
Holy River and Magic Mountain: Public Lands Management and the Rediscovery of the “Sacred in Nature”

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Recent years have witnessed debates over the use of public lands for spiritual purposes. Those debates are usually viewed as pitting the spiritual and cultural values of Native Americans against the secular interests of the dominant culture (Burton, p. 3). Lloyd Burton, in *Worship and Wilderness*, demonstrates that the real situation is “much more complex and multidimensional.” He breaks new ground, going beyond standard legal and anthropological categories, to present a rich ethnographic study (p. 6). In doing so, Burton reaches a surprising conclusion: that Native Americans and the dominant culture alike are rediscovering “the sacred in nature” (p. 6). He believes that the revival of “ancient environmental wisdom” (p. 269) will foster more harmonious relationships among peoples and further Native American interests.

Burton’s book is thorough and balanced enough to support alternative readings (p. 14), and this article offers one. This reading emphasizes not the similarities between indigenous and immigrant peoples, but the long-standing historical differences between them. A cultural dialogue that acknowledges these differences ultimately may do more to further Burton’s aspirations than any revival of ancient wisdom.

The Revival of Ancient Environmental Wisdom and the Future of Public Lands Management

Burton asserts that Western religion is “beginning to relearn lessons from its own history that surviving tribal peoples have managed never to forget” (p. 8). He first observes that the core elements of Native American religions are contemplation—an extrarational way of knowing—and connection—a close relationship between the individual and the environment. Indigenous peoples are intimate with nature. “In fact, to speak . . . of spiritual traditions

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and the environment is conceptually awkward, since . . . indigenous spiritual traditions are altogether *of* the environment rather than separable from it” (p. 33). Some tribes literally believe that they were born from the earth (p. 34) or that they join with it upon death (p. 44).

Burton then claims that native spirituality serves as an elder brother, anticipating movements within the dominant culture.¹ As evidence, Burton points to the revival of pre-Christian earthen spiritual traditions (p. 272), the eco-feminism movement (p. 187), the growing interest in Buddhism and Taoism (pp. 255–8), the emergence of New Age religions (p. 274), the “greening” of the Jewish and Christian faiths (pp. 258–61), and even the spiritual experiences of persons lacking religious beliefs (pp. 6, 58–61).

Burton thinks that the rediscovery of environmental learning is transforming public lands management.² For one, the rediscovery is encouraging a “consensus-oriented mutual accommodation of intercultural differences,” (p. 198) a process preferable to the “adversarial, either/or context of constitutional litigation” (p. 5). By building on shared values, rather than on power and rights, negotiators can reach a “just and durable” agreement (pp. 289–90). By sparking interfaith dialogue and hosting spiritual ceremonies, national parks serve as classrooms, mediating institutions that teach the importance of “ancient environmental wisdom.”

Burton illustrates interest-based negotiation with the conflict over Devil’s Tower, a site used by rock climbers for recreation and Native Americans for worship. For several months in the mid-1990s, representatives from each group met, finally agreeing to a one-month voluntary limitation on climbing activities. This remarkable agreement resulted from mutual education, cross-cultural brokering, and solutions rooted in cultural values.³

Burton also believes that the rediscovery of environmental wisdom is transforming legal doctrine. Traditionally, native peoples seeking to preserve their way of life could only appeal to the federal government’s trust responsibility, which is derived from its authority to enter into treaties. This appeal leaves Native Americans at the mercy of the legislative and executive branches of government, which have often displayed hostility toward them. Burton believes, however, that native peoples are acquiring a sec-

¹ See p. 286 (concluding that “religious traditions seem to be gravitating more and more toward teachings that have been at the center of indigenous spirituality from time immemorial”).

² See p. 68 (“To a greater extent than perhaps any other time in our history, indigenous and immigrant-descended Americans of every conceivable spiritual orientation see our public lands . . . as places of sanctuary and worship”).

³ Native Americans finally decided that a voluntary ban would best demonstrate respect for their traditions (pp. 131–3).

ond, independent ground for legal redress. As the dominant culture rediscovers the sacred in nature, courts are recognizing the legitimacy of Native American religions under the First Amendment (pp. 292–4). As a consequence, indigenous tribes need no longer depend solely upon the goodwill of the federal government (pp. 116–8), but they can also invoke their own rights under the free exercise clause. Burton hopes that adding First Amendment analysis to the trust responsibility doctrine will provide “both a wider angle view and depth of field” (p. 291).

Doubts About the Revival and Its Effects on Federal Lands Management

Two doubts arise about Burton’s argument. The first is whether the dominant culture truly shares common values with indigenous religions. The belief in the “sacred in nature” takes many forms. The indigenous attitudes toward nature may resemble the earthen religions’ claim that nature is divine (p. 57), but those religions play a tiny role in American religious life. Pre-Christian, New Age and Eastern religions comprise only a half-million Americans, less than one-quarter of 1% of the population. The growth in such religions is dwarfed by that in other groups.⁴ From 1990 to 2001, the number of people identifying with Native American, New Age, Wiccan, and pagan religions grew from 75,000 to 445,000. During that period, the number of evangelical Christians increased from 12 million to 22.5 million,⁵ and the number of Americans identifying with no religion at all grew from 14 million to 29 million.⁶

If one looks beyond the earthen religions, one finds an understanding of the “sacred in nature” quite different from Native American contemplation and connection. Buddhism is certainly contemplative, but its connection does not center on nature per se, but on all existence, and countries with large Buddhist populations have not been particularly friendly to the environment (p. 67). More important, contemplation and connection both play minor

⁴ See The American Religious Identification Survey (2001) (describing the top three gainers in America’s religious marketplace as evangelical Christians, nondenominational Christians, and those professing no religion).

⁵ It is difficult to precisely quantify the evangelical movement. The numbers in the text are the sum of Pentecostals, evangelical denominations, the Assemblies of God, and nondenominational Christians. The number of Pentecostals grew from 3.1 to 4.4 million, the number of evangelical denominations grew from 250,000 to 1 million, the members of the Assemblies of God grew from 600,000 to 1.2 million, and the number nondenominational groups grew from 8 million to 16 million. See The American Religious Identification Survey.

⁶ See The American Religious Identification Survey.

roles in Christianity and Judaism. Nature may be a source of inspiration, but it is not itself divine. Most Christians regard themselves as stewards, managing nature for other ends.⁷ This stewardship model often subordinates environmental values to economic development. Accordingly, many Christians disagree with environmentalists on issues such as industrialization, population control, and global warming.⁸ This attitude pervades the larger culture. Americans generally attach a low value to the environment.⁹

The prominence of the stewardship model weakens the foundation for interest-based dispute resolution. The range of interests is wider than Burton acknowledges, and once that full range is considered, it may be difficult to find the similarities that can sustain “a just and durable agreement.” The controversy over the Devil’s Tower plan illustrates this problem. Although supported by a long list of religious groups,¹⁰ that plan was nonetheless challenged by commercial interests (pp. 290, 297), which regarded Devil’s Tower not simply as a site to be preserved but as a resource to be managed.

The prominence of the stewardship model also makes the First Amendment much less helpful to Native Americans. Without widespread social consensus regarding the primacy of environmental values, indigenous peoples will have difficulty invoking the free exercise clause. Experience bears this out. As Burton notes, Native Americans have lost every free exercise claim in a public land case (p. 297).

The second doubt is whether the rediscovery of the sacred in nature will transform public lands management as Burton hopes. Such rediscovery may foster conflict instead of consensus. By itself, reverence for nature is not a substantive management program. In fact, such reverence may foster a proliferation of land use plans. For example, indigenous peoples seeking to hunt wild animals often clash with conservationists who categorically oppose hunting (pp. 207, 209). Similarly, many Native Americans resent New Age

⁷ National Council of Churches (2003) describing a coalition to “protect and restore God’s creation” at 2. See Statement of the Evangelical Environmental Network (2003), “As a biblically orthodox Christian organization, EEN totally rejects nature worship and pantheism.”

⁸ See Acton Institute on the Study of Religion and Liberty, defending market growth as an important step toward environmental protection and questioning concerns regarding overpopulation, global warming, and species extinction; Interfaith Council for Environmental Stewardship (1999). See also Colson (2003).

⁹ See Ladd (1990), finding that 78% of Americans believe environmental improvement should be made regardless of cost, but that 71% do not favor paying \$200 more per year to reduce air pollution; Dunlap (2002), noting “the discrepancy between Americans’ high level of concern and their modest levels of personal action on behalf of the environment.”

¹⁰ Thirteen religious groups filed amicus briefs in defense of that plan (p. 263).

religions that “misuse” indigenous sites (p. 276).¹¹ Indeed, Burton himself feels ambivalent about engaging in Buddhist meditation in a Puebloan kiva (p. 283).

Likewise, the rediscovery of the sacred in nature might hurt Native Americans under the First Amendment. That amendment is a two-edged sword. It not only protects the free exercise of religion, but it also prohibits the establishment of religion. The proliferation of land management programs makes it more likely that a court will view an accommodation of Native American practice as establishing religion. The Devil’s Tower program was challenged on precisely that ground (pp. 136), as was a National Forest Service plan that protected another Native American site, Bighorn Medicine Wheel (p. 165).

Admittedly, these challenges failed (pp. 142, 322, note 28), and courts have suggested that accommodation of native practices is a valid secular purpose. Thus far, however, recognizing indigenous practices as religious has only harmed Native Americans. Those practices can be accommodated without invoking the free exercise clause,¹² and treating them as religious creates additional hurdles under the establishment clause.¹³

Learning From the Past: An Alternative Account

These doubts point to an alternative, more traditional, account, implicit in Burton’s book. This account emphasizes not the similarities, but the differences among religions. As Burton demonstrates, native religions differ from contemporary dominant religions in two ways. First, indigenous religions embrace virtually all aspects of life—birth, education, sustenance, and death. Native American thought lacks the distinction between sacred and secular found in most dominant religions.¹⁴ Second, native religions regard place as important. They do not merely revere

¹¹ For example, Burton describes the outrage felt by Puebloan Indians over the scattering of human ashes near a kiva, an act that the Pueblo believed desecrated a sacred site (p. 280).

¹² *Corporation of Presiding Bishop v. Amos* 1987, 483 U.S. 327, at 334. (“The limits of permissible state accommodation to religion are by no means co-extensive with the non-interference mandated by the Free Exercise Clause”) (quoting *Walz v. Tax Comm’n*, 1970, 397 U.S. 664, at 673).

¹³ To withstand constitutional attack, a law must not only have a secular purpose, it must also have a “primary effect” that “neither advances nor inhibits religion” and not foster an “excessive entanglement” between government and religion (*Lemon v. Kurtzman* 1971, 403 U.S. 602 at 612–13).

¹⁴ See p. 294 (spiritual practices are not severable from other aspects of life); p. 125 (“in most traditional indigenous societies in North America, [culture, religion and education] are all utterly interdependent, each having little meaning without the other”).

nature; they attach specific religious meaning to particular sites.¹⁵ To Native Americans, Devil's Tower is Bear's Lodge, a place where seven young girls were saved from the clutches of bears and ascended to become the seven stars of the Pleiades (p. 8).

These differences were not always so pronounced. In the past, dominant religions drew little distinction between secular and sacred. In ancient Judaism, for instance, God dictated rules for all aspects of everyday life. Likewise, dominant religions once attached more significance to place. Old Testament Judaism centered on a temple constructed on a particular site. Medieval Christians strove to liberate Jerusalem. Today, however, the dominant religions fit comfortably within a secular society. Only small minorities, like orthodox Jews and the Amish, experience sharp conflict between their faith and modern lifestyles. Similarly, for most Americans, sacred sites are faraway places with little relevance to daily religious practice.

Paradoxically, emphasizing differences may facilitate accommodation more readily than emphasizing similarities. Similarities often block accommodation. Jerusalem has long been a bitter source of enmity precisely because Jews, Christians, and Muslims all regard that city as a sacred site. Accommodation may be more likely when most people are indifferent. Secular societies are often more tolerant of the practices of religious minorities precisely because the interests of the majority differ from those of the minority.

An emphasis on difference alters the role of the past. Dominant religions need not revive an attachment to particular places, or even a reverence for nature generally. All they must do is remember the role place played in an earlier stage of their development, before they became universalist, world faiths. Accommodation becomes easier when it is the immigrant religions that assume the role of elder brother, protecting those with whom they share a common past. The dominant culture respects Amish home schooling, for instance, not because it itself rejects schools, but because it remembers an earlier, simpler age.¹⁶

The Devil's Tower plan itself exemplifies how difference and memory of the past lead to reconciliation. The conflict in that case arose because both Native Americans and climbers had religious experiences of the rock formation.¹⁷ Accommodation became possible because of the differences between these groups. For native peoples, Bear's Lodge was hallowed ground necessary for ritual

¹⁵ See p. 118 (describing place-based religious activities as "a singular hallmark of nearly all indigenous worship").

¹⁶ See *Wisconsin v. Yoder* (1972), observing that "the Amish communities singularly parallel and reflect many of the virtues of Jefferson's ideal of the 'sturdy yeoman' who would form the basis of what he considered as the ideal of a democratic society" (406 U.S. at 225–26).

¹⁷ Some climbers felt the act of climbing was "a kind of religious experience" (p. 133).

celebrations; for climbers, it was merely “an important site” (p. 132), whose use could be limited if other climbs remained available.¹⁸ Furthermore, the memory of the importance of place in the climbers’ own traditions likely played a role in their willingness to accommodate native peoples. Tribal representatives repeatedly compared scaling Bear’s Lodge to climbing St. Peter’s Cathedral in Rome (p. 132).

An appreciation of difference also indicates that Native Americans should abandon First Amendment analysis and rely solely on the federal government’s trust relationship. The First Amendment is predicated on the assumption that neutrality is possible, i.e., that rules are available that neither interfere with free exercise nor establish religion. This assumption, however, does not apply to Native American religion. Because native spirituality embraces all aspects of life, every regulation of indigenous lifestyles potentially interferes with the free exercise of religion, and every accommodation of those lifestyles potentially establishes religion. Thus, the all-embracing quality of Native American religion creates the either/or, all-or-nothing conflict that Burton abhors. And in this conflict, native peoples, as a small minority, will inevitably lose.

By contrast, the trust relationship is not based on neutrality. That relationship recognizes that Native Americans are different than other groups (pp. 125, 140). This means that indigenous peoples can be accommodated without impinging upon the rights of others. Because it recognizes their unique status, the trust relationship doctrine provides a vehicle through which native peoples can vindicate their interests.

Conclusion

The key to Burton’s “just and durable” accommodation of Native American religious practices may lie not so much in the dominant culture’s reviving similar practices, but in that culture’s remembering its own past. Support for this conclusion is found in Burton’s own research. One strength of *Worship and Wilderness* is that it supports such alternative readings.

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¹⁸ Climbers strongly opposed mandatory closure because they feared it might set precedents for other climbing areas (p. 134).

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