious activities for Indians. While that may be correct in an anthropological sense, the federal Constitution does not recognize such a broad concept of religion (Weaver 224).

Unfortunately for the subscribers of the non-Western perceptual experience, the court has yet to articulate what concept of religion the Constitution does recognize. Congruently, neither did this particular court acknowledge a statement from an earlier free exercise case (*Teterud v. Burns* (1975)) opining that “it is not the province of government officials or the court to determine religious orthodoxy” (Stambor 71). In line with previous Native free exercise litigation, the Supreme Court, noted by legal experts as the last safe haven for religious expression in American jurisprudence,7 ruled that while they found the Indians’ religion to be interesting in an academic sense, “the Free Exercise clause did not prevent the government from using its property in any way it saw fit” (Deloria 1999 205). Defensively arguing that the integrity of a religious institution older than this country could not be imposed on the collective land-use interests of the American public, the Court found that altering the Forest Service’s resource management practices amounted to a “a diminution of the Government’s property rights” (Niezen 154).

Similarly, because the Department of the Interior’s new plans to undercut the local Native religion did not demand, or even suggest that perhaps the Indians should adopt a new faith instead, the Supreme Court ruled that the Forest Service was not acting in violation of the First Amendment. Justice Brennan in reading the dissent said, “the First Amendment bars only outright prohibitions, indirect coercion and penalties on the free exercise of religion. All other ‘incidental effects of government programs,’ it

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7 Stephen Carter 1993 and Vine Deloria, Jr. in a number of his works
concludes, even those 'which may make it difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs,' simply do not give rise constitutional concerns" (Deloria 1992 285).

If this is the precedent to be followed in interpreting the Constitution in future cases, as it has been in the past, the First Amendment Freedom of Religion then becomes the freedom to not be subjected to government sponsored proselytization, a fundamental concept in a working democracy, though not necessarily something that needs to be stated in regards to the American libertarian ideal. In such a scenario, if the land in dispute happens to lie on the federally owned turf, the government need not do anything to actually protect the religion, as long as their motives do not explicitly include religious conversion. Perhaps in the minds of the justices in the majority, the Indians were at fault in this whole affair because they had made the mistake of conducting their private and fragile religious ceremonies on public land set aside for resource development. Indeed, Justice Sandra Day O'Connor alluded to this mentality.

A broad range of government activities—from social welfare programs to foreign aid to conservation projects—will always be considered essential to the spiritual well-being of some citizens, often on the basis of sincerely held religious beliefs. Others will find the very same activity deeply offensive, and perhaps incompatible with their own search for spiritual fulfillment and with the tenets of their religion.

But as Vine Deloria points out, this reflects the ethnocentric nature of the Court's majority, which earlier allowed them to force Indian concepts into non-Indian categories, as Dorothy Theodoratus put it, including drawing the analogy between a traditional world renewal ceremony and hunting and fishing. “To characterize the ceremonies as if they were a matter of personal emotional or even communal aesthetic preferences, as was done by Justice O'Conner, is to miss the point entirely” (Deloria 1999 205). Solemnly
recognizing that once again that a ritual deemed by the local Indian nations to be integral
to the continuance of the world had been out weighed, this time by “speculative” logging
interests, the minority in Lyng offered the closing remarks. “Today’s ruling sacrifices a
religion at least as old as the Nation itself, along with the spiritual well-being of its
approximately 5,000 adherents, so that the Forest Service can build a 6-mile segment of
road that two lower courts had found had only the most marginal and speculative utility,
both to the Government itself and to the private lumber interests that might conceivably
use it” (Deloria 1992 286).

The Religious Freedom Restoration Act (RFRA) passed through Congress in 1993 as a means of imposing legal restrictions on the government’s “principle of highest
use” that seemed to be consistently defeating Indians in free exercise land battles. “In
general, [the] Government shall not substantially burden a person’s exercise of religions,”
reads the section of the Act titled “Free Exercise of Religion Protected.” It goes on,
“[the] Government may substantially burden a person’s exercise of religion only if it
demonstrates that application of the burden to the person— (1) is in furtherance of a
compelling governmental interest; and (2) is the least restrictive means of furthering that
compelling governmental interest” (Religious Freedom Home Page 2001). Though the
point of the RFRA, specifically in regards to Native Americans, was to finally give teeth
to the 1978 AIRFA, in reality the mandate did little to restore any religious freedoms to
Native Americans. Section Five of the Act defines four relevant terms found in the print
(those are “government,” “state,” “demonstrates” and “exercise of religion”), but failed to
define the most questionable term used, “compelling interest.” Consequently, though it
took measures to ensure that the Government could not compromise one’s religious
freedoms on a mere whim as it had tried to do in Lyng, the classic ambiguous wording of
the document continued to allow federal land management agencies to annihilate
religious practices as long as they could demonstrate that they really wanted to do so.
That little morsel of legal theory could easily have been formulated by John Marshall.
“Compelling justification” is just another way of phrasing the principle of highest use
that has trumped the Native request for religious protection since BIA Commissioner
John Collier issued his report insisting that Indian religious and ceremonial life be left
alone in 1934.

Thus, the RFRA appears to be another inconsequential Congressional apology
and a pledge of good faith. The concept of wardship was also mandated a Congressional
pledge of good faith two-hundred years ago. Seemingly the RFRA, and undoubtedly
AIRFA thus far, have simply fallen in line with this tradition of ducking responsibility.
While ensuing cases may require more testimonial paper work from the relevant
government land management agencies, exactly what either act did to actually restore
religious freedoms to Native Americans remains unclear. In his article titled “Losing My
Religion,” Cherokee lawyer Jace Weaver wraps up this saga eloquently: “As Justice
Thurgood Marshall declared in Choctaw Nation v. Oklahoma, at least since the Indian
Removal Act of 1830, it has been “apparent that policy, not obligation would prevail”
(Weaver 219).
Chapter 4: An Inappropriate Definition of Religion

The Western masculine cosmology literally raped the New World. The rape occurred at all levels of the Native American experience; rape was done to the Earth as well as to the people who were in close harmony with the Earth spirits. The Western way of being in the world has been systematically forced on the Native American people in such brutal and genocidal proportions that there has been a wound severing their connectedness with the Earth.

(Duran and Duran 82)

America's legal theory often violates the basic principle of justice.

(Elizabeth Cook-Lynn in Weaver 227)

Paul Bernal, the veteran secretary of the Taos Pueblo Tribal Council, took a week's leave from his domestic duties in 1969 to travel across the country and plead his case before the United States Congress. Appearing before the House Subcommittee on Indian Affairs, Bernal gave a testimony that arguably sealed the ensuing decision by the Congress to restore exclusive title of the Blue Lake section of Carson National Forest to the Taos Pueblo. After sixty-four years of occupation, the Forest Service would be forced to relinquish its control of the geographical center of the Taos cosmology in reparations for the federal government's illegal appropriation of the Taos land.

Advocating the bill proposed by the Nixon Administration, the Tribal Secretary convincingly proclaimed that the presence of the U.S. Forest Service in the immediate vicinity of the lake would result in the eventual discontinuation of traditional Taos world renewal ceremonies. "In all of its programs the Forest Service proclaims the supremacy of man over nature," he insisted. "We find this viewpoint contrary to the realities of the natural world and to the nature of conservation" (Gordon-McCutchan 6). Recognizing that the philosophical foundation of American bureaucratic land management inherently
contrasted with the cosmology of Blue Lake's original caretakers, the Senate passed the Blue Lake Bill by a count of almost six to one.

Early in his presidency, Nixon officially abolished the tribal termination policy that had been fading away over the course of two previous administrations. The Government's intent to lessen its bureaucratic responsibility to Native Americans by restoring a greater degree of autonomy to the reservations necessitated an atmosphere of more cultural sensitivity in Washington. The theological imagery that pervaded the Blue Lake affair, particularly in those testimonies presented by the leaders of the Taos Pueblo community, raised some eyebrows in the arena of federal Indian law regarding the historic treatment of Native American religious liberty. Eight years later, Congress ratified the 1978 American Indian Religious Freedom Act (AIRFA), a “toothless” pledge of good faith by the government to insure one of Native America's fundamental First Amendment rights, seemingly by lending more credibility to Indian explanations of their own religions. The Act stated: "Henceforth, it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express, and exercise their traditional religions" (Churchill 1992 "Table" 17).

AIRFA's inaugural decade saw five land-based First Amendment cases—four federal court cases and a fifth Supreme Court case—each of which heard Native American land-based claims to their right to the free exercise of their religion in specific sacred places on federally-owned land. To protect against the potential of tribes asserting free exercise claims to tracts of land that were not ritually significant, the courts in each of these cases required that the Indians prove the "centrality" of the sites to their

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3 Termination sought to sever the Government's bureaucratic relationship with Indian tribes by cutting federal support and programmatically relocating Indian families away from reservations to physically assimilate them into cities across the country.
respective traditional religious structures, a standard reflective of a perceived intrinsic correlation between popular spirituality and religious institutions. The legal concept of centrality held that unless the government’s interference at the site in question directly resulted in the discontinuation of the entire belief system, the government’s interest in using its own land outweighed those of the plaintiffs. “To receive First Amendment protection, American Indians must demonstrate that a change will not merely infringe but virtually destroy a religious practice or belief,” explains University of Colorado anthropologist Deward Walker. “Judgments by courts as to centrality, therefore, are being made in terms of a standard of survival/extinction” (Walker 110).

All five of these cases were filed by Native Americans under the errant assumption that AIRFA had obliged the American judicial system to make an effort to preserve indigenous religions in the face of culturally-insensitive bureaucratic land management. What makes these five cases noteworthy is that in each of them the plaintiffs offered essentially the same argument that had been successful for Paul Bernal and the Taos Pueblo, leading to the establishment of AIRFA: the trends and ideologies that inspire American bureaucratic land management inevitably contrast with Native American religious philosophies to the extent that indigenous worldviews are being edged out by relatively insignificant resource development projects. But in each case courts proved to be as ethnocentric and bull-headed in their treatment of Indian religions

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9 The “centrality test” is the product of a precedent set in Wisconsin v. Yoder (1972), which established that Amish children could not be required to be enrolled in school after eighth grade on the grounds that the atmosphere of public high schools would be corruptive to the Amish way of life.
as the government's land management agencies had been, consistently ruling in each case that the plaintiffs had provided an "inappropriate definition of religion"\(^\text{10}\) (Deloria 1999).

**Indian Concepts in non-Indian Categories**

*Lyng v. Northwest Indian Cemetery Protective Association* (1988) was the first and only land-based free exercise claim to make its way into the Supreme Court. The plaintiffs, a group of Yurok, Karok, and Tolowa Indians indigenous to northwestern California, had predictably failed the centrality test when they brought a case before the Ninth Circuit U.S. Court of Appeals to plea for an injunction against a Forest Service-planned logging road that would run through the center of their sacred "High Country." It appears that the Supreme Court decided to hear this particular suit, and not the four previous cases, because it did not rely primarily upon the testimonies of the religion's practitioners, of whom the American judiciary have proven to be skeptical. Rather, the central piece of evidence in their suit against the government was the 450-page report, commissioned by the Forest Service to determine the cultural impact of the new road, dubbed the Theodoratus Report. The report outlined in great detail the religious beliefs and practices of the three tribes and concluded that dividing the "Indian perceptual experience" between that which is sacred and that which is not is an exercise that puts "Indian concepts into non-Indian categories, and distorts the original conceptualization in the

\(^{10}\) One rather extreme example of a court dismissing the Indians' testimony to the nature of their own religion because it was untrue came in *Badoni v. Higinson* (1980). Following a statement by a group of Navajo Medicine Men outlining the ceremonial import of Rainbow Bridge (a natural sandstone arch in southern Utah), the court decided "there is nothing to indicate that at the present time the Rainbow Bridge National Monument and its environs has [sic] anything approaching deep, religious significance to any organized group, or has in recent decades been intimately related to the daily living of any group or individual" (Stambor 1983:75). This element of disbelief is indicative of the line of thought that inspired the verdicts in other similar cases.
process" (Weaver 224). Therefore, the report insinuated, to find that the ritual function of the "High Country" was anything but integral to the tribes’ belief system in its entirety was a reflection of a non-Indian concept of religion and it was simply wrong.

Unfortunately for the Indians, the Supreme Court did just that, ruling that though the road would probably destroy much of this sacred tract of land, the government’s encroachment into the area would not prevent the tribes from practicing their religion. Though the report had demonstrated that tribal adherence to the traditional religion would diminish if the construction of the logging road were actualized, the Court displayed their ignorance of spiritual and cultural significance of the Native American land ethic and concurred with the previous appellate court’s decision. The dissenting opinion in the Ninth Circuit Court’s hearing on the case read, “The report... suggests that hunting and fishing are religious activities for Indians. While that may be correct in an anthropological sense, the federal Constitution does not recognize such a broad sense of religion” (quoted in Weaver 1998 224). Again, the court decided that the claim to First Amendment protection was invalid because the plaintiffs’ definition of religion, this time provided in a report commissioned by a government agency, was deemed by the judges to be inappropriate. “In the corner of the minds of the judges is the idea that these can’t be real religions,” explains Charles Wilkinson, a professor of law at the University of Colorado at Boulder. “Religion is something you do in a church. Real religion isn’t something you do in nature. The category for that is recreation and the idea that a religion could be tied to a particular place is not part of the life experience of these judges” (In the Light of Reverence).
The fact remained, however, that the Lyng cases was a claim to one's inherent right to freely exercise their religion and the claimants had convincingly argued that their belief system, even if the Constitution did not recognize such a concept of religion, would inevitably be detrimentally impacted by the encroachment of commercial logging into the area. This was certainly a matter of survival/extinction and the plaintiffs were entitled to a ruling on the constitutionality of the government's interference. In response, the Supreme Court swept this matter under the rug by arguing that the First Amendment only protects against governmental coercion away from a religion. A dissent formulated by Justice Brennan summarized the Court's majority opinion:

The Court argues that the First Amendment bars only outright prohibitions, indirect coercion and penalties on the free exercise of religion. All other "incidental effects of government programs," it concludes, even those "which may make it difficult to practice certain religions but which have not tendency to coerce individuals into acting contrary to their religious beliefs," simply do not give rise to constitutional concerns (Deloria 1992, 284).

In theory, this wording of the principle of coercion reiterates the precedent that individual governmental actions or programs cannot legally disallow people to subscribe to their religion by outlawing or penalizing the most basic tenets of the faith. This is the same concept upon which the principle of centrality is predicated. However, the Court's principle of coercion also implies that failing to perform certain rituals and uphold religious responsibilities is somehow distinguished from "acting contrary to their religious belief," a distinction that is founded in the Judeo-Christian idea that one can differentiate between belief and practice.

Justice Sandra Day O'Connor admitted that "the government does not dispute, and we have no reason to doubt, that the logging and road-building projects at issue in this case could have devastating effects on traditional Indian religious practices" (Deloria 1992 283-4).
A Portable God

The ultimate ruling in Lyng seems to imply once again, in a manner similar to the findings in the four federal court cases, that the plaintiffs' testimonies to the centrality of the "High Country" were fabrications, and that the court knows, even if the Indians do not, that the area is in fact not integral to their traditional religion. Therefore, the government maintains a "compelling interest" in developing the land and perhaps the Yurok, Karok, and Tolowa Indians, who have occupied the area for thousands of years, should pack up and go somewhere else to pray—someplace where the government does not "need" the land. Such a decision interprets the free exercise clause as not literally protecting one's religious liberty in its entirety, but rather as a type of insurance against overt religious persecution. It is fine line, but in these cases in particular, it is an important one nonetheless. The result is that the judicial system has justified the government's interests in annihilating Native American religions by insisting that it is an "incidental effect" and therefore within the parameters of legality as defined by the Constitution.

The problem underlying the entire issue of American Indian sacred sites on federally-owned land is the cultural discrepancy between nature and religion, practice and belief. As Charles Wilkinson noted, the courts have repeatedly denied the Indians' free exercise claims by trivializing Indian religions as "recreation"12 because they are literally grounded, both spiritually and ceremonially, in nature (one can imagine the term "paganism" darting in and out of the minds of these justices). The dominant Euroamerican worldview, which is founded primarily in the "odd-couple" relationship

12 Stephen Carter, a Professor of Law at Yale University, describes America's popular trivialization of religions by suggesting an analogy between religious practices and "building model airplanes, just another hobby" (Carter 22).
between Protestantism and post-Enlightenment rationale,\textsuperscript{13} locates religion primarily within the walls of buildings, though also occasionally at a specific place made holy by the deeds of a particularly pious person. In either case, determining which places are sacred and why is the vocation of people, rather than that of the Creator, hence the suggestion that Indians should relocate their holy places when they interfere with the interests of the government. The logic follows that because the majority population of the United States subscribes to this type of portable sacredness, to make an exception for a cultural minority could be construed as a governmental establishment of religion, thus violating the other half of the freedom of religion clause. In 1995, the National Park Service attempted to ban rock climbing on Devil’s Tower—“The Lodge of the Bear” to the Lakota—which functions as a sort of spiritual “beacon in the ocean, like a lighthouse” (\textit{In the Light of Reverence}) to most northern Plains nations. One recreational climber spoke of his frustration with the possibility of being disenfranchised by Native American religions receiving exceptional treatment in the eyes of the Park Service. “I’ve received the criticism of I am [sic] climbing on somebody’s church,” he admitted. “I don’t mean to offend anybody, but if there’s a climbing ban that’s put into effect, then I’m being locked out my church and I think the church ought to be open” (\textit{In the Light of Reverence}).

Though the origins and functions of one’s spirituality is their own prerogative, what is offensive, or at least culturally insensitive, of the climber’s pronouncement is that it implies that because he personally decided that Devil’s Tower was a spiritually powerful place for himself, he rightfully deserved an equal religious claim the use of the

\textsuperscript{13} Deloria notes that Christian thought lends itself particularly well to Enlightenment rationale, claiming that “immense and intense rationality seems to be the only resonant fact of the Christian world” (Deloria 1999 149).
Tower. Thus, he denied the relevance of the cultural history of the Plains Indians, who continued to perform traditional ceremonies at the site, and maintained that holiness is a characteristic imposed on the land by people rather than being inherent in the essence of the place itself.

"The Western ideological tradition tends to hold that vitality is a quality that human imagination imposes on the land, not vice versa," writes one Euroamerican scholar of the Native land ethic. "This sort of preemption of significance, or privileging of human imagination, is one of the dangerous shortcomings of the Euroamerican humanistic tradition ... Busily admiring the human ability to see, we lose sight of what is there to see—the land, alive, waiting to hold and be held" (Nelson 9). Americans (meaning the "foreigners," not the natives) have been trying for over four hundred years to reconcile a sense of geographical dislocation that is inherent in the cultural experience of the people of a diaspora, even for those playing the role of the colonizer. Displacement and exile are the contextual origins of the Judeo-Christian image of a universal God who can be worshipped anywhere and everywhere, rising out the spiritual desperation resultant of the Jewish exile into Babylon. The same Judeo-Christian conception of God prevails today in mainstream American thought and is undoubtedly implicated in that same group's inability to comprehend the significance of landscape and physical geography in Native American cosmologies.

The discrepancy again lies in the differing perceptions of the vitality of the land. Western religion is predicated upon the interpretation and application of texts and defines the piety of landscapes by reflecting upon the role of that place in the human experience. Native American religion, on the other hand, relies heavily upon divine revelations as the
inspiration for popular theology, which is constantly adapting to the knowledge gained through dreams, vision quests, and communal ceremonies performed in spiritually-charged places. These revelations often regard the requirements of maintaining the balance of the universe through specific actions; failure to receive such a mandate could potentially result in catastrophe or widespread suffering for all of Creation. Because traditional Indians “see religion as a cooperative enterprise” (Deloria 1999, 154), the primary function of religion is to uphold the responsibility of providing for the continuation of the natural order of the universe.

So when the Supreme Court suggests that a tribe or community of Indians (or three, as in the Lyng case) abandon their site-specific rituals in favor of forestry, the Indians are left aghast, knowing that without performing their ceremonies there could potentially be no forest, nor could there be bureaucrats to exploit it. A Taos Pueblo man once explained this concept to anthropologist Frans Boas: “We are the people who live on the roof of the world; we are the sons of the Sun who is our father. We help him daily to rise and to cross the sky. We do this not only for ourselves, but for the Americans also. Therefore they should not interfere with our religion” (quoted in Nabokov 411). One could argue, then, that it is in the American judiciary’s own best interest to recognize that for American Indians, practice is inextricable from belief.

“Discovering” Americans

The differentiation between practice and belief is a relatively recent phenomenon within the realm of federal Indian management and one could argue that these courts’ recent
revelation that spirituality is not part and parcel of Native American culture little more than an improvised excuse that has been eerily consistent in dissolving Native American free exercise claims. Outlawing practice to eliminate belief has always been the backbone of federal Indian assimilation campaigns,\(^{14}\) intended to circumvent the issue of Native autonomy by breaking up tribal communities and merging Indians with mainstream American society by repeatedly redefining Indian sovereignty in relation to the Government’s trust relationship with its “domestic dependent nations.” Federal Indian law, from the earliest treaties to contemporary deliberations with mineral extraction corporations, has revolved around justifying the United States’ annexation of Indian land. The “compelling interest” doctrine that has factored significantly into free exercise cases is a throw back to the Manifest Destiny mentality that if Indians do not really use land, “the lands should be taken away and given to people who knew what to do with them” (Deloria 1969 18), an attitude that is still prevalent today among big-business farmers and natural resource development companies. An infatuation with the mythical frontiersmen of American folkculture and a collective desire to congeal a nation of settlers aligned nineteenth century America in direct opposition to Native Americans,\(^{15}\) whose lives and cultures, and most importantly legal possession of vast areas of land, stood in the way of American industrialism and the drive west. Genocide was frowned upon by the international arena in which the young republic was attempting to legitimize itself and though the United States could not physically rid the continent of native blood,

\(^{14}\) The most intense period of overt Indian assimilation lies between the bookends of the 1887 Dawes General Allotment Act and the Termination programs of the 1950s.

\(^{15}\) Colonization constructs a series of dualisms that naturalize the power of the colonizer by creating a status of “inferior otherness” for the colonized. “The master more than the slave requires the other in order to define his boundaries and identity, since these are defined against the inferiorised other; it is the slave who makes the master a master, the colonized who make the colonizer, the periphery which makes the center” (Plumwood 48–49).
dissolving any remnant indigenous sovereignty could serve the same purpose by removing Indians from the political landscape of North America. The intensive military roundup of western tribes and the establishment of reservations peaked at the end of the 1800s and a relatively short time there after the Government instituted numerous policies designed to make traditional Indian lifestyles practically impossible, consequently eroding the social and political value of one's Indian identity. One such policy was a ban on Indian religious practices that lasted for over thirty years bridging the turn of the twentieth century.

In 1879, the Supreme Court described Mormon polygamy as being "subversive to the good order" (Carter 29), indicating the atmosphere of religious intolerance that played into the nation-building spawned by western expansion. In the process of moving American imperialism west of the Mississippi River, the process of vanquishing Indians bodies was predicated upon colonizing Indian souls. A collective identity, such as calling one's self an "American," is founded in a common sense of place and purpose in this world, a phenomenon relying heavily upon common cosmology and cultural memory. When such identities are constructed in opposition to an identifiable "other," as was the case with the Cowboys versus Indians mentality that pervades the popular American perception of the "Wild West," they become the foundation for solidarity, and in the face of colonial occupation, the basis for resistance. Indian resistance on a tribal scale, as well as the worldviews that fueled it, was an affront to the existence of the United States, and resistance movements founded in religion were a threat to national security. "The Ghost Dance movement, a last attempt to bring back the old hunting days, was enough to convince the Indian Bureau and the Army that the sooner the Indian was Christianized.
the safer the old frontier would be," writes Vine Deloria, Jr. (1969 110). In December of 1890, the U.S. Cavalry slaughtered 300 Ghost Dancers at Wounded Knee Creek in the last violent surge to "tame the American wilderness."

"The false assumption that Native Americans did not use the land was a fallacy that justified conquest in some minds from sea to shining sea," writes one observer (Grinde and Johansen 11), noting the Eurocentric conception of land use that lent itself so well to the idea of a conquest executed in the name of God. "We did not think of the great open plains, the beautiful rolling hills, and winding streams with tangled brush, as 'wild,'" explained Sioux orator Luther Standing Bear. "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. Earth was bountiful, and we are surrounded with the blessing of the Great Mystery" (quoted in Grinde and Johansen 25). The Euroamerican tradition, on the other hand, is the product of two belief systems that understand humanity to be superior to the natural world.

Judeo-Christianity, the nexus of popular American spirituality, maintains that God intended man to hold dominion over the totality of Creation and that historically man finds his place in relation to geography only after conquering land, usually preceded by an extended sense of loneliness created by wandering around in a vast wilderness. Andrew Jackson, in attempting to legitimize Indian Removal, alluded to this want to create a "city of heaven" on Earth, asking "what good man would prefer a country covered with forests, and ranged by a few thousand savages, to our extensive Republic, studded with cities, towns, and prosperous farms?" (Steiner 117). Enlightenment rationale, the inspiration for Western thought, holds that nature is the opposite of
reason—it is uncivilized and those who choose to literally live in nature cannot actually be people in the civilized sense. Rather, such people must not be people at all, but instead a sub-human race that has not evolved to the end of the spectrum of cultural evolution, where Western European culture sits as king. While this concept is fairly archaic in anthropology, it prevails today as the subconscious foundation of everyday racism. Thus, the most expedient way to abrogate any claims to human rights and civil liberties (not to mention sovereignty) by non-Europeans in the New World was to deny the humanity of these people and include them in category of wilderness, deemed by God to be tamed. “Warring against colored nations was more dangerous and more exciting than big game shooting,” Theodore Roosevelt, Jr. once quipped, “but still more or less in the same category” (Steiner 162).

In the 1810 case of *Fletcher v. Peck*, the first in a series of Supreme Court cases in which Chief Justice John Marshall laid the foundation for the legal status of Indian sovereignty (or lack thereof), Marshall first referred to the territory west of the Alleghany-Appalachian crest as ‘vacant,’ opening the door for his later decisions that all Indian lands, legally ceded or otherwise, belonged to the United States by the rights of discovery. This brand of preemptive history has been central to the Euroamerican revision of the continent’s history and is largely responsible for the popular American conception of Native cultures as lingering relics of a romantic past, if not entirely make-believe. Such a mentality has even pushed its way into the on-going saga of Native cultural claims to traditionally sacred sites. In arguing against the climbing ban imposed on Devil’s Tower, Winnie Bush, mayor of Hulet, Wyoming, complained, “we people
who have lived here our whole lives have our own culture that is being invaded by the
Indians coming here all the time and taking over” (In the Light of Reverence).

Both the Government and courts that have legitimized its plenary power over its
subjects are products of this same ideological tradition. The result has been a series of
free exercise cases in which the Government has argued that their property rights are
being diminished by a culturally-insensitive Native American religious invasion. So, like
the idea of “discovery,” Indian sovereignty and the interpretation of its inherent stake in
aboriginal territory are predicated on the concept that Indians did not exist before
America needed to steal their land and renounce their political power. Thus, history in
the Western Hemisphere began.

Subversive to the Good Order

Indians in pre-contact North America and religion bound to nature seem to share a
common bond; both are contradictory to the Sunday-school revisionist version of
American history that tells of brave pioneers taming the wilderness in the name of God.
They run against the brightest threads of America’s national fabric, utilitarian progress
and Manifest Destiny; if God had chosen to reside in the natural world rather than
mandate that humanity conquer it, perhaps our forefathers were wrong in believing that
the Supreme Being had supported the genocidal conquest of North America. However,
as suggested earlier, Euroamericans in the age of nation-building were determined to
recreate the North American landscape, not just geographically but also historically, into
a self-indulgent image combining old Europe with fantasies of subduing Eden once and
for all. God's garden on Earth, like old Europe, did not have Indians, and consequently, says the white man's history, neither did North America.

One can only imagine the shock and confusion felt by young Indian school children when they are first hear that their ancestors did not exist prior the accidental arrival of a destitute Italian sailor and then later told that those same ancestors somehow evolved into human beings upon the severance of their relationship to their traditional lands. The implication is very clearly that Native Americans as such are not people until they are made Americans, an idea that presents a rather bleak prognosis to anyone attempting to assert a claim to human rights while maintaining their own traditional national identity. But in the spirit of a judicial system that suggests that Indians should rethink their religious devotion to make it portable, American assimilation policies have relied heavily upon the assumption that in the face of European "civilization," Native cultures, with the unlimited help of missionary evangelism and a boost towards bureaucratic conformity, will ultimately wise up to the realities of cultural evolution. Like evolution, Euroamerican time is linear; relishing progress and destiny, the past is as easily and as often malleable as the future.

However, Native Americans philosophies and their corresponding worldviews exist predominantly in space, as opposed to the temporal Western existence, and a cyclical conception of time that is rooted in landscape cannot be easily rewritten. Unless, that is, the landscape itself is rewritten and transformed to the extent that it becomes almost unrecognizable to the Indian perceptual experience. This radical of brand conservationism is an important aspect of Native American resistance that is often overlooked when placed in the context of territorial expansion. The political and
economic values of land, and perhaps even the issues of pride involved in being forcibly
removed from one's traditional home, are peripheral to the cosmological significance of
being rightfully placed in relation to the entirety of Creation. The extensive history of the
federal theft of Indian land—from removal from traditional lands to the partitioning of
reservations to the exploitation of sacred places—has been met with persistent resistance
not because it is an issue of ownership but because it is an issue of spiritual orientation.

All Indian struggles to liberate their land from the colonial yoke carry an inherent
religious claim that is incomprehensible to American jurisprudence, in which private
property is paramount. Hence the consistent Indian assertion, undoubtedly calling on half
a millennium of experience, that Euroamerican land grabbing and natural resource
exploitation ultimately leads to an irreparable erosion of traditional lifeways, even if the
place in question is not used in a manner recognizable to the Western perception of land.

Of course sovereign territory and a cohesive homeland are critical to the preservation of a
nation; this is the ideological basis for any struggle against colonial occupation that treats
cultural disintegration as an "incidental effect of government programs." But indigenous
land struggles "run into the dangerous currents of national and tribal identities," as
Ronald Niezen described religious prohibition (141), because "the land, this land, is
secure in his racial memory" (Momaday 1999, 28) and it is "a memory of ourselves and
our deeds and experiences" (Deloria 1999, 253). Native Americans are in a sense the
land that they live on and federal Indian law functions, be it often in round about ways, to
annex that same land. Consequently, severing the indigenous connection to land serves
to annex the people that are part of that land—to pull them into mainstream American
society to be efficiently bureaucratically managed and subjected to governmental
programs of development and exploitation. The insensitive disregard for the validity of
Indian religious traditions that has dictated the five land-based free exercise cases of the
post-AIRFA era is a philosophical relic of the assimilation policies spawned by Manifest
Destiny and as a result, Native Americans are attempting to use the umbrella of
protection theoretically provided by AIRFA not to merely claim their right to religious
freedom, but even more so to fight against the comprehensive and enduring persecution
of Indian cultures. When viewed in this light, a criticism of the subjective interpretation
of American religious liberty warrants an examination of the nature of Euroamerica’s
“higher power.”

The United States is a nation born of the pen and the sword, rewriting God to
justify its conquest and then rewriting the conquest to justify itself as a god amongst men.
Emile Durkheim once wrote, “The sacred ultimately refers not to a supernatural entity,
but rather to people’s emotionally charged interdependence, their societal arrangements”
(Kertzer 9). “America is not a nation in the cultural sense, it’s an idea” (Gerald
Wilkinson quoted in Steiner 291) and it binds together in a social contract the
descendants of a mixed bag of immigrants, holding in common little more than a promise
of liberty and a whiff of prosperity. The god of non-native North America, or perhaps
more precisely America’s “foreign” god, exists on paper, amassing and sedating an
amalgam of dislocated souls. “We’re dealing with people who are frightened, who are
paranoid, because they have no country, no real country,” declared Gerald Wilkinson as
Director of the National Indian Youth Council (Steiner 292). Euroamerica is still
wandering around in this vast wilderness, blindly pushing forward through time, fleeing
the ghosts of a scarred landscape and muting the voices that seek this continent’s
redemption. The Bill of Rights, itself a written and portable god, has become their "concept of themselves" (Steiner 291), causing one's salvation to be contingent upon ideological conformity, making cultural diversity a threat to national security.

But the government of the United States "is run every way in the world but according to the Constitution of the United States" (Steiner 274). Cultural minorities and the socially disempowered—the very people who need the Bill of Rights most to protect their civil liberties—are politically and legally marginalized by a government that seems to reward efficient conformity with the extension of supposedly guaranteed rights. For example, for one to argue that a governmental program is infringing on their religious practices, one must first qualify those practices as being religious under the definition formulated and applied by the Supreme Court. To be recognized by American jurisprudence, the beliefs and practices must then conform to a more mainstream conception of religion, effectively eliminating the original need for legal accommodation. Thus, the First Amendment is yet another broken treaty in a tradition of rewritten promises, demanding adherence in belief as the criteria for one's national identity while only upholding the righteous practice of an idealistic civil religion in which liberty and justice died to absolve a nation of the sins of its own conquest and dominion. Dr. Martin Luther King, Jr. wrote from a Birmingham jail, "just law is a man-made code that squares with the moral law of the law of God" (Carter 38). American jurisprudence is a vengeful god that penalizes non-believers, forcibly coercing their conversion to the higher power of a collective Manifest Destiny for the sake of serving and protecting a nation constructed upon popular devotion to the sacred doctrines that majority rules and might
equals right. Consequently, popular spirituality in America has little to do with one’s public identity and less to do with one’s sense of morality.

Native American cultural resistance, however, is based in a collective rejection of America’s religious colonialism that has worked to remove Indian bodies from the North American landscape by assimilating Indian minds, and their spiritually-critical sacred places, into the transformational world of bureaucratic government. As anthropologist David Kertzer notes, “Part of the cultural struggle . . . is the struggle of the privileged to protect their positions by fostering a particular view of people’s self-interest. It is a process that involves defining people’s identity for them” (Kertzer 175). The history of the United States Government’s responsibility to Indians as wards of the state is laden with assimilation policies intended to dissolve the Native connection to the land, a connection with inherent religious significance. The logic behind the suppression of Indian religions has changed little in the past two hundred years, still relying upon the logic that “if Indians did not have religion, their gathering must be either debased forms of amusement or subversion” (Niezen 129). Consequently, American jurisprudence has held steadfastly to their belief that Indian religions are at best comparable to recreational “hunting and fishing”—a lifestyle choice or a hobby that may be culturally significant, perhaps even a welcome addition to the distant dream of a real “melting pot” society, but is still inconsistent with the social norms and political ideologies that are protected by the Constitution. The free exercise clause of the First Amendment is apparently defined within the parameters of the country’s popular sense of what is sacred, deifying American cultural imperialism and institutionalized spirituality at the cost of ideological diversity and sincere religious devotion. Consequently, claims to legal accommodation for sacred
sites on federally-owned lands are an affront to the bureaucratic management of Indians and natural resources alike, and today, just as they were 150 years ago, medicine men are still always found in the anti-progressive party (Irwin 2).
Conclusion

In the previous chapter, I mentioned the recreational climber who referred to Devil's Tower as his "church." Perhaps his reasoning, as I understand it, is a touchstone for the argument of this entire thesis. One critical point that I'm trying to make is that injecting meaning into places is a characteristic of worshipping a portable god. It's tricky, because there are certainly types of Indian sacred places that are sacred because the Indians designated them such, like points of divine revelations to people, or places like Wounded Knee where something cosmologically significant went down, for example. But in the case of Devil's Tower and the white climber, he's doesn't seem to arguing the actual place is sacred at all. Rather, I think he views the Tower itself as his church- a place that he has erected in his mind where he can feel in touch with God. In fact, he calls it a church, and I could just be too critical of cultural semantics. But I think he's saying more.

I think he's saying that the sacredness of the Tower is detached from the land and that if he (or any climber or Indian or anybody) wasn't there, the Tower wouldn't necessarily be sacred. Or at least it wouldn't matter, because the Euroamerican worldview holds that form, essence, etc. are injected by people, while for Indians, these things are intrinsic. I'm also trying to unspokenly imply that the sacredness that we each believe in is what's really sacred. In this case, Indians believe that the holiness of the Tower revealed itself to them so they could perform ceremonies. So they're thankful. The climber thinks, "I feel good here, this place must be holy," thereby believing, be it subconsciously, that the place is holy because he says so, and this really doesn't have anything to do with the land or even the Tower. It has to do with his love for climbing and maybe even his love for nature. Again, it's the difference between
recreation and religion, but this time it's flipped. So instead of being thankful, this guy's selfish and pissed off because he innocently thinks that the Indians are injecting their religion too, and to favor them would be an unconstitutional establishment of religion, thus violating the second half of the freedom of religion clause. Nevermind that in a certain sense, the place really is sacred for Indians, while what's sacred to the climber is his own view of himself as the kind of down-to-earth guy that would find god in nature. An appropriated version of the noble savage, if you will, but he still gets to go home to "civilization" at the end of the day.

If the Supreme Court got a crack at this one, assuming they'd lend some credibility to the legitimacy of Native religions, they might rule that the Indians have compelling interests because while the place is admittedly sacred to both parties, the climber is unable to prove the centrality of the place to his life because it's a transparent construction of a shallow faith made up in reaction to a threat to his "close his church." The difference is if you close his church, you still don't close his god, so at the end of the day he's lost a chance to feel good about himself. He figures that Indians retaining their tradition and their culture and their religion is just Indians feeling good about themselves, which it is very simplistically, but the impact of an individual losing his recreation versus an entire community, or nation, losing their religion is self-centered ethnocentric comparison that's founded in the foreign belief of that man is a god on earth and that white men are the gods of North America.

So when the courts have ruled that the government's degree of ownership by law is greater than the Indians' right to these places by divine mandate—or simply because they were here first and have enduring connections to these places that were established
before this continent was even accidentally stumbled upon by a confused Italian sailor—what the courts are really saying is two things. First, the courts are saying that the Indians' "primitive" nature-bound religion is cute but its still part of the wilderness, a cultural remnant of a romantic past. Indians can still believe in whatever they want, but for all practical purposes, including ceremonially preserving the entire Earth from imminent destruction, for the American Indian, God is dead. This is a rather bleak vision of religious freedom. Secondly, the courts are arguing that Native American claims to the restoration of their sacred land amounts to their encroaching on the government's property rights. Talk about revisionist history—these judges think the government's land is being invaded by Indians! You can choke on the irony.

The point is, American jurisprudence is incapable of comprehending the significance of place in worship and therefore will continue to rule against Indians on the grounds that what is truly sacred to contemporary America are the pieces of paper that created our collective national identity. Bureaucratic efficiency, evolving and civilizing, conquering and improving, form the ideological axis of federal Indian law. As one author wrote, "perhaps these judges really do think that ski resorts and logging roads are more important that Indians" (Vecsey 14). But more likely, what they think is more important than Indians is the law—their written and rewritten god that justifies their very existence; this god who had made it their destiny to conquer this vacant land by pen and by sword. This is still how they rule today. Rather than carving out some legal room for Indian sovereignty and guaranteeing their rights as the court-appointed wards of the state, they do all that they can do to erase them from time, making it an economically, socially, and now spiritually a bad decision to retain one's cultural identity outside of the one
formulated on paper. And as a result, Indian religions, like other cultural "remnants," are changing and adjusting; being put on reserve, so to speak. But American Indians exist in space and in breath and are born of this soil and inevitably return to their sacred places in one way or another. Native American religions, like those who sustain them, persist in resistance to further colonialization in the name of American progress.
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