Author's Response: Worship, Wilderness, and Cultural Coevolution

Lloyd Burton

When I learned that *Worship and Wilderness* was to be featured at an Author Meets Reader panel at the 2003 Annual Meeting of the Law and Society Association, at first I felt grateful. I would be able to discuss in an open forum with knowledgeable colleagues the results of a research and writing project to which I had devoted much of the previous six years of my life. But I also felt just a little trepidation, and for the same reason: my work would be subject to some fairly strict public scrutiny by critics well versed in the fields constituting the subtitle of the book.

Under the strict scrutiny standard of review, I could only hope the panelists would conclude that I had a compelling scholarly interest in bringing *Worship and Wilderness* into being, and that I had done so by means least intrusive on the traditional disciplinary boundaries separating the subtitle fields of culture, religion, and law as they pertain to the management of our commonly held public lands. As I learned at the panel presentation and as the written critiques in this forum generally reflect, my colleagues seem to have decided in the affirmative on the former question, and perhaps have cast a split vote on the second.

Flirting With Theory Development

One of the observations that panel chair Marianne Constable made in her introductory remarks at the 2003 LSA meeting was echoed there by Susan Gooding, to the effect that while in the introductory chapter I suggest a theoretical construct grounded in both the ethnographic fieldwork and the more extensive document review and analysis done for this project, it is a theoretical framework never fully developed either in the opening chapter or at later stages in the book.

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Law & Society Review, Volume 39, Number 3 (2005)
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https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

In her written comments herein, Gooding goes on to demonstrate how, had I adopted an alternative mode of inquiry based on a more theoretical and critical literature that is not centrally featured in *Worship and Wilderness* (hereinafter, "W&W"), I might have been able to make a more original contribution to our understanding of how indigenous and dominant cultures have sought and are seeking to influence each other's thought and behavior regarding the sacred in nature. In particular, both she and Constable note—and I agree—that I could have done a better job of explaining what I meant in concluding that what I had discovered during the course of my research was an example of "cultural coevolution" (W&W, p. 6). In explanation if not in defense on this point, the four stated purposes for doing this research were

1. to develop a better understanding of the spiritual dimensions of the relationship that the indigenous and dominant culture groups have with their environment
2. to learn what role in these matters has been played by the public law of the dominant culture
3. to learn how managers of public lands have tried to achieve mutual accommodation and cultural reconciliation among various groups contesting the use of sacred sites
4. (based on this case study data) to suggest how we all might most constructively think about and deal with these issues in the future (W&W, pp. 13–4).

I readily acknowledge probably having done a more thorough job of achieving the second and third goals than the first and fourth. For in doing this work I often felt pulled in two different directions. On the one hand, I wanted to suggest novel or substantially untried frames of reference for thinking about these issues, since I find conventional discourse on these matters to often be predictably and sometimes dangerously predeterminative of outcomes. But I also wanted to work with conceptual constructs already familiar to public land managers and federal judges, since the practical playing out of dispute resolution efforts over contested sacred sites on public lands does and will continue to depend in large part on how these two groups of public sector professionals understand the dynamics of these disputes and exercise their considerable discretion in resolving them. That I eventually tilted more toward the applied rather than the theoretical side in this balancing act may also be partially a function of my own working environment—as director of an environmental law and policy program in a graduate school of public affairs, where we train public administrators and policy analysts who either already are or soon will be assuming responsibility for managing these and similar

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

highly charged environmental disputes in their respective workplaces.

To expand a little further on where I was originally headed theoretically, "coevolution" is a concept borrowed from the biological science of ecology. What it refers to is how two or more species of plants or animals inhabiting the same ecosystem coevolve in response to each other's behavior. The term itself is divisible into relationships described as examples of either adversarialism or mutualism.

Adversarialism refers to situations such as a prey species developing through evolutionary means various defense mechanisms (e.g., noxious exudations or camouflage coloration) to ward off threats to its survival from one or more predator species. Predator species may then in turn develop some structural or behavioral means of circumventing these defenses. By contrast, mutualism refers to coevolutionary changes among two or more subject species by which they change in ways that actually enhance the effectiveness of each other's survival strategies; that is, they evolve toward higher levels of cooperation.

Applied to intercultural relations in North America on the question of spirituality and the environment, the spiritual pluralism evident in many American Indian tribes[1] may be understood at least in part as a historical example of adversarialism. During the nineteenth and early twentieth centuries, entire tribes were threatened with complete cultural annihilation if they did not agree to the ministrations of Catholic and Protestant missionaries, including the removal of their children from family and tribal settings for education and enculturation at remote missionary boarding schools. Adopting at least the outer form of these immigrant religions may well have been essential to indigenous peoples' survival as a culture and a tribe.[2] A contemporary example of mutualism is that of mainstream religious denominations now being far more supportive—both legally and politically—of tribal efforts to protect sacred sites on public lands than at any previous time in American history. One significant example of this phenomenon described in the book is that of most of the nation's major religious denominations filing amicus briefs in support of the tribes at the 10th Circuit Court of Appeals' hearing in the Devil's Tower case (W&W,

[1] For example, conducting ancient pre-Columbian culture-sustaining rituals with complete sincerity and devotion one day, then participating in a Christian worship service with equal sincerity and devotion the next.

[2] This observation is not intended to denigrate the faith of tribal peoples in the American West today, but simply to make note of its historical origins. Some of the most devout present-day Christian congregations in the region are to be found on and near American Indian reservations, and congregants are not of the view that the practice of their faith is in any way being coerced.

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

p. 263). Likewise, some mainstream religious leaders—such as the Catholic bishops of the Pacific Northwest—are now openly acknowledging how indigenous teachings on the sacred in nature are serving to remind Christians of the moral responsibility they have for the care of creation. At the same time, however, most Christian leaders also make a clear distinction between this need to exercise moral restraint in environmental management—which they see themselves as sharing with indigenous peoples—and the theological underpinnings for such responsibility, which differ markedly between indigenous and immigrant religious beliefs (a distinction developed in more detail below).

Another area of more expansive theoretical development the book would have benefited from concerns the characterization of our public lands and resources as a national commons. The analogy is drawn from the history of early American colonial land use in New England and Pennsylvania, as colonists continuously negotiated the tensions between the desire for individual landed estates and the realization that both their local economies and the cohesion of their communities would benefit from the democratic governance of collectively held lands and resources (W&W, pp. 83–4). Collective governance of the commons was also much closer in form and function to the law ways of the indigenous peoples who were the colonists' neighbors than were the much more individualistic patterns of land ownership and management that were to become more the norm in the post-Revolutionary United States and its claimed territories.

Where Gooding and I part company sharply is on the question of *why* I chose to suggest a new theoretical framework for understanding the meaning of the case studies described in the book. In her view, the contested governance of public lands by indigenous and colonizing culture groups is a terrain that has already been thoroughly mapped in writings such as Sally Merry's on legal pluralism, some of which I actually relied upon in informing my own thoughts (W&W, p. 113), and some of which I chose not to incorporate into this work.

Describing my decision to not use as my mapping device the lexicon of critical legal theory (CLT) as applied to indigenous-colonizer relations, Gooding analogizes my suggestion of a new framework for understanding my subject matter to Lewis and Clark's claiming in 1805 that they had "discovered" the new and empty lands of the Pacific Northwest. These were lands already thoroughly if sparsely inhabited by indigenous peoples who had lived there for thousands of years and knew their homelands intimately.

Rather than taking Gooding's analogy solely as an indictment on a charge of intellectual imperialism, however, to me this portion

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

of her critique reads mostly as a lamentation. She laments that I did not use the language that she felt I should have used, that I did not frame the subject matter in terms of the discourse she felt it deserved, and that ultimately, I did not write the book she wished I had written.

In determining how to explore the meaning of my subject matter, there were indeed several paths I could have gone down, including the one opening onto the now-familiar landscape of critical legal theory. This is something I did deliberately choose not to do, but not for the motives Gooding might suspect.

Merry's and others' urging that indigenous-colonizer legal relations are most revealingly seen through the extranational lenses of human rights and international law is a hugely important contribution to understanding the dynamics at work in these relationships. If such a perspective were ever to be adopted by the national and international powers that be, it could go a long way toward to restoring genuine sovereignty and self-determination to indigenous peoples throughout the world. Like Archimedes' assertion that with a properly sized and placed lever and wedge he could move the world, perhaps someday a combination of international public opprobrium and institutionally legitimated human rights advocacy can work a positive change on the legal status of indigenous peoples of the Americas and elsewhere.

There are two reasons I did not go down this path. The first is that, as enumerated above, my goals in doing this research were more modest, more immediate, and more incremental than the grand-scale reconceptualization offered in the works Gooding approvingly cites. My interest is in freshening and more fully informing the thinking of everyone interested in how culture, religion, and law collectively influence how we manage the American public estate in this place at this time in our history. Included in this intended audience are the public land managers and federal judges who periodically make crucial decisions on these matters within our existing national legal framework, as admittedly imperfect and culturally biased as that framework has regularly shown itself to be. I chose to use terms and arguments I felt would most effectively achieve these goals; and I chose them on unabashedly utilitarian grounds.

The second reason I generally avoided the language and logic of CLT is that, like any other theoretical framework, it has its limitations as well as its uses. Gooding opens her review by remarking how contextualization (or lack thereof) can be determinative in either revealing or obscuring meaning. This is just as true of CLT, as are the dominant-culture discourses she decries. Application of the CLT construct can and often does devolve into a formulaic treatment of the subject matter—stories routinely told in terms of

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

oppression and resistance, of intercultural thrust and parry, and of ceaseless struggle—in short, discourses of despair.

Thus, the CLT framework does have explanatory potency regarding the adversarialism half of the concept of cultural coevolution I introduced and applied to my case studies. But I found it lacking in terms of providing an adequate explanation for what I have taken to be fairly clear-cut examples of mutualism between indigenous peoples and mainstream religious denominations in these stories.[3]

As the case studies in *Worship and Wilderness* illustrate, neither the dominant culture nor the indigenous cultures cohabiting the United States are at all monolithic in their views as to how spiritual teachings ought to be applied to environmental management. It is for this reason that I believe the phenomenon of mutualism as exhibited between some mainstream religious denominations (e.g., the National Religious Partnership for the Environment, the Evangelical Environmental Network (EEN), the *amici* in the Devil's Tower case) and some American Indian tribes and groups in these cases merits further study and support.

For under the banner of "energy independence," a government-corporate assault is about to be launched on our public lands, the scope and destructive potential of which this country has not witnessed in more than a century. To blunt or deflect it at all will require the ability of peoples across a wide variety of culture groups and spiritual orientations to speak with something approximating a common moral voice in defense of commonly held lands.

Characterization of the Judeo-Christian Tradition

Both Winnifred Sullivan's and William Blatt's points regarding a relative lack of place-based emphasis in the American importation of the Judeo-Christian tradition are well taken. Europe and the Middle East are full of sacred sites the control of which has

[3] In answer to the question of whether the conceptual constructs used in *Worship and Wilderness* represent a good-faith effort at charting new territory or a papering over of a more critical perspective of which I was either oblivious or disdainful, I also have some testimonial evidence to support the former view. Gooding laments that I did not pay more attention to the critical work of scholars such as Vine Deloria Jr., whom she quotes at some length. But unbeknownst to me, he was one of the anonymous peer reviewers retained by my publisher to offer expert advice on whether or not the manuscript should be published. In his review, Deloria wrote,

> Very original. Burton has brought together many diverse sources primarily in law and religion to present an analysis of the current state of human rights and the political problems of the environment. Nothing is as comprehensive as this book in weaving the two strands together.

With Deloria's permission, my publisher shared this attributed quote with me, and also printed it on the book jacket.

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

periodically given rise to horrendous conflicts for the last two millennia. My observations in *Worship and Wilderness* distinguishing place-based from practice-based religions should certainly be understood as pertaining only to Christianity and Judaism as practiced in the United States.

In terms of miscommunication, though, it seems that Sullivan gained the impression from her reading of *Worship and Wilderness* that I condemn Christianity because it is "anthropocentric and thus not attentive to nature." Unfortunately, that is not actually my writing she is quoting. It is an excerpt from Lynn White's now-famous 1967 article in *Science*, "The Historical Roots of Our Environmental Crisis," in which he does indeed take Western religions (at least as they were practiced up to the time of his writing) severely to task for either condoning or staying silent on the question of environmental despoiling.

I quoted White in that section of the book (W&W, pp. 64–5) as a prelude to coming to a quite different conclusion. In my view, which almost all of Chapter 11 seeks to convey, one of the most important recent developments in the American environmental history is the reclaiming of Earth-friendly texts in both the Old and New Testaments of the Bible by mainstream American religious denominations, and the use of these rediscovered teachings to set forth an action-based theology of environmental stewardship as a divine mandate and moral obligation. Far from asserting that Western religious teachings on spiritual freedom are "askew and inadequate," I instead emphasized how the Judeo-Christian tradition already has within it all the teachings necessary to bring Western civilization into a far more harmonious and less rapacious relationship with our environment.[4] Far from being "hard on Christianity," I view mainstream faith-based environmentalism as one of the most hopeful recent developments in the American conservation movement.

As Blatt points out—and as the EEN's Web site does as well—the reasons *why* evangelical as well as other Christians and Jews have taken up environmental protection as a religious cause differ sharply from those of the Wiccans and other pagan groups, the New Age movement, and most American Indian tribes, for that matter. EEN members strongly emphasize that they are not pantheists or nature worshipers, and that they are instead following God's commandment to humanity as set forth in the second chapter of Genesis to "dress and keep" the garden entrusted to us.

[4] I also never use in the book the term *Judeo-Christianity*, although I do refer (as above) to the "Judeo-Christian" tradition, which most standard dictionaries define as "having historical roots in both Judaism and Christianity" (e.g., *Webster's Ninth New Collegiate Dictionary*, 1991, p. 653).

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

These are just the same terms that were being used in English jurisprudence at the time the Bible was first translated from Latin into English to describe the legal and moral obligations gamekeepers and groundskeepers owed to the lord of the manor on which they were employed.

Finally, Blatt and Sullivan both seem to have the impression that I am advocating the elevation of American Indian spiritual interests to a privileged position, and sacred site protection to a consistently preemptive public lands management principle. I believe this to be another area of miscommunication. Instead, what I have attempted to do in *Worship and Wilderness* is to first demonstrate how tribal spiritual interests historically have been either actively thwarted or ignored altogether throughout the development of American environmental law and policy until the last quarter of the twentieth century. I then argue that such interests should at least continue to be acknowledged as cognizable under both the First Amendment's religion clauses and under the trust responsibility doctrine; and that tribal religious interests should at least play a role—although not necessarily a determinative one—in public land management decisionmaking.

The Jurisprudence of Indigenous Spirituality

This is an inherently complex area of law, made even more so by a near-complete lack of consistently applied, coherent doctrine informing federal court interpretations of the religion clauses of the First Amendment over the last quarter-century. And religion clause jurisprudence tells only half the story, since an equally significant body of law on this point has emerged and developed since Justice John Marshall first articulated it nearly two hundred years ago—that of the trust responsibility doctrine.

Blatt concludes that my arguments on behalf of the recognition of tribal religious interests in the environment would have been stronger had I placed more emphasis on the trust responsibility doctrine and less on religion clause case law. I agree with Blatt entirely that the trust responsibility doctrine could provide more solid support for tribal interests in sacred site and resource management on the public estate, if all three branches of the federal government would simply take more seriously the ethical obligations the Marshall court originally imposed on them via this doctrine. The problem is that they do not consistently do so, and seem to have been doing so even less in recent times.

Turning to the religion clauses, a crucial distinction exists between analysis based on the prohibition against government thwarting the free exercise of religion, and the companion prohi-

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

bition against it respecting an establishment of religion. I can readily acknowledge that the free exercise clause (which the American Indian Religious Freedom Act [AIRFA] does no more than recognize as applicable to indigenous as well as immigrant religions) and AIRFA itself have basically availed the tribes nothing in terms of judicial protection for their efforts to prevent the commercial despoiling of sacred sites on public lands. The tribes have lost every free exercise claim they have brought for such purposes in reported federal court decisions.

However, the same is not true of cases brought by commercial interests under the establishment clause seeking to prohibit federal land managers from protecting the free exercise of tribal religion at sacred sites on public lands. In two recent landmark decisions (concerning the management of Devil's Tower National Monument and the Bighorn Medicine Wheel in the Bighorn National Forest, described in detail in Chapters 6 and 7), federal judges determined that the National Park Service and Forest Service were achieving a secular purpose by accommodating the free exercise of tribal religion in their management plans for Devil's Tower and the Medicine Wheel, rather than impermissibly engaging in the establishment of American Indian religion. The trial and appellate courts also dismissed for lack of standing the complaint of some Euro-American visitors to Devil's Tower that Park Service signs asking visitors to stay on trails out of regard for what the American Indians considered to be the sacred character of the site constituted an establishment of religion.[5]

Thus I do not entirely agree with Sullivan's conclusion that "Indians will do better legally to rely on what mileage they can gain from the genuine shame of American history than from trying to persuade courts that their religions are as good as anyone else's." Again, it is not a question of either-or, but both. While the free exercise clause has not proven to be a very useful sword in the hands of indigenous plaintiffs attacking the commercial exploitation of sacred sites, it has become an effective shield for indigenous and government defendants against commercial exploiters wielding the establishment clause sword in an effort to prohibit sacred site protection.

Multiculturalism, Methodology, and the Sectarian Specter

At the end of her critique, Sullivan asserts that in *Worship and Wilderness* I have privileged the discourse of my own spiritual ori-

[5] Park Service signage does not simply declare the site to be sacred irrespective of cultural context.

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

entation (Buddhism) at the expense of all other religious and spiritual traditions. In her view, I have "relativized" these other traditions by subjecting them "to the anthropologist's gaze," but have not done the same to my own. She closes by characterizing my work as "a sermon," and "not a book about religion and law."

Evidently, her assessment of the book changed while she was writing her review of it. For at the beginning of her critique she describes it as "at once a critique of the U.S. constitutional religious free exercise doctrine, a plea for environmental stewardship, a cry for justice for native peoples, and a Buddhist sermon." But by the end it seems she had decided that only the fourth of these descriptors actually applied—that I had basically produced a lengthy sectarian screed rather than scholarly analysis and evidence-based advocacy for a suggested policy path. I beg to differ.

Although she teaches in a graduate school of theology and may thus be better able to recognize a sermon when she sees one than I am, in my view Sullivan's concluding observation is inaccurate both descriptively and interpretively. Descriptively, her initial assessment of *Worship and Wilderness* is much closer to the mark than her closing one. In terms of simple content analysis, more than half the book is an explication of free exercise doctrine *and* establishment clause doctrine *and* trust responsibility doctrine as they pertain to the spiritually based environmental interests of everyone subject to the rule of law in the United States—indigenous and immigrant alike.

Early chapters (4 and 5) discuss the origins and evolution of these doctrines, including the case law they have spawned; while later chapters (6 through 9) apply them to more than one dozen contemporary case studies concerning sites and wildlife species held sacred by indigenous people across the American West. Another chapter (10) comparatively analyzes the handling of similar cross-cultural disputes in Australia, Canada, and Aotearoa, New Zealand. Three chapters (2, 3, and 11) address the teachings of indigenous and immigrant religious traditions (e.g., Christian, Jewish, Taoist, and Buddhist) on reverence for nature, as compared with the actual behaviors and practices of adherents to those traditions, both historically and at present. Descriptively, therefore, *Worship and Wilderness* is indeed a book about the intertwining influences of culture, religion, and (mostly constitutional) law on the management of our public lands and resources.

Interpretively, the issue of whether my book ultimately represents a "sermon" is less susceptible to quantitative resolution, if she is referring to the term's common-use definition as "a religious discourse delivered in public."[6] Although she offers no evidence

[6] *Webster's Ninth New Collegiate Dictionary*, 1991, p. 1075.

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

from the book to substantiate this interpretation, I do have some in support of the view that this characterization of my work is not well-grounded.

That I ultimately advocate a policy path consonant with the similarities I discovered in Earth-friendly teachings across a wide variety of religious and spiritual traditions I freely admit. The Judeo-Christian tradition teaches the need to "dress and keep" the natural world because it is a gift from God entrusted to our care, Buddhism teaches compassionate treatment of all sentient beings as the path toward the cessation of suffering, and many indigenous teachings advise ritual reverence for all life—including the ritual taking of life—for the very pragmatic reason that human well-being and ecosystem well-being are understood to be inextricably intertwined. (See generally Chapters 2, 3, 11, and 12.)

That I have somehow "privileged" Buddhism in this process I do not believe to be so. With regard to each of these traditions, I compare and contrast classic teachings with how adherents to these views have actually behaved over time. I conclude that on occasion they have all departed to varying degrees and for varying periods of time from what their traditions had to say about reverence for their surroundings. And in this regard, I treat Buddhism no differently than any of the other religious perspectives I examine:

> Historically, Asian spiritual traditions such as Buddhism and Taoism generally receive more favorable treatment in environmentalist critiques of religious thought because transcendence of the self and unity with nature (actually, with all existence) lie at the very core of their teachings . . .
>
> However, it also appears that these teachings have historically done little to dissuade their host cultures (e.g., India, China, Japan, and countries in Southeast Asia) from regularly making ruinous environmental decisions. Moreover, while present-day adherents of Buddhism and Taoism (of both Asian and European extraction) may profess reverence for nature, some critics contend that for many if not most of them—just like the rest of American society—an affinity for material acquisition and personal convenience far outweighs genuinely reverential treatment of the environment in their personal lifestyles. (pp. 67–8)

In my view, this is not a "discourse of privilege." Rather, it is a recognition that the teachings of all these traditions represent aspirations, that no one of them is inherently superior or inferior to the others, and that ultimately, the true measure of any culture group's environmental ethic is less a matter of the substance of its religious and spiritual teachings than of how well its members honor these aspirations in daily life.

https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press

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https://doi.org/10.1111/j.1540-5893.2005.00241.x Published online by Cambridge University Press