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FREEDOM, LAW, AND PROPHECY: A Brief History of Native American Religious Resistance

By Lee Irwin

In August 1978, the American Indian Religious Freedom Act (AIRFA) was passed by Congress as a guarantee of constitutional protection of First Amendment rights for Native Americans. This act was passed as an attempt to redress past wrongs by the federal government or its agents. That history of legal suppression was due to “the lack of a clear, comprehensive and consistent Federal policy [which] has often resulted in the abridgement of religious freedom for traditional American Indians.” The summary text of this act¹ states:

Henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sacred sites, use and possession of sacred objects and freedom to worship through ceremonials and traditional rites.

It is perhaps hard for those unfamiliar with the history of Native American religious oppression to realize that in our own lifetimes it continues to be difficult or impossible for Native Americans to freely practice their religions. The suppression of those practices has been pervasive to such a degree that AIRFA has proven to be insufficient to grant the freedom that many Native Americans feel is necessary for the complete affirmation of their respective religious identities.

What is the background that necessitated AIRFA and what directions have issues of religious affirmation taken since this act became law? Perhaps the most suppressive laws regarding religious freedom were those promulgated by the Bureau of Indian Affairs for the Indian Courts, known as the Indian Religious Crimes Code. These laws were first developed in 1883 by Secretary of the Interior Henry Teller as a means to prohibit Native American ceremonial activity under pain of imprisonment. Teller’s general guidelines to all Indian agents ordered them to discontinue dances and feasts as well as instructing them to take steps with 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.”²

Religious offenses on the reservations were later codified by the Commis-

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sioner of Indian Affairs, Thomas J. Morgan, in 1892 in his “Rules for Indian Courts,” whereby he established a series of criminal offenses aimed at Native American religious practices. He wrote:

Dances—Any Indian who shall engage in the sun dance, scalp dance, or war dance, or any similar feast, so called, shall be guilty of an offense, and upon conviction thereof shall be punished for the first offense by withholding of his rations for not exceeding ten days or by imprisonment for not exceeding ten days; for any subsequent offense under this clause he shall be punished by withholding his rations for not less than ten days nor more than thirty days, or by imprisonment for not less than ten days nor more than thirty days.

Medicine men—Any Indian who shall engage in the practices of so-called medicine men, or who shall resort to any artifice or device to keep the Indians of the reservation from adopting and following civilized habits and pursuits, or shall use any arts of conjurer to prevent Indians from abandoning their barbarous rites and customs, shall be deemed guilty of an offense, and upon conviction thereof, for the first offense shall be imprisoned for not less than ten days and not more than thirty days: Provided That, for subsequent conviction for such offense the maximum term or imprisonment shall not exceed six months.³

These laws not only abrogate First Amendment rights in a conscious and well-documented policy of religious oppression, they also reveal a systematic attempt on the part of highly placed government officials to stamp out Native American religious practices. 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. Such policy is found consistently in the Annual Reports of many commissioners of Indian Affairs from the creation of the office in 1832 through the appointment of John Collier in 1934.⁴

These oppressive policies can be traced through the writings of not only the Indian commissioners and other heads of state who managed Indian affairs such as various secretaries of state (after 1849) as well as various secretaries of war (1824-1848), to an even earlier policy, that of the 1819 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.⁵ Where this proved impossible or undesirable, the Indian Civilization Act also called for the more insidious policy of Indian removal, generally to the west and thus away from encroaching Euroamerican settlement. The mandate for determining Indian affairs by government officials can be further traced back to the 1783 First Continental Congress Indian Proclamation which says, “The United States in Congress assembled have the sole and exclusive right and power of regu-

lating trade and managing all affairs with the Indians.”⁶ This set in place the legal precedent by which Indian peoples were denied religious freedom imposing exclusively non-Native standards of legitimacy. Pushing back even further, it is significant that in the United States Constitution only five words can be found that refer to any Native peoples, these words involving only trade and taxation agreements.⁷

What strategies have Native peoples followed in responding to this crushing onslaught against their spiritual lives, goods, and diverse religious practices? In general, there has been a range of strategies in a spectrum between two major alternatives: accommodation or resistance. As Gregory Dowd has argued, the late 1700s and early 1800s was a period of resistance by Native people against Anglo-American settlement, a time of “widespread intertribal activity” in which various Native peoples sought to solve the challenges of cultural and political encroachment while also being deeply influenced by events affecting other tribes.⁸ On the religious front, some groups, like the Cherokee and other southeastern peoples, tried to accommodate the new way of life introduced by settlement, taking up Anglo farming as well as taking a receptive interest in the teachings of Christianity. Significantly, the strategy of accommodation often was promoted by those in upper echelon leadership roles (like John Ross among the Cherokee) who often had diminishing contact with the most traditional ways of life as a result of intermarriages, exposure to Anglo-European education, or wealth accrued through non-Native economic practices.⁹

However, this strategy of accommodation proved to be primarily a one-way accommodation; that is, while various Native groups struggled to adapt or accommodate the invading Anglo-Europeans, this accommodation was rarely if ever reciprocated. Such one-way accommodation often proved fatal, such as in the Cherokee case when, after many years of often successful adaptation and conformity to alien values and lifeways, they were forced off their lands through the greed and racist mentality of the Georgia legislature that revoked their political rights after gold was discovered on Cherokee lands. The federal government then forced Cherokees to take the Trail of Tears in the fateful winter of 1838 when so many Cherokee people died.¹⁰ Thus the strategy of accommodation has its own tragic history and has largely been non-reciprocal, often resulting in a subordination of Native concerns to those of the dominating political hierarchies on state and federal levels.

Over against the strategy of accommodation is the resistance or revivalist movements that increasingly emphasized the importance of traditional Native values, indigenous religious orientations, and the need to abandoned all dependency on non-Native goods or ideas. Often, the origins of this resistance came from a variety of Native religious leaders who emphatically called for an assertion of Native beliefs and practices as an affirmation of intrinsic, inherited spiritual values and as a rallying cry for the preservation of the many diverse paths found in Native religious life. At the extreme pole of this response, “nativistic” came to mean not a return to the past in an ideal or artificial, utopian sense, but a 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. This affirmation was strengthened by the emergence of a significant number of prophetic spiritual leaders whose visionary experiences confirmed and celebrated Native religious orientation as a primary source of empowerment for resisting colonial advancement. In many cases, this prophetic leadership was forced to advocate a militant resistance and a strategy of complex alliances, often turning hostile in the face of non-Native aggression while also rejecting any form of unilateral, submissive accommodation.¹¹

Examples of this prophetic leadership are many, extending from coast to coast in the wake of increasing patterns of political and cultural domination. The corrosive effects of trans-Appalachian conflicts through the forced migrations of east coast indigenous peoples, the uninhibited spread of the rum and whiskey trade, and various Anglo-European armed conflicts (and later American military aggression) all contributed to a necessarily defensive stance on the part of Native peoples.¹² A responsive religious leadership began to emerge among Native peoples in the form of empowered individuals whose messages were oriented to more apocalyptic visions in which non-Native aggressors would be defeated, destroyed, or pushed back depending on the degree to which Native peoples could re-affirm traditional values corrupted by colonial advancement.

As early as 1752, Munsee religious leader Papounhan received a vision while mourning the death of his father that he should lead the Munsee people in a restoration of their Native traditions that had been nearly lost as a result of European contact.¹³ The Delaware prophet Neolin, in the 1760s, was one of four such prophetic leaders who arose to reaffirm through personal visions the importance of traditional religious values and in fact influenced Pontiac's resistance during his so-called "conspiracy" of 1763. In 1776, Wangomen, another Delaware prophet, also advocated a return to Native values and religion. He condemned a number of Euroamerican practices such as slavery and the use of alcohol and tried to lead the Delaware to a renewed affirmation of traditional Delaware values.¹⁴ Around 1800, Handsome Lake, a Seneca prophet, perhaps a bit more of an accommodationist, received a religious revelation that combined elements of Christianity and core Senecan religious practices. Preaching the Gaiwiiio or Good Word, Handsome Lake led the Iroquois in reorganizing their economic, social, and religious lives along lines that combined traditional Iroquois religious practices and beliefs with elements from Christianity.¹⁵

By the early 1800s on the Northwest Coast, many such prophetic and charismatic figures appeared in a sequence of revitalizing spiritual movements, all advocating a new rebirth of older religious patterns as a means for the affirmation and survival of indigenous tribal identities. The Spokane leaders Yurareechen (Circling Raven), the Flathead leader Shining Shirt, and the Umatilla religious leader Dlaupác, all preached the importance of preserving indigenous traditions. Dlaupác predicted ominous and apocalyptic scenarios in the wake of the arrival of Euroamerican settlers, including a prediction of the complete destruction of the

Indian way of life as well as the destruction of the world thorough flood or fire.¹⁶ In the east, prior to 1812, Tenskataaw (Open Door), the Shawnee prophet and brother of Tecumseh, sparked the first intertribal confederacy that united many thousands of diverse Native peoples around a religiously motivated resistance movement. Tenskataaw emphasized a return to indigenous values as a result of a visionary journey he had during a near death experience. He condemned intermarriage and all contact with Europeans and urged a return to traditional communal values. He traveled extensively throughout the tribes with his message of spiritual and political renewal.¹⁷ Around this same time Hildis Hadjo (or Josiah Francis), the Creek Prophet, also led a movement that combined resistance to Anglo-European ways with a return to Native values in the face of cultural erosion.¹⁸

Throughout the nineteenth century, revitalization movements continued along the front of advancing Anglo-American settlement, as tribal displacements made life increasingly more difficult and bitter for Native peoples. In 1820, Yonaguska (Drowning-Bear), a Cherokee prophet, as a results of visionary experience at the age of 60, promulgated traditional Cherokee values, promoted anti-alcoholism, and resisted removal talk, emphasizing the need to retain ancestral ties to the Blue Ridge mountains as intrinsic to Cherokee spiritual life.¹⁹ In 1832, Kenekuk, a Kickapoo spiritual leader, led the Kickapoo to Illinois when they were displaced by settlers as a result of the 1832 Indian Removal Act promulgated by Andrew Jackson. While Kenekuk assimilated some features of Christianity into his teachings, he also emphasized the maintenance of core Kickapoo religious values and practices as essential for Kickapoo survival. The Kickapoo under his leadership resisted standardized education and land division, refused to learn English, and engaged in Kickapoo dances and singing during religious ceremonies.²⁰ In the mid-1850s, other Nativistic religious movements in the Northwest were underway, led by Smohalla, the Wanapam dreamer-prophet and Washani religious revitalizer. Smohalla's teachings, which emphasized a return to Native traditions and the abandonment of alien goods and ideas, acted as a catalyst for tribal confederation during the Yakima Wars of 1855-56 against Anglo-American encroachment and government plans to confine the Northwest peoples onto small and inadequate reservations. Those who kept the old Washani spiritual ways would be resurrected after death and their traditional world would be restored to them.²¹ Smohalla, like many other yantcha or "spiritual leaders" of the Northwest emphasized non-violence and peaceful co-existence with non-Natives (as did Kenekuk and Drowning Bear) while still seeking to return to older ways and indigenous spiritual values.

From this period forward, many such prophetic movements arose, all emphasizing Native values and traditional religions, with varying degrees of accommodation with Christian beliefs—but all stressing the importance of a return to basic core values and indigenous practices. The culmination of this movement, what Leslie Spier has called the Prophet Dance tradition, was transmitted by the 1860s dreamer-prophet, Wodziwob, a Paiute of central California, to Tavibo, the father of the Nevada Paiute, Wovoca, the visionary founder of the Ghost Dance

of 1889. Again, this visionary history of spirit dancing became a rallying cry for many different Native peoples throughout the Great Plains area, illustrating the intertribal effects of Native prophetic movements and their often unifying character. Many different tribes sent representatives to meet with Wovoca who then instructed them in Ghost Dances rites. These rites were then transported back to the Plains tribes as a revelation of greatest import—the practice of the dance was to result in the return of the old way of life now rapidly diminished, a return of the buffalo, and the expulsion of Anglo-Americans from Native lands.²² The tragic consequence of the Lakota practice of this dance resulted in the U.S. Army's slaughter of 84 men, 44 women, and 18 children at Wounded Knee, in December 1890. The victims of this massacre are buried in a mass grave on the Pine Ridge reservation. This site, a stain on the American national conscience, continues to be a historic monument of the tragic and aggressive assault on Native religious life. Even though the Ghost Dance continued sporadically, as among the Kiowa, the unprovoked destruction of the Lakota people as they attempted to arbitrate their rights to practice Native religions, had a shocking, suppressive force on all Native religious practices.²³

It is around the time of the events at Wounded Knee that the most suppressive measures against Native religions were promoted through the “Rules of Indian Courts” instigated by Commissioner Thomas J. Morgan, nominal head of the BIA under the Secretary of the Interior. Morgan also wrote in his 1889 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 severalty, 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.²⁴

A similar Canadian law also was promoted, the 1884 Canadian Indian Act that made Native potlatch or giveaways illegal and participants subject to a misdemeanor and imprisonment from two to six months. Similarly repressive laws were introduced and approved by the Canadian legislature in 1895, 1914, and 1933.²⁵

The darkest and most difficult times for the practice of Native religions and ways of life was the post-Civil War period up to the mid-twentieth century. During this period Sun Dancing and other such rites were made illegal, suppressed by government Indian agents as “barbaric and uncivilized.” In accordance with the Grant Peace Policy, the Board of Indian Commissioners was formed in 1869. Their first report noted that the duties of the board were “to educate the Indians in industry, the arts of civilization, and the principles of Christianity.” This board was given joint control with the secretary of the interior over congressional funds appropriated for dealing with the Indian agencies. Christian missionaries of all de-

nominations were given government support for the founding of missions on Indian reservation land on seventy-three agencies. In 1872, Commissioner of Indian Affairs Walker reported that agents from the mostly Protestant denominations were appointed “to assume charge of the intellectual and moral education of the Indians thus brought within the reach of their influence.”²⁶ During this time, Native children were forcibly shipped to Christian missionary schools where they were denied the rights to speak Native languages, to wear Native clothing, or to practice any form of Native religion.²⁷ Missionary zeal specifically targeted Native religions as the bane of all civilized Christian ideology. Subsequent missionary activities caused “fractions, feuds and schisms, discredited popular leaders and imposed new ones on the Indians and in scores of ways undermined and weakened the unity of the tribes.”²⁸ Indian ceremonies were banned, religious practices disrupted, and sacred objects destroyed or confiscated.

Some renewal movements did continue, such as the turn of the century Four Mothers Society of the Natchez-Creek based on a return to the old Southeast ceremonial tradition. Membership in the Four Mothers Society linked traditional full-bloods from the Natchez, Creek, Cherokee, Choctaw, Chickasaw, and Seminole in Oklahoma. In 1900 there was a resistance to allotment led by the Creek spiritual leader Chitto Harjo (Crazy Snake), who formed a Chitto or Snake Society members of which were dedicated to preserving the old Creek spiritual way and to resisting political encroachment. In 1902 Redbird Smith, breaking away from the Four Mothers Society, led a renewal of the Oklahoma Cherokee Ketoowa or Night-Hawk Society and laid out a traditional ceremonial ground on Blackgum Mountain. This effort established a new sacred fire from which twenty-two more traditional fires were started spreading a traditionalist spiritual movement among the older Cherokee population.²⁹ In the Northwest, in 1910, the Nisqually John Slocum established the Shaker Church in Olympia, Washington. As a result of a visionary experience, Slocum and his wife promoted a religious movement that brought together Native people from many different tribes throughout the Northwest and California in a synthesis of prophetic Native indigenous beliefs and reinterpreted Christianity.³⁰ In 1918 the Native American Church (NAC) was legally incorporated in Oklahoma in resistance to congressional efforts to make possession and transportation of peyote illegal, though seventeen states passed laws making the use of peyote illegal.³¹

During the early twentieth century, however, Native religious reaffirmation movements tended to decline as indigenous peoples struggled to survive under the appalling and oppressive political circumstances. In 1906, the Act for the Preservation of American Antiquities (APAA), while making it a criminal offense to appropriate, excavate, injure, or destroy historic or prehistoric ruins or monuments or objects of antiquity located on lands owned or controlled by the U.S. Government, also defined dead Indians or Indian artifacts as “archaeological resources” and converted these persons and objects into federal “property,” thereby further

depriving Native peoples of the right to dispose of their dead or to maintain possession of sacred objects as reservation lands were under federal jurisdiction.³²

Indian religions, many still espousing a commitment to Native religious practices, went underground, into the Kivas, out of sight, into the back hills and hidden valleys of the reservations. Many religious leaders still refused to accommodate the larger cultural imperium. In 1934, John Collier was appointed as the Commissioner of Indian Affairs and the Indian Reorganization Act was passed. This act ended allotment, allowed for the appointment of Native people to the BIA without civil service requirements, and encouraged the formation of tribal governments—but only with a written constitution and accompanying by-laws approved by the Department of the Interior. Secretary of the Interior Harold Ickes approved of Collier's BIA Circular 2970 titled "Indian Religious Freedom and Indian Culture," which was sent to all agencies and stated that "no interference with Indian religious life or ceremonial expression will hereafter be tolerated." This circular represents the government's first specific policy statement made to protect Native American religious rights.³³

Still, the long history of religious oppression was by no means ended as government policy and legislation continued to undermine the solidarity and cohesion of reservation life. In 1940 the Fish and Wildlife Service of the Department of the Interior "issued regulations restricting the taking, possessing and transporting of bald and golden eagles or their parts" as a result of the Bald (and later Golden Eagle) Protection Act. This made the use of eagle feathers a federal offense and individual spiritual leaders and traditional practitioners were persecuted under this act.³⁴ Displacement from reservation lands in the mid-1950s to forced relocations in urban environments, as epitomized by the 1954 Menominee Termination Act, further added to disorientation and spiritual loss as many families were paid to move into large cities where promised job opportunities and employment failed to materialize. Thousands of indigenous people found themselves alienated from reservation life, living in "red ghettos" where crime, poverty and alcoholism escalated to extreme proportions.³⁵ In 1959, a court case between the Native American Church and the Navajo Tribal Council resulted in a ruling from the Tenth Circuit Court of Appeals that "The First Amendment applies only to Congress. . . . No provision in the Constitution makes the First Amendment applicable to Indian nations nor is there any law of Congress doing so." This decision severely limited the freedom and legal rights of Native peoples to seek redress from religious oppression or discrimination.³⁶ As late as 1971, Sun Dancers were being arrested on Pine Ridge by tribal police because the tribal judge issued an injunction against Sun Dancing.³⁷

The first contemporary resistance movement came with the formation of yet another Nativistic survival movement, this time led by younger Native American political radicals, in the form of the American Indian Movement (AIM). In 1968, George Mitchell and Dennis Banks (Chippewas) founded AIM in Minneapolis in an attempt to force better treatment for inner-city Native peoples harassed constantly by police and other city officials. Shortly thereafter, Clyde and Vernon

Bellecourt (Chippewa) and Russell Means (Oglala) joined AIM and, in 1969, AIM members joined with other Native peoples in the occupation of Alcatraz Island as “Indian land” in the first public re-affirmation of Red Power since Wounded Knee. In August 1972, AIM members went to the Lakota Crow Dog Sun Dance at Pine Ridge where traditional spiritual leaders gave their support to the movement. The “spiritual rebirth” of Indian rights was affirmed as a union between traditional religious and political leaders espousing a revival of Native identity and a rebirth of Native religious practices as a means for political empowerment. AIM became the spearhead in the effort to secure tribal rights, authentic religious practices, and governmental redress of past wrongs and oppression. Increasing confrontations between AIM leaders and non-Native authorities, as well as opposition from government-supported tribal leaders at Pine Ridge, resulted in numerous shoot-outs and yet another battle and standoff at Wounded Knee (Feb-May 1973) as AIM members confronted state and federal authorities. While no redress was given after AIM members and tribal religious leaders surrendered at Wounded Knee (562 were arrested, yet only 15 were found guilty of a crime), from this time forward visible redress of Native rights begins to surface in government policy.³⁸

In 1973, all attempts at tribal termination officially ended; in 1974 the Indian Self-Determination and Education Assistance Act (ISDEAA) authorized the secretary of the Interior to implement “an orderly transition from federal domination of programs for and services to Indians to effective and meaningful participation by Indian people in the planning, conduct, and administration of those programs and services.” This act allowed for contracts and grants to train Native people to operate programs they might want to take over in full, as well as for the disbursement of funds more directly to reservation populations and the election of Native peoples to official positions within governmental institutions and programs.³⁹ In 1978, the Indian Child Welfare Act assured that there will be no more governmentally enforced education or the “forcible and systematic transferring of care of Indian children to non-Natives through compulsory boarding schools and adoption to non-Natives.”⁴⁰ And in 1978, the American Indian Religious Freedom Act (AIRFA) was passed.

In 1979, the Archaeological Resources Protection Act (ARPA) attempted to redress the 1906 Act for the Preservation of American Antiquities by ruling that permits must be obtained for excavations of sites more than 100 years old, that consent must be obtained for any work on tribal Indian lands by tribal landowners, and that work on public lands held to be sacred by any tribes requires those tribes to be notified before any permits are granted. However, human remains on federal lands are still “archaeological resources” and “property of the United States” which, if excavated under federal permit, can be “preserved by a suitable university, museum or other scientific or educational institution.”⁴¹ This act still undercuts the rights of Native peoples to claim legitimate control over ancestral dead territorially identified as under federal jurisdiction and inhibits religious claims about how those ancestral dead (now or previously unearthed) should be treated.

In 1987, the National Park Service issued a policy statement in response to AIRFA, to explore means for integrating the needs of Native religious practitioners into park resource management. The statement clearly says that Native religious claims “must be within the bounds of existing legislation as well as NPS rules and policies” thereby subordinating Native religious needs and practices to pre-existing government regulations.⁴² Also in 1987, the Iroquois Recognition Bill was passed “to acknowledge the contribution of the Iroquois Confederacy of Nations in the development of the United States Constitution and to reaffirm the continuing government-to-government relationship between tribes and the United States established in the Constitution.” In 1989, the National Museum of the American Indian Act (NMAIA) provided for the repatriation of Native human remains collected by the Smithsonian Institution to American Indian tribes upon tribal request. The Smithsonian must inventory and, where possible, identify its collection of remains (18,000), notify appropriate tribal groups, and return them if the tribes requests—Blackfeet reburial of 16 ancestral remains occurred in 1989; and 700 remains presently are being returned to Kodiak Island cemetery.⁴³ Previous to this, in the 1980s, the Denver Art Museum returned War Gods to the Zuni; the Heard Museum in Phoenix returned Kiva masks to Hopi elders; the Wheelwright Museum returned eleven medicine bundles to Navajo; the State Museum of New York in Albany returned twelve wampum belts to Six Nation Confederacy and a clan bundle to the Hidatsa; the Boston Peabody Museum returned the sacred pole (plus 270 other artifacts) to the Omaha; and many others have made nominal returns as well. But many museums and institutions have ignored requests. For example, the Iroquois request for return of all their sacred masks has not been met.⁴⁴

In 1990, Native American Grave Protection and Repatriation Act (NAGPRA) was passed. This act protects Indian gravesites from looting and requires repatriation of all culturally identifiable tribal artifacts. According to the act, museums must inventory collections and notify tribes of their holdings. Legal procedures are established for reclaiming artifacts, though claimants must meet strict legal tests.⁴⁵ However, NAGPRA does not apply to state land or private property. By 1991, thirty-two states had laws that dealt with reburial and repatriation of ancestral prehistoric remains; but there is little consistency among the laws passed and many do not involve goods found on private property.⁴⁶ As Walter and Roger Echo-Hawk have written, “criminal statutes in all fifty states very strictly prohibit grave desecration, grave robbing, and mutilation of the dead—yet they are not applied to protect Indian dead . . . [Native dead are still] ‘federal property’ to be used as chattels in the academic marketplace.”⁴⁷

In 1993, the Religious Freedom Restoration Act (RFRA) was passed and signed into law, thereby compelling the government not to “substantially burden religious exercise without compelling justification” and to “provide a claim or defense to persons whose religious exercise is substantially burdened by government.” While this act may help to redress future infringement of Native American religious rights, it does not mention those rights specifically. This brings us fully into the

present with the 1994 Native American Free Exercise of Religion Act (NAFERA). NAFERA is a bill amending the 1978 American Indian Religious Freedom Act (AIRFA) and includes, among other things, specific protections for the use of peyote by Native American Church members as well as protecting the religious rights of Native American prisoners who wish to practice traditional Native religions. The NAFERA bill was proposed as a means to put teeth into the policy statement of the 1978 act which has been largely perceived as ineffectual in court cases involving Native American religious freedom.⁴⁸ As of 1995, no government agency has developed actual regulations based on AIRFA; further, the U. S. Forest Service has been one of the most aggressive antagonists of AIRFA in the courts (particularly in *Lyng v. Northwest*). As Sharon O'Brien writes concerning AIRFA, "Testimony by American Indian witnesses and government officials clearly attest to the lack of federal administrative compliance with the law and congressional failure to rectify religious infringements through legislative reform."⁴⁹

And where is AIM today? AIM is alive and well, continuing its long struggle for political and religious rights of Native peoples. In 1993, AIM reorganized into "an alliance of fully autonomous but reciprocally supporting chapters." AIM chapters are dedicated "to advance the cause of indigenous sovereignty and self-determination within its own context and regional conditions." Decisions of local and state chapters are made independently, emphasizing their local constituencies.⁵⁰ In April 1993, AIM held a Western Regional Conference of its many chapter organizations where AIM members were joined by John La Velle, the Santee Lakota founder of Center for the SPIRIT (Support and Protection of Indian Religions and Indigenous Traditions). San Francisco area-based SPIRIT is "a nonprofit organization of American Indian people dedicated to the preservation and revitalization of American Indian spiritual practices and religious traditions." La Velle announced a joint commitment with diverse tribal elders and the AIM chapters to continuing to work for the protection and maintenance of Native religious rights.

At the Lakota Summit V, in June 1993, an international gathering of United States and Canadian Lakota, Dakota, and Nakota nations, including 500 representatives from as many as 40 tribes, unanimously passed a "Declaration of War Against Exploiters of Lakota Spirituality." At the conference, Wilmer Mesteth, a traditional Lakota leader and instructor at Lakota Oglala College, spoke about the imitation and sale of Lakota ceremonies by non-Indian peoples. Mesteth, along with Darrell Standing Elk and Phillis Swift Hawk, drew up the declaration to warn non-Natives against the appropriation of Native spirituality.⁵¹ AIM also has become more visible in a walk led by Dennis Banks and Mary Jane Wilson that began February 11, 1994, from Alcatraz island and which culminated in Washington D.C., in July as a means to call attention to the continued imprisonment of Leonard Peltier—who many believe was falsely imprisoned and who is certainly the foremost symbol of Native American political and spiritual resistance.

The concerns of both AIM and SPIRIT are summarized in the Lakota Summit "declaration of war" against all "plastic Indians." This declaration expresses the

frustration and anger that many Native peoples feel about the sale of Native American religious objects as well as the marketing of Native ceremonies by unqualified and (usually) non-Native people (see Appendix One). Tourism that results in the sale of Native artifacts has been denounced as well as “New Age exhibitors [who] wrongfully [portray] themselves as Native Americans or [sell] ceremonies for profit.”⁵² AIM and SPIRIT sponsor political actions against institutions of higher education and confrontations with various institutions members of which are engaged in ceremonies that falsely claim to legitimate students as “pipe-carriers” or as representatives of Native religions. Confrontations have occurred with people claiming to lead or in other ways sponsor Native religious activities who are neither members of any tribe nor qualified by tribal standards to lead such events.

AIM and SPIRIT have adopted the terms “exploiters” and “exploitation” as part of a regional and national strategy to confront people, whether Indian or non-Indian, who profit from Native American religious traditions. Actions are presently underway by AIM to mandate tribal identification cards or tribal legal verification for anyone claiming to represent Indian people in any public forum, including powwow vendors and artisans. Anyone profiting from religious activities associated with a claimed tribal affiliation should be able to provide references from that tribe affirming the good standing of that person with tribal members. Finally, AIM delegates have resolved to work toward getting a bill to Congress making it illegal to falsely impersonate a medicine man or a medicine woman and to stop, where possible, the selling of ceremonies and sacred objects.

Other such Native groups have formed, including the League of Indigenous Sovereign Nations (LISN, May 1991, established on Piscatoway Native land in Port-Tobacco Maryland); the Indigenous Peoples Caucus (IPC, Canada, 1993, Sulian Stone Eagle Herney, Mi’kmak); Native American Traditions, Ideals, Values Educational Society (NATIVE, 1993, founded by a Navajo mother of five, Betty Red Ant LaFontaine); and WARN (Women of All Red Nations) as one of the first Native American feminist movements. This feminist element has taken a more visible form in the recent Second and Third Continental Congress of Women of the Americas (1994, Washington D.C.; 1995 in Beijing) which included women from North, Central and South America, Canada, and Russia, providing an opportunity for networking which may prove to be a formidable resource for Native political and religious actions.

In the summer of 1995, while attending a Sun Dance on Pine Ridge, I had several opportunities to discuss these issues with the full-blood traditional Lakota ceremonial leader who had invited me to that dance.⁵³ In our discussions, we touched on the history and background of oppression on the Pine Ridge reservation. His comments on Black Elk were particularly salient:

You know, Black Elk was part of a conspiracy, a cover up here among the Lakota. What he says there about the Indian religion being dead,

over, was part of a plan to stop the oppression here at Pine Ridge. It worked too. After that book came out, things got better; we just said it was over, dead, a thing of the past. We had to still do it secretly, but things have gotten better. Now we can do it more openly and bring other people in. . . . I don't believe our religion is something that should be hidden or kept from other people who are not Lakota or Indian. But for a long time, we had to keep everything hidden, even from other Lakota.

These comments reflect more than a personal point of view. They express in many ways both the consequences of a long oppressive history and the resistance strategies that have led to the preservation of many traditional Native religious practices in the face of religious persecution. Caution still exists—this Sun Dance was by invitation only and closed to casual outsiders. Held back in the hills, there were no signs, no indications other than a single red cloth tied on a stop sign. On entering the dance grounds, a very large sign in red paint read, “No cameras or tape recorders allowed!” The entrance was watched day and night and roped off to anyone other than those approved or known to those posted at the entrance.

Perhaps one of the most fundamental of all strategies in the struggle for spiritual survival among Native Americans has been the constant theme of maintaining traditional religious integrity and not compromising religious beliefs or practices in the face of massive oppression and coercion. Accommodation has proven, in many ways, to lead to an erosion of traditional values in the face of a long and usually uncompromising, non-reciprocal assault on Native character and identity. Yet, political resistance in the late twentieth century has been moderated by a resurgence in Native religious practices, the leaders of which have constantly promoted non-violent tactics and an ethics of preservation, mutuality, and respect for tribal differences. All too often, these leaders have been labeled as “radicals” and “troublemakers” whose actions are seen as unjustly critical of majority rule. Such a response is a symptom of cultural blindness indicating a profound lack of awareness of the real history of Native American religious oppression.

The history of prophetic leadership has been one of cultural survival with a constant reaffirmation of the rights of Native peoples to formulate, and reformulate, their religious and communal identities through a validation of their own cultural pasts. Often this has required constant, bitter negotiation with non-Native peoples whose perspective is reinforced by alien cultural values. There is nothing “radical” about such resistance—it is a natural inclination to preserve valued cultural practices that are inseparable from a way of life and identity grounded in deep, abiding spiritual principles distinct from those imposed by aggressive missionization and assimilative government policies. In many ways, Native communities are actually proponents of the conservation of culture, of maintaining continuity with the past and of preserving long-held values. The prophetic foreground of visible resistance to cultural annihilation is more appropriately seen as

a bulwark protecting a long and deeply held stability than as simply a reaction to aggressive settlement.

Another theme of this paper has been the way in which traditional spiritual movements act to facilitate intertribal cooperation without denying the diversity of religious practices or values of any particular community. This, it seems to me, is a lesson for all of us. There is a genuine need for all people involved in the study and practice of Native religious life to respect religious differences (which past generations of Euroamericans in particular have failed to do, including academics) in order to further the causes of religious pluralism as a basis for personal empowerment and religious identity. The character of religious resistance is grounded in the confrontation between various cultural monomyths and the struggle for any people to value the uniqueness of their own spiritual practices. Only when we fully affirm those practices as living resources for our mutual betterment can we move past the need for legislation and legal protections for what is, in fact, a right of all human beings—the free exercise of their religious beliefs.

**Appendix One:
Declarations Against the Sale or Appropriation of
Native Ceremonies by Non-Natives**

There is a sequence of this type of proclamation reaching back to at least October 1980, where an early version was passed at Rosebud Creek, Montana, in the Northern Cheyenne Two Moons' camp. This document was signed by the following tribal spiritual elders: Tom Yellowtail; Larry Anderson; Izadore Thom; Thomas Banyacya; Phillip Deere; Walter Denny; Austin Two Moons; Tadadaho; Frank Fools Crow; Frank Cardinal; Peter O'Chiese. The text is as follows (circular in possession of author):

**Resolution: 5th Annual Meeting of the
Traditional Elder's Circle**

It has been brought to the attention of the Elders and their representatives in Council that various individuals are moving about this Great Turtle Island and across the great waters to foreign soil, purporting to be spiritual leaders. They carry pipes and other objects sacred to the Red Nations, the indigenous people of the western hemisphere. These individuals are gathering non-Indian people as followers who believe they are receiving instructions of the original people. We, the Elders and our representatives sitting in Council, give warning to these non-Indian followers that it is in our understanding this is not a proper process, that the authority to carry these sacred objects is given by the people, and the purpose and procedure is specific to time and the needs of the people. The medicine people are chosen by the medicine and long instruction and discipline is necessary before ceremonies and healing can be done. These procedures are always in the Native tongue; there are

no exceptions and profit is not the motivation. There are many Nations with many and varied procedures specifically for the welfare of their people. These processes and ceremonies are of the most Sacred Nature. The Council finds the open display of these ceremonies contrary to these Sacred instructions.

Therefore, be warned that these individuals are moving about playing upon the spiritual needs and ignorance of our non-Indian brothers and sisters. The value of these instructions and ceremonies are questionable, maybe meaningless, and hurtful to the individual carrying false messages. There are questions that should be asked of these individuals:

- 1) What Nation does the person represent?
- 2) What is their Clan and Society?
- 3) Who instructed them and where did they learn?
- 4) What is their home address?

If no information is forthcoming, you may inquire at the addresses listed [by those who signed], and we will try to find out about them for you. We concern ourselves only with those people who use spiritual ceremonies with non-Indian people for profit. There are many things to be shared with the Four Colors of humanity in our common destiny as one with our Mother the Earth. It is this sharing that must be considered with great care by the Elders and the medicine people who carry the Sacred Trusts, so that no harm may come to people through ignorance and misuse of these powerful forces.

Similar AIM resolutions were passed in 1982 and in the May 11, 1984 meeting at Window Rock, Arizona (circular in possession of author). These documents present concerns for the loss of Native ceremonies and religious practices to non-Native persons as a long-standing grievance with many Native people, as attested to by the 1993, Lakota Summit V.

1984 AIM Resolution

WHEREAS the Spiritual wisdom which is shared by the Elders with the people has been passed to us through the Creation from time immemorial; and

WHEREAS the Spirituality of Indian Nations is inseparable from the people themselves; and

WHEREAS the attempted theft of Indian ceremonies is a direct attack and theft from Indian people themselves; and

WHEREAS there has been a dramatic increase in the incidence of selling of Sacred ceremonies, such as the sweat lodge and the vision quest, and of Sacred articles, such as religious pipes, feathers, and stone; and

WHEREAS these practices have been and continue to be conducted by Indians and non-Indians alike, constituting not only insult and disrespect for the

wisdom of the ancients, but also exposing ignorant non-Indians to potential harm and even death through the misuse of these ceremonies; and

WHEREAS the traditional Elders and Spiritual leaders have repeatedly warned against and condemned the commercialization of our ceremonies; and

WHEREAS such commercialization has increased dramatically in recent years, THEREFORE, be it resolved that the Southwest AIM Leadership Conference reiterates the position articulated by our Elders at the First American Indian Tribunal held at D.Q. University, September 1982, as follows:

Now to those who are doing these things, we send our third warning. Our Elders ask, "Are you prepared to take the consequences of your actions? You will be outcasts from your people if you continue these practices" . . . Now, this [warning] is another one. Our young people are getting restless. They are the ones who sought their Elders in the first place to teach them the Sacred ways. They have said they will take care of those who are abusing our Sacred ceremonies and Sacred objects in their own way. In this way they will take care of their Elders.

WE RESOLVE to protect our Elders and our traditions, and we condemn those who seek to profit from Indian Spirituality. We put them on notice that our patience grows thin and they continue their disrespect at their own risk.

Notes

1. Prucha 1990:312-14; see Michaelson 1984 for an overview of this act.
2. Prucha 1990:160-161.
3. Prucha 1990:187-88.
4. Writing of the Commissioners of Indian Affairs are accessible in Prucha 1990; those writings that particularly express an intention to suppress Native religion and culture (1832-1901) are found on pp. 63, 73-74, 77-78, 124, 157, 160-161, 175, 177, 187-188, 200-201. With regard to the First Amendment, it is clear in the writings of both the Secretary of the Interior and the Commissioner of Indian Affairs during this period that Native Americans were regarded as having no protection or guarantees under the Constitution and were in fact regarded as "alien nations" within the borders of the United States.
5. In 1818, Secretary of War John Calhoun wrote: "Our views of Indian interests, and not their own, ought to govern them. By a proper combination of force and persuasion, punishments and rewards, they ought to be brought within the pales of law and civilization. Left to themselves they will never reach that desirable condition," Prucha 1990:32. The Indian Civilization Fund Act established a government fund "to employ capable [non-Indian] persons of good moral character to instruct Indians in the mode of agriculture suited to their situation; and for teaching their children reading, writing and arithmetic," Prucha 1990:33.
6. Prucha 1990:3.
7. Loftin 1994:60.
8. Dowd 1992:xxii.
9. McLoughlin, 1994, *passim*.
10. McLoughlin 1984b:438.
11. Trafzer, 1986, *passim*.
12. Dowd 1992:17.

13. Hirschfelder and Molin 1992:207; even earlier prophetic traditions are found among the Aztec and other Mesoamerican peoples; see Stephen Colston, "No Longer Will There be a Mexico': Omens, Prophecies, and the Conquest of the Aztec Empire" in Trafzer 1986:1-20.
14. Hirschfelder and Molin 1992:66, 312; Champagne 1994:512-13.
15. Hirschfelder and Molin 1992:114-115; see also Champagne 1994:512-14.
16. Ruby and Brown 1989:6.
17. Hirschfelder and Molin 1992:295-296; Champagne 1993:520-21.
18. Hirschfelder and Molin 1992:94; see also Frank Owsley, "Prophecy of War: Josiah Francis and the Creek War." in Trafzer 1986:35-55.
19. Hirschfelder and Molin 1992:338.
20. See Joseph Herring, "Kenekuk, the Kickapoo Prophet: Acculturation without Assimilation" in Trafzer 1986:57-69; Hirschfelder and Molin 1992:145.
21. See Clifford Trafzer and Margery Ann Beach, "Smohalla, The Washani, and Religion as a Factor in Northwest Indian History" in Trafzer, 1986:71-86; and Ruby and Brown 1989:29-49.
22. See L.G. Moses "The Father Tells Me So! Wovoca: The Ghost Dance Prophet" in Trafzer 1986:97-113; Kehoe, 1989, *passim*. Also of interest, see McLoughlin 1990.
23. For more on the Kiowa Ghost Dance, see Kratch 1992.
24. Prucha 1990:177; Commissioner Jones, in 1901, wrote of Indian education, "the Indian youth...[is] born a savage and raised in an atmosphere of superstition and ignorance, he lacks at the outset those advantages which are inherited by his white brother and enjoyed in the cradle. His moral character has yet to be formed. ... In a word, the primary object of a white school is to educate the mind; the primary essential of Indian education is to enlighten the soul" (Prucha 1990: 200-201).
25. Hirschfelder and Molin 1992:38.
26. Prucha 1990:131-134, 135, 141-143. The 1872 distribution was listed by Commissioner Walker as follows:

Agencies		Indian Enrollment
Methodists	14	54,473
Baptists	5	40,800
Presbyterians	9	38,069
Episcopalians	8	26,929
Catholic*	7	17,856
Orthodox Friends	10	17,724
Congregationalist	3	14,476
Christian Church	2	8,287
Reformed Dutch	5	8,118
Hicksite Friends	6	6,598
Unitarian	2	3,800
Am. Board of Comm.	1	1,496
Lutheran	1	273
TOTAL	73	238,899

* Catholic is much higher as Catholic Missions were long established before the creation of the BIC and there was a strong Catholic presence on many reservations not listed by the obviously pro-Protestant Board.

27. Prucha 1990:200-201; See also Crow Dog 1990:28-41. In 1901, Indian Commissioner Jones wrote in his annual report: "These pupils are gathered from the cabin, the wickiup, and the tepee. Partly by cajolery and partly by threats; partly by bribery and partly by fraud; partly by persuasion and partly by force, they are induced to leave their homes and their kindred to enter these schools and take upon themselves the outward semblance of civilized life."

28. Josephy 1984:82.
29. Hendrick 1983:62-66.
30. See Al Logan Slagle, "Tolowa Indian Shakers and the Role of Prophecy at Smith River, California" in Trafzer, 1986:115-136.
31. Stewart 1993:44-62; p. 60 gives a table of states which passed laws against peyote, of which only seven have been repealed.
32. Hirschfelder and Molin 1992:2.
33. Prucha 1990:222ff.; Stewart 1993:45.
34. Hirschfelder and Molin 1992:9-10; only after 1975 was the Bald and Golden Eagle Act modified to allow American Indians to "possess, carry, use, wear, give, loan, or exchange among other Indians without compensation, all federally protected birds, as well as their parts and feathers."
35. Prucha 1990:234, 264.
36. Prucha 1990:241.
37. Lewis 1990:65.
38. Josephy 1984:235-263; Crow Dog 1990:73-91; *passim*.
39. Prucha 1990:264, 274-76.
40. Prucha 1990:293; Churchill and Morris 1992:17.
41. Prucha 1990:295; Hirschfelder and Molin 1992: 6-7.
42. Moore 1993:86. Also in 1987, the Iroquois Recognition Bill was passed "to acknowledge the contribution of the Iroquois Confederacy of Nations in the development of the United States Constitution and to reaffirm the continuing government-to-government relationship between tribes and the United States established in the Constitution."
43. Hirschfelder and Molin 1992:193.
44. Hirschfelder and Molin 1992:238-39; for more on the Omaha Sacred Pole, see Ridington 1993.
45. This act is supported by the AAM (American Association of Museums) and the SAA (Society for American Archaeology), but limits the kind of objects legally subject to claims to avoid "raids on collections."
46. Hirschfelder and Molin 1992:32, 195, 305; for examples see 1976, Native American Historical, Cultural and Sacred Sites Act (California) and 1989, Unmarked Human Burial Sites and Skeletal Remains Protection Act (Nebraska).
47. Echo-Hawk 1993:68.
48. See Michaelson, 1993; also Churchill 1992:20; see also Smith and Snake, 1996, for a case study on Peyote and its relationship to NAFERA.
49. O'Brien 1993: 30-31 where she also calls the Lyng case "most restrictive interpretation" of AIRFA; 31-40 reviews the outstanding cases involved. See also Steve Moore's excellent review of ARIFA (Moore 1993) as well as Loftin 1994; also Deloria 1994.
50. The Edgewood Declaration of the International Confederation of Autonomous Chapters of the American Indian Movement (Edgewood, New Mexico, December 18, 1993); endorsed by 10 other AIM chapters at that time.
51. From "Lakota Declaration of War" by Valerie Taliman, published in The Circle Newspaper, July, 1993; three Native newspapers, News From Indian Country, The Circle, and Native American Smoke Signals, have all published articles on AIM and SPIRIT's present concerns.
52. A statement issued by SPIRIT and reprinted in Churchill (1994), says:

Therefore, we urge all supporters of American Indian people to join us in calling for an immediate end to the cynical, sacrilegious spectacle of non-Indian “wannabes,” would-be gurus of the “New Age,” and “plastic medicine men” shamelessly exploiting and mocking our sacred traditions by performing bastardized imitations of our ceremonies. They are promoters of “spiritual genocide” against Indian people; and while some of them may be guilty “merely” of complicity in “genocide with good intentions,” others have become aggressive in insisting on their “right” to profiteer by exploiting and prostituting American Indian sacred traditions.

53. The leader of this particular Sun Dance, one of many on Pine Ridge, prefers to remain at this time anonymous.

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