Chapter Twenty-One

Religion and US Federal Indian Policy

Sarah Dees
Iowa State University, Ames, Iowa

In 1978, the US Congress passed the American Indian Religious Freedom Act (AIRFA). The act outlined a federal policy of protecting Native American and Indigenous beliefs and practices:

> 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 sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.[1]

Many Indigenous activists and religious practitioners celebrated the passage of this act. Reflecting on its importance forty years later, a Kiowa religious leader explained in 2018, "this law allowed us to openly dance, sing, and mostly pray as our grandfathers did. … To be able to do these things without outside interference is what makes the American Indian Religious Freedom Act significant."[2]

The First Amendment of the United States' Bill of Rights ostensibly ensures its citizens' free exercise of religion, but, as AIRFA makes clear, Native American traditions have not always benefitted from constitutional protections. Answering the question of why Native Americans' religious practices have required additional legal protections, beyond those already granted to its citizens, implicates the US government itself. Furthermore, it requires chronicling Native Americans' changing relationships to the US body politic and tracing seismic shifts in ideas about religion, race, culture, society, and sovereignty.

Ultimately, Native religions have faced a long history of discrimination, with complex roots and an enduring legacy. While some US laws and policies have been enacted to protect and preserve Native religions, others have served to manage, contain, and constrain them. This chapter compares AIRFA's account of the history of Native American religious discrimination to scholarly work on the topic. It focuses on the period leading up to the Assimilation Era from the 1880s to the 1930s. Federal policies in this era — perhaps more so than in any other era in US history — specifically and systematically targeted Native American religions.

A Companion to American Religious History, First Edition. Edited by Benjamin E. Park.

Pushback against assimilation policies eventually led to AIRFA and other legal measures to protect Native religions. The gaps between AIRFA's historical narrative and critical scholarship on the same topic illuminate how the law, religious freedom, and the category of religion have themselves been implicated in violence toward Native American religions. Legal mechanisms such as AIRFA are offered as solutions to complex problems that federal Indian policies played a role in creating.

* * *

The text of AIRFA underscores the importance of religion for Native Americans and emphasizes the ideal of religious freedom in the United States. It also signals the reality of historic and ongoing discriminatory treatment of Native American traditions. AIRFA declares freedom of conscience to be a central US value and affirms that "the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion." Further, it states that the United States "has benefitted from a rich variety of religious heritages," extolling religious diversity as a key feature of American life and identity. Finally, AIRFA notes that religion is a key feature of Native cultures, stating that "the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition, and heritage, such practices forming the basis of Indian identity and value systems." While the act does not directly define the category of religion, it does indicate that religious beliefs, expressions, and activities qualify for protection. It gestures to the significance of land and nature for Indigenous communities by highlighting the need for practitioners to access sacred sites. It also mentions the importance of sacred objects. Taken together, the act refers to religious beliefs, practices, sacred space, and material religion as key elements of religious traditions worthy of and requiring protection.

Yet despite these lofty claims of American ideals, the AIRFA was necessary because of a long history of discrimination against Native traditions. Indeed, the act explicitly outlines some of the reasons for its creation, noting that "traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned." It does not go into detail about the nature of these intrusions — nor does it identify specific perpetrators or targets — but it does hint at the government's role in limiting Native religious practices.

The text of AIRFA identifies two primary causes of these infringements: the absence of clearly articulated federal Indian policies and insensitivity to the effects of laws on Native religions and cultures. The act cites "the lack of a clear, comprehensive, and consistent Federal policy" regarding the regulation or protection of Native practices. Indeed, federal Indian law and policy unfolded unsystematically over time.[3] In addition, AIRFA mentions "the lack of knowledge of the insensitive and inflexible enforcement of Federal policies and regulations" that were "designed for such worthwhile purposes as conservation and preservation of natural species and resources" but unduly affected Native religious practices.[4] For example, the statement alludes to laws such as the 1940 Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c), which prohibited individuals from possessing eagle feathers, objects that are sacred to numerous Native nations. It was passed to protect endangered species that are culturally significant for the United States but has created difficulties for Native communities seeking to obtain feathers for ceremonial purposes. A process allows Native people to apply for a permit to obtain feathers, but it has been described as slow, restrictive, and burdensome on those who seek to maintain their traditions.[5]

While religious practitioners, activists, lawmakers, and scholars praised the passage of AIRFA, many have noted its limitations. In particular, they have criticized the act for "lacking teeth" — in other words, they argue it offers little in the way of enforcement.[6] The act required the President to direct federal agencies to study their impact on Native religions. Agencies were to "evaluate their policies and procedures with Native traditional religious

leaders to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices."[7] The President was expected to then report back to Congress the following year with a full report. In 1979, a task force, under the direction Secretary of the Interior Cecil D. Andrus, provided an overview of issues affecting Native traditions. The task force identified barriers to the free exercise of Native religious practices, worked with federal agencies and Native nations to identify specific problems, and offered recommendations.[8] Subsequent laws, including the 1990 Native American Graves Protection and Repatriation Act (NAGPRA), the 1993 Religious Freedom Restoration Act (RFRA), and 1994 amendments to AIRFA, were enacted to remedy some of the earlier act's shortcomings. Critics of the original 1978 act itself described it as not being concerned with results but with processes.[9]

Discrimination against Native American religions has taken many forms, including legal forms. This creates a challenge when seeking to identify legal solutions to discrimination. In describing the need for the protection of Native religions, the American Indian Religious Freedom Act of 1978 does not fully account for the intricacies of the problems that it was enacted to redress. Discrimination has been due in part to changing ideas about religion and the shifting status of Native peoples vis-à-vis US government. Longstanding ideologies regarding Euro-American cultural superiority and Christian supremacy have led to social and political biases against Native traditions. These underlying ideologies led to the implementation of a series of assimilation efforts that sought to change Native practices. 1978's AIRFA, while significant in signaling a change in federal policies and affirming the rights of Native religious practitioners within the US legal system, only accounts for limited aspects of the greater problem. The text of the act omits noteworthy information and generally oversimplifies the causes of discrimination against Native religions.

AIRFA intimates that the US government has banned practices and infringed upon Native traditions. However, when explaining the reasons for these infringements, the act cites only a lack of foresight about the repercussions of regulations that were deemed "not related." Further, the act fails to explicitly convey that Native traditions have been the primary *targets* of federal policies — not merely collateral damage. Federal regulations during the Assimilation Era specifically singled out Native beliefs and practices, and the US government has knowingly authorized actions that have damaged Native sacred sites and material culture.

There is a long backstory to this tension. In the past, non-Natives have not always recognized Native traditions as valid types of "religions." Part of this may be due to issues of translation. Religion as a parallel term and concept might not exist in original languages and cultures. But another issue has been assumptions of Euro-American cultural and religious superiority. While a primary premise of US politics is that a strict "wall of separation" exists between church and state, religious values — specifically, Christian values — have formed the basis of some aspects of US law. Further, Americans, building on European traditions, have viewed Christianity as a marker of "civilized" culture, and efforts to assimilate Native Americans to mainstream American society assumed the superiority of Christianity and required Native people's conversion. In addition, the expansive nature of many Indigenous religions exceed historic definitions of religion developed out of and pertaining largely to monotheistic religions. Rather than focusing on individual beliefs and being limited to worship in purpose-built structures, Indigenous religious traditions are often connected to special ceremonies as well as everyday practice, legal structures, relationships and protocols. This has led to some difficulties in protecting Indigenous religions under the law.[10]

* * *

The unique and changing status of Native American individuals and nations with respect to the United States helps to explain both the causes of religious discrimination against Native people and the development of AIRFA. As of March 2020, there are 574 federally

recognized Native nations, and at least sixty-six tribes that are recognized by state governments.[11] As sovereign sociopolitical entities predating the formation of the United States, Native nations have held the original cultural and religious claims to the land on which the United States developed. Through the process of settler colonialism, Europeans and Euro-Americans have sought to displace Native Americans from their original homelands and appropriate their territories and resources. As the United States took root and gained increasingly more expansive landholdings — through treaty, purchase, war, or seizure — Native communities were eventually partially subsumed into the jurisdiction of the United States as "domestic dependent nations." While they are subject to the US government, many groups have retained rights as sovereign Native nations.[12] However, during the Assimilation Era, Native Americans had not yet been granted US citizenship. In other words, Native Americans were subject to federal policies *before* they were US citizens.

When identifying the causes of the infringement of Native religions, AIRFA places some blame on the lack of a clear federal Indian policy. Indeed, federal Indian laws and policies developed unevenly over time, and often did so in response to US — not Indigenous — objectives. Regulations were often contradictory, with different branches of the government holding different ideas about US relations with Native Americans. While the 1978 act sought to protect Native practices, in preceding eras the US government used laws and policies to exert power and control over Native lands, resources, and lifeways. Legal scholars have argued that US law "did not just *declare* and *enforce* the preeminent role of the United States over the states and the tribes … it *provided justifications* for subordinating the tribes to the federal sovereign and asserting rights to tribal lands."[13] In other words, federal Indian law and policy has claimed federal US power over Native nations, enforced its own rules through available means — which includes police and the military — and justified these policies and practices through a frame of reference that places the needs and goals of the United States over those of Native nations.

While different branches of the federal government have had different goals and policies with respect to Native nations, it is possible to discern an overarching shift in the federal treatment of Native nations. When the United States was founded, the federal government treated Native nations as sovereign foreign nations. Over the course of the nineteenth century, policies increasingly devalued Native sovereignty, and the US government made decisions limiting the rights of Native communities without their input. By the mid- to late-twentieth century, the federal government began to shift back toward recognizing the inherent rights of Native self-governance.[14] The US government's treatment of Native American religions has often roughly paralleled these shifts: in eras when the US government has not recognized Native sovereignty, it has undermined the free exercise of Native traditions; over the course of the twentieth century, protections of Native religions, such as the passage of AIRFA, have been granted as government recognition of Native sovereignty has grown.

At the broadest level, *US federal Indian policy* refers to an official set of principles governing political relations between the US federal government and Native American polities. One of the first chroniclers of Indian policy defined it as "a course of action pursued by any government and adopted as expedient by that government in its relations with any of the Indians of the Americas." "Expedient" actions are those considered to be "advantageous or advisable under the particular circumstances or during a specific time span."[15] Federal Indian policy, then, is rooted in and privileges the United States' goals and interests — which, over time, have often conflicted with the needs and desires of Native nations. A related concept and system, *US federal Indian law* refers more specifically to the body of rules and laws, subject to enforcement, that regulate the relationships between Native nations and the government and outline the rights and restrictions of Native people and nations. *Tribal law* is a distinct category that refers to the specific, unique laws and policies that each Native nation develops and that apply to its members under its own jurisdiction.

Federal Indian law draws on a wide array of sources and precedents: treaties between the US government and Native nations; the US Constitution; legislation (federal acts, codes, or statutes); court case judgments; executive orders; and administrative policies determined by relevant agencies such the Bureau of Indian Affairs. US federal Indian laws and policies did not emerge as coherent systems but have developed over time. To complicate matters further, many US policies were inherited from earlier European practices.[16] As legal scholars have noted, broad policies goals have changed, and different branches of the government have pursued inconsistent goals during the same era.[17]

Religion has played a significant role federal Indian law and policy in five key ways: as a justification, method, target, challenge, and refutation. That is, European and Euro-American forms of Christianity have served as an ideological basis and method of settler colonial assimilation practices. In the context of settler colonialism, Indigenous religions have been a target of as well as a form of resistance to destructive US federal Indian policies. Today, Native religious traditions serve as evidence of the ultimate failure of destructive US federal Indian policies to eliminate Indigenous cultures. Native cultures have survived and thrived in the face of settler colonialism and assimilation. The passing of AIRFA and the ongoing presence of Native religious practices demonstrate that, while assimilation policies may continue to impact Native religious practitioners, efforts on the part of the United States to eliminate Native traditions were never wholly successful. Today, many Native communities are working to recover, restore, and reimagine traditions and practices that were once targeted by federal assimilation policies.

A brief survey of federal policies is useful in highlighting these interactions, as well as the culmination of these various policies and laws seeking to manage Native religions in the late nineteenth century. The roots of US Indian policy lie in ideas and practices inherited from earlier European policies. The foundation for European interactions with Native Americans was formed even before Columbus first sailed to the Caribbean. Between 1085 and 1492, the Crusades and the *Reconquista* provided an ideological basis and practical model for interactions between Europeans and Indigenous inhabitants of the Americas. During these periodic episodes of religiously and politically motivated warring, which were initially authorized by the Pope, European (Catholic) Christians fought Muslims for control of sacred sites and landholdings in the Middle East and Europe. Centuries of conflict cultivated animosity between Christians and Muslims, shaping Christian ideas of religious and racial "others" that would serve as a blueprint for interactions between Natives and newcomers in the Americas.[18]

As European powers led expeditions around the African continent and into the Indian Ocean in the fifteenth century, the Pope granted them the authority to convert or conquer non-Christians and take their land and resources. In 1454, the Pope conferred upon Portuguese King Alfonso license to "invade, conquer, and subjugate any and all Saracens [Muslims or Arabs] and pagans, enemies of Christ, their lands and their possessions, to reduce all to servitude and to keep everything for his own use and that of his descendants."[19] During this era, religious and racial categories overlapped and "exploration" was inextricably tied to the conquest of non-European or non-Christian peoples. While Spain and Portugal were the only nations that drew directly on divine authority to justify their conquest of Native people and lands, Spanish modes of justification would later be adopted by the US government. In 1594, the Treaty of Tordesillas had divided newly "discovered" lands outside of Europe between the Spanish and the Portuguese. This was the right of land ownership via "discovery" — despite the fact that Native Americans already inhabited, used, and cared for the lands. In the early decades of the United States, Native communities were treated as foreign nations, as they had been described in the Constitution. However, the doctrine of discovery re-emerged in 1823 in the case of Johnson v. M'Intosh. This famous case upheld the idea that, as the inheritors of European Christian rule, the US held title to Indian lands the Europeans had "discovered."[20]

In some instances, Europeans treated Native communities as independent nations; in others, as inferior societies that needed to assimilate. Spanish theologians argued that Native Americans were "natural slaves" and proto-Christians who would benefit from the violent *encomienda* system, similar to plantation slavery, that Spain instituted in the Caribbean. In contrast, French entrepreneurs formed networks with Native hunters and traded for pelts in the Great Lakes region, relying more on partnership with than subjugation of Native inhabitants. Eventually, French Jesuits introduced the goal of assimilating Native people, establishing colonies in which Native Americans would live, work, and worship. Though short-lived, Dutch colonies formed a basis for modes of engagement that the British would later adopt. The Dutch recognized Native titles for land and purchased lands with bills of sales documenting the agreement. This is in contrast to earlier assumptions about the divine right of Europeans to claim Native lands. In addition, the Dutch formed alliances with nations, particularly the Iroquois, with whom they traded for protection. The British established colonies with the intent of fully taking control over new lands. Some British recognized Native sovereignty, engaging in trade and forming alliances. However, others sought to assimilate Native people using "praying towns." Most notably, the missionary John Eliot encouraged Native people to live in British-style homes and engage in British forms of culture and industry in addition to trainings in Christian faith and practice.[21] US policies were later modeled off of these forms of interactions. Similar to European nations, US states and governments at different times fought, formed alliances, engaged in trade with and sought to assimilate Native Americans.

Over the course of the nineteenth century, federal Indian policies transitioned from interacting with Native nations as sovereign foreign entities to seeking to incorporate Natives into Euro-American society. As the United States moved enacted policies to assimilate Native people to mainstream society, Christianity was a tool, and Native religions were targets. The Civilization Fund Act of 1819, "An Act Making Provision for the Civilization of the Indian Tribes Adjoining the Frontier Settlements," marked a turning point toward US efforts to assimilate Native Americans. This act mentioned the possibility of and concern for the "extinction" of Native American people. The act authorized the President to "employ capable persons of good moral character" to instruct Native adults and children in a variety of subjects, from agriculture to reading, writing, and math. $10,000 per year was directed to Christian missionaries for their work educating, and ultimately assimilating, Native communities. Christians of many denominations were eager to take up this work. Their goals of conversion were all-encompassing: Native Americans were expected to give up aspects of their individual and communal identity, from languages to societal structures. American missionaries viewed labor as necessary for Natives' spiritual development.

Assimilation policies were ostensibly enacted in order to reduce tensions between Euro-Americans and Native people, who would be incorporated into the folds of mainstream society. However, racial animosity coupled with Euro-American desire for Native land and resources persisted. This is clearly illustrated by the US treatment of the "Five Civilized Tribes." By the nineteenth century, the Cherokee, Choctaw, Creek, Chickasaw and Seminole nations in the Southeast were known as the "Five Civilized Tribes" due to their acceptance of Christianity and selective adoption of features of Euro-American culture and society. White settlers set their eyes on Native lands in Alabama, Florida, Georgia, North Carolina, and Tennessee, and began attacking Natives' homesteads. States began agitating for the removal of Native Americans to lands further west, away from Euro-Americans. In 1830, President Andrew Jackson signed the Indian Removal Act, which authorized him to negotiate with Native nations for lands further west. Despite the 1832 decision in Worcester v. Georgia that Native Americans were entitled to their land, the federal government sent troops to enforce removals in the 1830s.[22] These removals wrenched thousands of Southeastern Natives from their ancestral homelands. In this case, the fact that Native nations

had selectively incorporated features of Euro-American technology, religion, and culture into their societies was not enough to grant them legitimacy in the eyes of white settlers who wanted their lands.

By 1850, US government leaders looked to the establishment of reservations, which are lands set aside for Native nations, as a way maintain distance between Native Americans and non-Natives. These reservations were administered by the Office of Indian Affairs. During this period, Christian leaders advocated for policies that would prioritize reform of Native individuals and societies. In 1868, President Ulysses S. Grant was concerned about the corruption of federal Indian agents who ran many of the reservations. He proposed a new policy that entrusted care of reservations to missionary organizations. Missionaries, who saw themselves as advocates for Native people, oversaw strict policies that limited features of Native religion and culture. At times they coordinated with US military to keep Native Americans on reservations.[23] In this way, missionaries often functioned as para-governmental entities that policed Native communities and enforced federal Indian policies.

After a series of engagements between the US military and Native nations in the west after the Civil War, politicians and the broader American public called for a comprehensive set of policies to manage Indian affairs. By the 1880s, senators and concerned advocates advocated for assimilation policies that would entail religious conversion, education, and new forms of landholding. Together, non-Natives hoped that these policies would "civilize" Native Americans.

* * *

During the Assimilation Era, policies specifically targeted Native American religious traditions. An 1883 list of punishable "Indian offenses" included participation in traditional dances and healing rituals. In effect, this policy banned key features of communal practice and attacked the authority of religious leaders. Individuals who broke these rules risked having essential rations withheld by local Bureau of Indian Affairs officials. In 1890, government concerns about a new dance were at least partially responsible for the massacre of Miniconjou Lakota at Wounded Knee, South Dakota.[24]

Additional policies during this era were destructive to Native religions on multiple fronts. Boarding schools affected the transmission of traditions from elders to young adults and children. Policymakers and advocates envisioned boarding and day schools as institutions that would assimilate Native children to Euro-American society. Initially these schools were administered by missionaries on or near reservations. In 1879, the government established the Carlisle Indian Industrial School, the most well-known of the federal boarding schools. In their attempts to assimilate children, school policies attacked features of Native religion and culture. Children were expected to adopt Christian practices and not allowed to speak their Native languages or maintain aspects of their culture. While some students valued aspects of the education they received, these schools damaged family connections and removed children from the ceremonial cycles of their communities.[25]

Another significant policy during this era involved Indigenous landholdings. The Dawes Act of 1887 was meant to re-fashion Native forms of land ownership. The Act stipulated that communally held lands on reservations would be divided up and assigned to Native individuals. "Excess" lands would then be sold to Euro-Americans. These policies resulted in the loss or splintering of lands significant to Native culture and traditions.[26] Many subsequent court cases related to Native religious practice have taken up the issue of access to sacred sites, which the allotment process exacerbated.[27]

Destructive federal Indian assimilation policies continued to target Native cultures through the first two decades of the twentieth century. In 1924 the Indian Citizenship Act was passed, which granted full US citizenship to Native American. Up to this point, Native American were not subject to constitutional protections. Policies began to change in the 1930s with

the publication of a report entitled "The Problem of Indian Administration." Prepared under the direction of Lewis Meriam, this document, often known as the "Merriam Report," outlined the many ways federal Indian policies were ineffectual and damaging to Native communities. Armed with this data, John Collier, who became the head of the Commissioner of Indian Affairs in 1933, advocated for a reversal of many of the assimilation policies that had directly targeted or indirectly affected Native religious traditions. The federal government backtracked in the 1940s and 1950s during the Termination and Relocation Era, seeking to sever nation-to-nation relationships and enacting relocation programs. Under these programs, adults living on reservations were incentivized to move to cities where they were expected to find jobs and assimilate into the local population. Inadvertently, these policies led to the development of pan-Indian communities. New traditions began to flourish in this urban setting among Indigenous people from many nations who were searching for a sense of community. This, in turn, helped to create political alliances.[28]

Since the 1960s, federal Indian policies have slowly turned toward the recognition of Native sovereignty and the value of Native cultures. In 1968, the Indian Civil Rights Act was passed. Participants in the Red Power movement agitated for rights and recognition. Activists drew attention to the ways that the US government has failed to uphold treaties through efforts including the occupation of Alcatraz, which began in 1969, and the 1971 Trail of Broken Treaties. Native Americans sought to re-claim traditions that had previously been targeted. With its passage, the First Amendment's Free Exercise Clause was finally applied to Native Americans. Finally, in 1978, the passage of the American Indian Religious Freedom Act (AIRFA) seemed like a victory for practitioners of Native religions. AIRFA promised to remedy to the historical discrimination of Native religious traditions.

But the legal redemption of Native religions would not be automatic. A number of court cases revealed the limits of the protections for Native traditions — both individual forms of practice and communal access to sacred lands. In the infamous 1990 case Employment Division v. Smith, the Supreme Court ruled against members of a misunderstood Native practice. Alfred Smith and Galen Black were fired after ingesting peyote, a sacrament in Native American Church. They were denied unemployment benefits because of their participation. The court decided that because laws restricting the use of peyote applied to all citizens, this outcome did not result in a substantial burden for practitioners of Native religions. 1994 amendments to the American Indian Religious Freedom Act updated legal protections to account for the religious use of peyote. Cases related to Native sacred sites have also been unsuccessful. The 1998 case Lyng v. Northwest Indian Cemetery Protective Association ruled against the Yurok, Karuk, and Tolowa nations who sought to prevent the US Forest Service from constructing of a road through sacred lands. The Supreme Courts ruled against the Native nations, allowing the construction of the road to proceed, by changing the redefining the requirements that Natives would need to prove an action placed a "substantial burden" on their practices.[29]

Challenges remain for practitioners of Native religions. Their traditions are often incommensurable with laws that were created with monotheistic, belief-based traditions in mind. In some cases new policies are created with particular Native nations in mind that have, nonetheless, applied to many groups whose contexts and structures may not suit all communities. However, practitioners have been successful on a number of other fronts. The 1990 Native American Graves Protection and Repatriation Act called for museums and universities to return of tens of thousands of significant objects and human remains that had been collected by anthropologists and were housed in federally funded institutions. Increasingly, policies have been developed and implemented to return these objects to Native communities. At the global level, the UN Declaration of the Rights of Indigenous People was adopted in 2007, which outlines the significance of Indigenous religious practices. This document articulates the importance of traditions for Native cultures, and Native communities in the US has drawn on it to authorize their efforts to protect and preserve their

traditions. Finally, Indigenous supporters from around the world made their way to North Dakota in the fall of 2016 to support members of the Standing Rock Sioux Tribe who sought to prevent the construction of the Dakota Access Pipeline. These global Indigenous solidarity movements have raised public consciousness about the significance of Native traditions. Protest itself has become a way for Native communities to exercise and expand their religious practices.[30] And, indeed, the ongoing persistence of Native traditions today stands as evidence that policies meant to stamp out Native American religions were never wholly successful.

Further Reading

Adams, David Wallace. *Education for Extinction: American Indians and the Boarding School Experience, 1875–1928*. Lawrence: University Press of Kansas, 1995.

Deloria, Vine. *God is Red: A Native View of Religion, 3rd ed*. Golden: Fulcrum, 2003.

_____. *The Gods of Indian Country: Religion and the Struggle for the American West*. Oxford: Oxford University Press, 2018.

Holm, Tom. *The Great Confusion in Indian Affairs: Native Americans and Whites in the Progressive Era*. Austin: University of Texas Press, 2005.

Niezen, Ronald. *Spirit Wars: Native North American Religions in an Age of Nation Building*. Berkeley: University of California Press, 2000.

Wenger, Tisa. *We Have a Religion: The 1920s Pueblo Indian Dance Controversy and American Religious Freedom*. Chapel Hill: University of North Carolina Press, 2009.

Bibliography

Adams, David Wallace. *Education for Extinction: American Indians and the Boarding School Experience, 1875–1928*. Lawrence: University Press of Kansas, 1995.

Adams, William Y. *Indian Policies in the Americas from Columbus to Collier and Beyond*. Santa Fe: School for Advanced Research Press, 2014.

Berger, Benjamin. *Law's Religion: Religious Difference and the Claims of Constitutionalism*. Toronto: University of Toronto Press, 2015.

Bowden, Henry Warner. *American Indians and Christian Missions: Studies in Cultural Conflict*. Chicago: University of Chicago Press, 1981.

Boyarin, Jonathan. *The Unconverted Self: Jews, Indians, and the Identity of Christian Europe*. Chicago: University of Chicago Press, 2009.

Coulthard, Glen. *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota Press, 2014.

Deloria, Vine, Jr. and Clifford M. Lytle, *American Indians, American Justice*. Austin: University of Texas Press, 1984.

De Meo, Antonia M. "Access to Eagles and Eagle Parts: Environmental Protection v. Native American Free Exercise of Religion." *Hastings Constitutional Law Quarterly* 22, no. 3 (Spring 1995): 771–814.

Duthu, N. Bruce. *American Indians and the Law*. New York: Penguin, 2008.

_____. "Federal Indian Law." *Oxford Research Encyclopedia of American History*. 2014. Accessed March 2020. DOI: 10.1093/acrefore/9780199329175.013.18.

Estes, Nick. *Our History is the Future: Standing Rock versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance*. New York: Verso, 2019.

Fletcher, Matthew L. M. "The Supreme Court and Federal Indian Policy." *Nebraska Law Review* 85, no. 121 (2006): 121–185.

Goldberg, Carole and Kevin K. Washburn. "The Indian Law Canon as Narrative: Stories of Legal Strategy and Native Persistence." In *Indian Law Stories*, edited by Carole Goldberg, Kevin K. Washburn, and Philip Frickey, 1–29. New York: Foundation Press, 2001.

Goldberg, Carole, Kevin K. Washburn, and Philip Frickey, eds. *Indian Law Stories*. New York: Foundation Press, 2011.

Graber, Jennifer. "'If a War it May be Called': The Peace Policy with American Indians." *Religion and American Culture* 41, no. 1 (2014): 36–69.

_____. *The Gods of Indian Country: Religion and the Struggle for the American West*. Oxford: Oxford University Press, 2018.

Harjo, Suzan Shown. "American Indian Religious Freedom Act after Twenty-five Years." *Wicazo Sa Review* 19, no. 2 (2004): 129–136.

Hoxie, Frederick. *A Final Promise: The Campaign to Assimilate the Indians, 1880–1920*. Lincoln: University of Nebraska Press, 1984.

Johnson, Greg, and Siv Ellen Kraft. "Standing on the Sacred: Ceremony, Discourse, and Resistance in the Fight against the Black Snake." *Journal for the Society of Religion, Nature, and Culture* 11, no. 1 (2017): 131–147.

Loesch, Martin C. "The First Americans and the 'Free' Exercise of Religion." In *Native American Cultural and Religious Freedoms*, edited by John R. Wunder, 19–84. New York: Garland Publishing, 1999.

McNally, Michael. "Native American Religious Freedom Beyond the First Amendment." In *After Pluralism: Reimagining Religious Engagement*, edited by Courtney Bender and Pamela Klassen, 225–251. New York: Columbia University Press, 2010.

Morman, Todd. *Many Nations under Many Gods: Public Land Management and American Indian Sacred Sites*. Norman: University of Oklahoma Press, 2018.

Newcomb, Steven. *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery*. Golden: Fulcrum Press, 2008.

Niezen, Ronald. *Spirit Wars: Native North American Religions in an Age of Nation Building*. Berkeley: University of California Press, 2000.

Sullivan, Winnifred Fallers. *The Impossibility of Religious Freedom*. Princeton: Princeton University Press, 2005.

Talbot, Steve. "Spiritual Genocide: The Denial of American Indian Religious Freedom, from Conquest to 1934." *Wicazo Sa Review* (Fall 2006): 7–39.

Tyler, S. Lyman. A *History of Indian Policy*. Washington, DC: Government Printing Office, 1973.

US Federal Agencies Task Force. American Indian Religious Freedom Act Report. PL 95-341(1979).

Vecsey, Christopher, ed. *Handbook of American Indian Religious Freedom*. New York: Crossroad, 1991.

Wenger, Tisa. *We Have a Religion: The 1920s Pueblo Indian Dance Controversy and American Religious Freedom*. Chapel Hill: University of North Carolina Press, 2009.

Wilkins, David E. and K. Tsianina Lomawaima. *Uneven Ground: American Indian Sovereignty and Federal Law*. Norman: University of Oklahoma Press, 2001.

Wolfe, Patrick. "Settler Colonialism and the Elimination of the Native." *Journal of Genocide Research* 8, no. 4 (2006): 387–409.

Wunder, John R., ed. *Native American Cultural and Religious Freedoms*. New York: Garland Publishing, 1999.

Zotigh, Dennis. "Native Perspectives on the 40th Anniversary of the American Indian Religious Freedom Act." *Smithsonian Magazine Blog, November* 30, 2018. https://www.smithsonianmag.com/blogs/national-museum-american-indian/2018/11/30/native-perspectives-american-indian-religious-freedom-act/.

Notes

1 The act was passed as a joint resolution on August 11, 1978 as Public Law 95-341 and was amended in 1994 as Public Law 103-344.

2 Tim Tsoodle in an interview with Dennis Zotigh. Zotigh, "Native Perspectives on the 40th Anniversary of the American Indian Religious Freedom Act," *Smithsonian Magazine Blog*, November 30, 2018, https://www.smithsonianmag.com/blogs/national-museum-american-indian/2018/11/30/native-perspectives-american-indian-religious-freedom-act/. Tsoodle is a Headsman of the Kiowa Gourd Clan, a society formed in 1957 that sponsors a yearly ceremonial gathering in Oklahoma.

3 See N. Bruce Duthu, *American Indians and the Law* (New York: Penguin, 2008).

4 The American Indian Religious Freedom Act (Public Law 95-311).

5 Antonia M. De Meo, "Access to Eagles and Eagle Parts: Environmental Protection v. Native American Free Exercise of Religion," *Hastings Constitutional Law Quarterly* 22, no. 3 (Spring 1995): 771–814.

6 Christopher Vecsey, "Prologue," *Handbook of American Indian Religious Freedom* (New York: Crossroad, 1991), 9.
7 The American Indian Religious Freedom Act, (Public Law 95-311).
8 US Federal Agencies Task Force, *American Indian Religious Freedom Act Report*, PL 95-341(1979).
9 Vernon Masayevsa, "Epilogue," *Handbook of American Indian Religious Freedom*, edited by Chris Vecsey (New York: Crossroad, 1995), 135.
10 Michael McNally, "Native American Religious Freedom Beyond the First Amendment," in *After Pluralism: Reimagining Religious Engagement*, edited by Courtney Bender and Pamela Klassen (New York: Columbia University Press, 2010), 227–228.
11 "Federal and State Recognized Tribes," National Council of State Legislatures, https://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx#State, updated March 2020. This designation refers to federal or state governments' recognition of Native nations as sovereign entities. Indigenous studies scholar Glen Coulthard discusses the implications of federal recognition, particularly for Canadian First Nations, in *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).
12 The category of "domestic dependent nations" has been used to describe Native nations' status as sovereign nations within the bounds of the United States. See Adams, *Indian Policies in the Americas: From Columbus to Collier and Beyond* (Santa Fe: School for Advanced Research Press, 2014), 296–300.
13 Carole Goldberg and Kevin K. Washburn, "The Indian Law Canon as Narrative: Stories of Legal Strategy and Native Persistence," in *Indian Law Stories,* edited by Carole Goldberg, Kevin K. Washburn, and Philip Frickey (New York: Foundation Press, 2011), 4 (emphasis added).
14 Adams, *Indian Policies in the Americas*, 237–261.
15 S. Lyman Tyler, *A History of Indian Policy* (Washington, DC: Government Printing Office, 1973), 2.
16 For a broad overview and comparison of European and US policies, see Adams, *Indian Policies in the Americas.*
17 See Duthu, *American Indians and the Law* and Goldberg, et al. *Indian Law Stories.*
18 Jonathan Boyarin, *The Unconverted Self: Jews, Indians, and the Identity of Christian Europe* (Chicago: University of Chicago Press, 2009).
19 Adams, *Indian Policies in the Americas,* 21–22.
20 Steven Newcomb, *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery* (Golden: Fulcrum Press, 2008).
21 Henry Warner Bowden, *American Indians and Christian Missions: Studies in Cultural Conflict* (Chicago: University of Chicago Press, 1981), 96–133.
22 Tyler, *A History of Indian Policy*, 54–69.
23 Jennifer Graber, "'If a War it May be Called': The Peace Policy with American Indians," *Religion and American Culture* 41, no. 1 (2014): 36–69.
24 Steve Talbot, "Spiritual Genocide: The Denial of American Indian Religious Freedom, from Conquest to 1934," *Wicazo Sa Review* (Fall 2006): 7–39.
25 David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875–1928* (Lawrence: University Press of Kansas, 1995).
26 Frederick Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880–1920* (Lincoln: University of Nebraska Press, 1984).
27 Todd Morman, *Many Nations under Many Gods: Public Land Management and American Indian Sacred Sites* (Norman: University of Oklahoma Press, 2018).
28 For a history of Native activism, see Nick Estes, *Our History is the Future: Standing Rock versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance* (New York: Verso, 2019).
29 Suzan Shown Harjo, "American Indian Religious Freedom Act after Twenty-five Years," *Wicazo Sa Review* 19, no. 2 (2004): 129–136.
30 Greg Johnson and Siv Ellen Kraft, "Standing on the Sacred: Ceremony, Discourse, and Resistance in the Fight against the Black Snake," *Journal for the Society of Religion, Nature, and Culture* 11, no. 1 (2017): 131–147.