

Sacred Lands and Religious Freedom by Vine Deloria, Jr.

Since time immemorial, Indian tribal Holy Men have gone into the high places, lakes, and isolated sanctuaries to pray, receive guidance from the Spirits, and train younger people in the ceremonies that constitute the spiritual life of the tribal community. In these ceremonies, medicine men represented the whole web of cosmic life in the continuing search for balance and harmony and through various rituals in which birds, animals, and plants were participants, harmony of life was achieved and maintained.

When the tribes were forcibly removed from their aboriginal homelands and forced to live on restricted smaller reservations, many of the ceremonies were prohibited by the Bureau of Indian Affairs, and the people were forced to adopt various subterfuges so that ceremonial life could continue. Some tribes conducted their most important ceremonies on national holidays and Christian feast days, explaining to curious whites that they were simply honoring George Washington or celebrating Christmas and Easter. Since many shrines and Holy Places were isolated and rural parts of the continent were not being exploited or settled, it was not difficult for small parties of people to go into the mountains or to remote lakes and buttes to conduct ceremonies without interference from non-Indians. Most Indians did not see any conflict between their old beliefs and the new religions of the white man and, consequently, a surprising number of people participated in these ancient rituals while maintaining membership in a Christian denomination.

During the last century, the expanding national population and the introduction of corporate farming and more extensive mining and timber industry activities reduced the isolation of rural America. Development pressures on public and reservation lands made it increasingly more difficult for traditionally religious people to conduct their ceremonies and rituals. Since many of the sacred sites were on public lands, traditional religious leaders were often able to work out informal arrangements with federal agencies to allow them access to these places for religious purposes. But as personnel changed in state and federal agencies, a new generation of bureaucrats, fearful of setting precedents, began to restrict Indian access to sacred sites by establishing increasingly narrow rules and regulations for managing public lands.

In 1978, in an effort to clarify the status of traditional religious practices and practitioners, Congress passed a joint resolution entitled "The American Indian Religious Freedom Act" which declared that it was the policy of Congress to protect and preserve the inherent right of American Indians to believe, express, and practice their traditional religions. The Resolution identified the problem as one of a "lack of knowledge or the insensitive and inflexible and enforcement of federal policies and regulations." Section 2 of the Resolution directed the President to have the various federal departments evaluate their policies and procedures and report back to Congress the results of this investigation and any recommendations for legislative action.

Most people assumed that the Resolution marked a clarification of federal attitudes toward traditional religions, and it began to be cited in litigation involving the construction of dams, roads, and the management of federal lands. Almost unanimously,

however, 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. Some courts even hinted darkly that any recognition of the tribal practices would be tantamount to establishing a state religion, an interpretation which upon analysis was a dreadful misreading of American history and the Constitution and may have been an effort to inflame anti-Indian feelings.

In 1988, the Supreme Court decided the *Lyng v. Northwest Indian Cemetery Protective Association* case which involved access to sacred sites high up in the Chimney Rock area of the Six Rivers National Forest in northern California. The Forest Service proposed to build a six-mile paved logging road that would have opened the high country to commercial logging, destroying the isolation of the ceremonial sites of three tribes and introducing new processes of environmental degradation. The lower federal courts prohibited construction of the road on the grounds that it would have made religious ceremonial use of the area impossible. Before the Supreme Court could hear the appeal, Congress passed the California Wilderness Act, thereby making the question almost moot. The Supreme Court, nevertheless, insisted on deciding the religious issues and ruled that even the Free Exercise clause did not prevent the government from using its property any way it saw fit.

Most troubling about the Supreme Court's decision was its insistence on analyzing tribal religions within the same conceptual framework as western organized religions. Justice O'Connor observed that, "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." Thus, ceremonies and rituals performed for some thousands of years were treated as if they were personal fads or matters of modern emotional personal preference based upon the erroneous assumption that belief and behavior can be separated. Justice Brennan's dissent vigorously attacked this line of reasoning but failed to gather support within the court. Most observers of the Supreme Court were simply confounded at the majority's conclusion which suggested that destroying a religion did not unduly burden it and that no constitutional protections were available to the Indians.

When informed of the meaning of this decision, most people have shown great sympathy for traditionally religious people. At the same time, they have had great difficulty understanding why it is so important that ceremonies be held, that they be conducted only at certain locations, and that they be held under conditions of extreme secrecy and privacy. These problems in understanding highlight the great gulf that exists between traditional western thinking about religion and the Indian perspective. It is the difference between individual conscience and commitment (western) and communal tradition (Indian), and these views can only be reconciled by examining them in a much broader historical and geographical context.

Justice Brennan attempted to make this difference clear when he observed that, “Although few tribal members actually made medicine at the most powerful sites, the entire tribe’s welfare hinges on the success of individual practitioners.” More than that, however, the “World Renewal” ceremonies conducted by the tribes were done on behalf of the earth and all forms of life. To characterize the ceremonies as if they were a matter of personal, emotional or even communal aesthetic preferences, as was done by Justice O’Connor, is to miss the point entirely. In effect, the court declares that Indians cannot pray for the planet or for other people and other forms of life in the manner required by their religions.

Two contradictory responses seem to describe the non-Indian attitudes toward traditional tribal religions: Some people want the medicine men and women to share their religious beliefs in the same manner that priests, rabbis, and ministers expound publicly the tenets of their denominations; others feel that Indian ceremonials are remnants of primitive life and should be abandoned. Neither perspective understands that Indian tribes are communities in fundamental ways that other American communities and organizations are not. Tribal communities are wholly defined by family relationships, whereas non-Indian communities are defined primarily by residence or by agreement with sets of intellectual beliefs. Ceremonial and ritual knowledge is possessed by everyone in the Indian community, although only a few people may actually be chosen to perform these acts. Authorization to perform ceremonies comes from higher spiritual powers and not by certification by an institution or even by any formal organization.

The Indian community passes knowledge along over the generations as a common heritage that is enriched by the experiences of both individuals and groups of people in the ceremonies. Both the ceremony and the people’s interpretation of it change as new insights are gained. By contrast the non-Indian communities establish educational institutions which examine, clarify and sometimes radically change knowledge to fit their needs. Knowledge is the possession of an exclusive group of people — the scholars and the professionals who deeply believe that the rank and file of their communities are not intelligent enough to understand the esoteric truths of their society. Basic truths about the world are not expected to change, regardless of the experiences of any generation, and “leading authorities” are granted infallibility based on their professional status alone.

A belief in the sacredness of lands in the non-Indian context may become a preferred belief of an individual or group of non-Indian individuals based on their experiences or on intensive study of preselected evidence. But this belief becomes the subject of intense criticism and does not, except under unusual circumstances, become an operative principle in the life and behavior of the non-Indian group. The same belief, when seen in an Indian context, is an integral part of the experiences of the people — past, present, and future. The idea does not become a bone of contention among the people, for even if someone does not have experience or belief in the sacredness of lands, he or she accords tradition the respect that it deserves. Indians who have never visited certain sacred sites nevertheless know of these places from the general community knowledge, and they feel them to be an essential part of their being.

Justice Brennan, in countering the near-demagogic statement by Justice O'Connor, that recognition of the sacredness of certain sites would allow traditional Indian religions to define the use of all public lands, suggested that the burden of proof be placed on traditional people to demonstrate why some sites are central to their practice and other sites, while invoking a sense of reverence, are not as important. This requirement is not unreasonable, but it requires a willingness on the part of non-Indians and the courts to entertain different ideas which, until the present, have not been part of their experience or understanding. The subject is considerably more complex than most people expect.

If we were to subject the topic of the sacredness of lands to a western rational analysis, fully recognizing that such an analysis is merely for our convenience in discussion and does not represent the nature of reality, we would probably find four major categories of description. Some of these categories certainly are overlapping in the sense that different individuals and groups have already sorted out their own beliefs so that they would not accept the classification of certain sites in the categories in which Indians would place them. Nevertheless, it is the principle of respect for the sacred that is important.

The first and most familiar sacred lands are those places to which we attribute a sacredness, because the location is a site where, within our own history, regardless of our group, something of great importance took place. Unfortunately, many of these places are related to instances of human violence; Gettysburg National Cemetery is a good example of this kind of sacred land. Abraham Lincoln properly noted that we cannot hallow the battlefield at Gettysburg because others, the men who fought there, had already consecrated it by giving "that last full measure of devotion." We generally hold these places sacred because there men did what we might one day be required to do — give our lives in a cause we hold dear. Wounded Knee, South Dakota, is such a place for many Indians. The Lincoln Memorial in Washington, D.C. might be an example of a location with a nonviolent background.

Every society needs these kinds of sacred places. They help to instill a sense of social cohesion in the people and remind them of the passage of the generations that have brought them to the present. A society that cannot remember its past and honor it is in peril of losing its soul. Indians, because of our considerably longer tenure on this continent, have many more of these kinds of sacred places than do non-Indians. Many different kinds of ceremonies can and have been held at these locations, and there is both exclusivity and inclusiveness depending upon the occasion and the ceremony. In this classification the site is all-important, but it is sanctified each time ceremonies are held and prayers offered.

A second classification of sacred lands has a deeper, more profound sense of the sacred. It can be illustrated in Old Testament stories which have become the foundation of two world religions. After the death of Moses, Joshua led the Hebrews across the River Jordan into the Holy Land. On approaching the river with the Ark of the Covenant, the waters of the Jordan "rose up" or parted and the people, led by the Ark, crossed over on "dry ground," which is to say they crossed without difficulty. After crossing, Joshua selected one man from each of the Twelve Tribes and told him to find a large stone. The

twelve stones were then placed together in a monument to mark the spot where the people had camped after having crossed the river successfully. When asked about this strange behavior, Joshua replied, "That this may be a sign among you, that when your children ask their fathers in time to come, saying, 'What mean ye by these stones?' Then you shall answer them: That the waters of Jordan were cut off before the Ark of the Covenant of the Lord; when it passed over Jordan." (Joshua 4:6-7)

In comparing this sacred site with Gettysburg, we must understand a fundamental difference. Gettysburg is made sacred by the actions of men. It can be described as exquisitely dear to us, but it is not a location where we have perceived that something specifically religious has happened. In the crossing of the River Jordan, the sacred appeared in the lives of human beings; the sacred appeared in an otherwise secular situation. No matter how we might attempt to explain this event in later historical, political or economic terms, the essence of the event is that the sacred has become a part of our experience.

Some of the sites that traditional religious leaders visit are of a similar nature. Thus Buffalo Gap in the southeastern edge of the Black Hills of South Dakota marks the location where the buffalo emerged each spring to begin the ceremonial year of the Plains Indians. It may indeed be the starting point of the Great Race which determined the primacy between the two-leggeds and four-leggeds at the beginning of this world. Several mountains in New Mexico and Arizona mark places where the Pueblo, Hopi, and Navajo peoples completed their migrations, were told to settle, or were where they first established their spiritual relationships with bear, deer, eagle and the other forms of life who participate in the ceremonials. As we extend the circle geographically, we must include the Apache, Ute, Comanche, Kiowa and other tribes. East of the Mississippi, even though many places have been nearly obliterated, people still have knowledge of these sacred sites.

In the religious world of most tribes, birds, animals and plants compose the "other peoples" of creation and, depending on the ceremony, various of these peoples participate in human activities. If Jews and Christians see the action of a single deity at sacred places and in churches and synagogues, traditional Indian people see considerably more activity as the whole of creation becomes an active participant in ceremonial life. Since the relationship with the "other peoples" is so fundamental to the human community, most traditional practitioners are very reluctant to articulate the specific elements of either the ceremony or the location. And since some ceremonies involve the continued good health and prosperity of the "other peoples," discussing the nature of the ceremony would violate the integrity of these relationships. Thus when traditional people explain that these ceremonies are being held for "all our relatives," that explanation should be sufficient. It is these ceremonies in particular that are now to be prohibited under the Supreme Court's rulings.

It is not likely that non-Indians have had many of these kinds of experiences, particularly since most churches and synagogues have special rituals which are designed to denaturalize the buildings so that their services can be held there. Non-Indians have

simply not been on this continent very long; their families have moved constantly about so that any kind of relationship that might have been possible for people has been forfeited. Additionally, non-Indians have engaged in senseless killings of wildlife and utter destruction of plant life, and it is unlikely that they would have understood any effort by other forms of life to communicate. But it is also a fact of human experience that some non-Indians, who have lived in rural areas of relative isolation and whose families have lived continuously in certain locations, tell stories about birds and animals not unlike the traditions of many tribes.

The third kind of sacred lands are places of overwhelming Holiness where Higher Powers, on their own initiative, have revealed themselves to human beings. Again we can use an Old Testament narrative to illustrate this kind of location. Prior to his trip to Egypt, Moses spent his time herding his father-in-law's sheep on and near Mount Horeb. One day he took the flock to the far side of the mountain, and to his amazement he saw a bush burning with fire but not being consumed. Approaching this spot with the usual curiosity of a person accustomed to the outdoor life, Moses was startled when the Lord spoke to him from the bush, warning, "Draw not hither; put off thy shoes from thy feet, for the place whereupon thou standest is holy ground." (Exodus 3:5, emphasis added)

This tradition tells us that there are, on this earth, some places of inherent sacredness, sites that are Holy in and of themselves. Human societies come and go on this earth and any prolonged occupation of a geographical region will produce shrines and sacred sites discerned by the occupying people. One need only to look at the shrines of present-day Europe and read the archaeology of the sites to understand that long before Catholic or Protestant churches were built in certain places, many other religions had established their shrines and temples on those spots. These Holy Places are locations where human beings have always gone to communicate and be with higher spiritual powers. This phenomenon is world-wide and all religions find that these places regenerate people and fill them with spiritual powers. In the western hemisphere these places, with some few exceptions, are known only by American Indians. Bear Butte, Blue Lake and the High Places of the Lyng case are all well-known locations which are sacred in and of themselves.

Among the duties which must be performed at these Holy Places are ceremonies which the people have been commanded to perform in order that the earth itself and all its forms of life might survive. Some evidence of this sacred dimension, and of other sacred places, has come through in the testimony of traditional people at various times in this century when they have explained to non-Indians, in and out of court, that they must perform certain kinds of ceremonies, at certain times and places, in order that the sun may continue to shine, the earth prosper, and the stars remain in the heavens.

Skeptical non-Indians and representatives of other religions seeking to discredit tribal religions have sometimes deliberately violated some of these Holy Places with no ill effects. They have thereupon come to believe that they have demonstrated the false nature of Indian beliefs. These violations reveal a strange non-Indian belief in a form of mechanical magic that is touchingly adolescent, a belief that an impious act would or

could trigger an immediate response from the higher spiritual powers. Surely these impious acts suggest the concept of a deity who spends time recording minor transgressions as some Protestant sects have envisioned God. It would be impossible for the thoughtless acts of one species to have a drastic effect on the earth. The cumulative effect of continuous secularity, however, poses an entirely different kind of danger, and prophecies tell us of the impious people who would come here, defy the Creator, and bring about the massive destruction of the planet. Many traditional people believe that we are now quite near that time.

Of all the traditional ceremonies extant and actively practiced at the time of contact with non-Indians, ceremonies derived from or related to these Holy Places have the highest retention rate because of their planetary importance. Ironically, traditional people have been forced to hold these ceremonies under various forms of subterfuge and have been abused and imprisoned for doing them. Yet the ceremonies have very little to do with individual or tribal prosperity. Their underlying theme is one of gratitude expressed by human beings on behalf of all forms of life, and they complete the largest possible cycle of life, ultimately representing the cosmos in its specific realizations, becoming thankfully aware of itself.

Having used Old Testament examples to show the objective pre-sense of the Holy, we can draw additional conclusions about the nature of these Holy Places from the story of the Exodus. Moses did not make that particular location of the burning bush an object of worship for his people, although there was every reason to suppose that he could have done so. Rather he obeyed and acted on the revelation which he received there. In the absence of further information, we must conclude that this location was so holy that he could not reveal its secret to other people. If he had been told to perform ceremonies at that location during specific days or times of the year, world history would have been entirely different. In that case, the particular message received at these locations becomes a definitive Divine command which people must then follow. We have many tribal migration stories that involve this particular kind of Divine command and sacred sites which originate in the same revelation. For traditional Indian religious leaders who have been told to perform ceremonies as spiritual guardians of this continent, there is no question of obedience.

The second and third categories of sacred lands result from revelations of the Holy at certain locations. The ceremonies that belong to these sacred sites involve a process of continuous revelation and provide the people with the necessary information to enable them to maintain a balance in their relationships with the earth and other forms of life. Because there are higher spiritual powers who are in communication with human beings, there has to be a fourth category of sacred lands. Human beings must always be ready to receive new revelations at new locations. If this possibility did not exist, all deities and spirits would be dead. Consequently, we always look forward to the revelation of new, sacred places and new ceremonies. Unfortunately, some federal courts have irrationally and arbitrarily circumscribed this universal aspect of religion by insisting that traditional religious practitioners restrict their identification of sacred locations to those places that

were historically visited by Indians, implying that, at least for the federal courts, God is Dead.

In denying the possibility of the continuing revelation of the sacred in our lives, federal courts, scholars and state and federal agencies refuse to accord credibility to the testimony of religious leaders, demand evidence that a ceremony or location has always been central to the belief and practices of the tribe, and impose exceedingly rigorous standards on Indians who appear before them. This practice does exactly what the Supreme Court avows is not to be done — it allows the courts to rule on the substance of religious belief and practice. In other words, courts will protect a religion if it shows every symptom of being dead but will severely restrict it if it appears to be alive.

Today a major crisis exists in Indian country because of the Lyng decision. As the dissent noted, there is no real protection for the practice of traditional religions within the framework of American constitutional or statutory law. Courts usually automatically dismiss Indian petitions without evidentiary hearings and at the same time insist that traditional people identify the “central belief” of the tribal religion. Presumably this demand is benign and made with the hope that by showing centrality for the site or ceremony, courts will be able to uphold some form of constitutional protection on some future occasion.

As human beings we live in time and space and receive most of our signals about proper behavior primarily from each other. Under these circumstances, both the individual and the group must have some kind of sanctity if we are to have a social order at all. By recognizing the sacredness of lands in the many aspects we have described, we place ourselves in a realistic context in which individuals and the groups can cultivate and enhance the experience of the sacred. Recognizing the sacredness of lands on which previous generations have lived and died is the foundation of all other sentiments. Instead of denying this aspect of our lives, we should be setting aside additional places which have transcendent meaning.

Sacred sites which higher powers have chosen for manifestation enable us to focus our concerns on the specific form of our lives. These places remind us of our unique relationship with spiritual forces and call us to fulfill our religious vocations. These kinds of experiences have shown us something of the nature of the universe by an affirmative manifestation of themselves, and this knowledge illuminates everything else that we know.

The struggle by American Indians to protect their sacred sites and to have access to them for traditional ceremonies is a movement in which all peoples should become involved. The federal agencies charged with managing public lands, who argue that to give recognition to any form of traditional tribal religion is to establish that religion, have raised a false issue. No other religion in this country speaks to the issue of the human relationship with the rest of the universe in this manner. The alternative use of land proposed by the Forest Service, the Bureau of Land Management and the National Park

Service is the rapid exploitation of natural resources by a few favored private clients — a wholly secular and destructive use of the lands.

The truly ironic aspect of modern land use is that during the past three decades, Congress has passed many laws which purport to protect certain kinds of lands and resources from the very developers who now seek to exclude Indian religious people from using public lands. The Wild and Scenic Rivers Act, the Wilderness Act, the National Environmental Protection Act, the Clean Air Act, the National Historic Preservation Act, and several other statutes all take definite steps to protect and preserve the environment in a manner more reminiscent of traditional Native American religion than that of uncontrolled capitalism or the domination of land expounded by the world religions. No real progress can be made in environmental law unless some of the insights into the sacredness of land derived from traditional tribal religions become basic attitudes of the larger society.

At present, legal remedies for Indian religious practitioners are limited to those procedures provided by various environmental and historic preservation laws which, in some circumstances, may provide an indirect means for protection of sites. The only existing law directly addressing this issue, the American Indian Religious Freedom Act of 1978, is simply a policy statement with “no teeth.” While it has led to some administrative regulations and policies providing for limited additional opportunities for input, it provides no legal cause of action to aggrieved practitioners.

Examples of sacred sites currently threatened are Zuni Salt Lake (NM), Indian Pass (CA), Medicine Lake (CA), Weatherman Draw (MT) and Yucca Mountain (NV). The Department of Interior has issued a permit for the Salt River Project to open a coal stripmine within a sanctuary used by the Zuni and other tribes on pilgrimages for salt. The Quechan people of southern California are fighting a proposed open pit gold mine amidst a network of trails used for spiritual practices. After years of hearings and studies, the Department of the Interior protected Indian Pass during the Clinton administration, but the Bush administration reversed that decision and now only a legal battle can protect the area from being decimated by a cyanide heap-leach open pit gold mine. At Medicine Lake, near Mount Shasta, geothermal energy may soon be tapped in a vision questing area. Weatherman Draw, a valley that contains the highest concentration of rock art in the country is threatened by oil drilling. Congressman Nick Rahall (D-WV) introduced a bill to protect the area, but it never passed the House. In early 2002, The National Trust for Historic Preservation bought some time by purchasing the current leases from the Anschutz oil company, but the Bureau of Land Management can still proceed with leasing in the future. By the 1863 Treaty of Ruby Valley, Yucca Mountain is under the jurisdiction of Shoshone and Paiute peoples. In 1977, the Indian Claims Commission offered the Western Shoshone \$26 million for their treaty lands. The Shoshone refused, maintaining that their religion prevented them from selling the land. In July 2002 a bill approving the entombment of 77,000 tons of high-level radioactive waste in Yucca Mountain passed the Senate by a 60-39 vote, overriding a veto by the state of Nevada, and President Bush signed his approval.

As a result of these ongoing threats, the Sacred Lands Protection Coalition — including the Association on American Indian Affairs, Seventh Generation Fund, Native American Rights Fund and National Congress of American Indians, as well as tribes and other Indian organizations — are seeking legislation which will provide for a legal cause of action when sacred places may be impacted by governmental or corporate action. New legislation should provide for more extensive notice to and consultation with tribes and affected parties in such circumstances, and for strict confidentiality with regard to details about sacred lands. New legislation would ensure that the principle of religious freedom, rightfully urged upon the rest of the world by the United States, truly incorporates and applies to the unique needs of Indian religions.

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