

BOOK REVIEW SYMPOSIUM

## Reflections on the Power of Relentless Creativity

### ***Defend the Sacred: Native American Religious Freedom beyond the First Amendment***

**By Michael D. McNally. Princeton: Princeton University Press, 2020. Pp. 400. \$99.95 (cloth); \$26.95 (paper); \$26.95 (digital). ISBN: 9780691190891.**

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As I write this, I am thinking of my friend Myron Dewey, a filmmaker, a fearless activist, a firefighter, and a water protector. Myron was Newe-Numah and Paiute-Shoshone. His life's work helped to bridge the gap between Native peoples and the wider world. He passed away at the end of September 2021 in a car accident near his home community in Nevada.<sup>1</sup> Myron faced arrest at Standing Rock in 2016 and throughout that time captured a remarkable set of images of the action that he and many others undertook with regard to the Dakota Access Pipeline. His family and community are grieving this loss, and I offer my comments in part from an understanding that he helped me to gain through our friendship.

Michael McNally's *Defend the Sacred* begins in an unusual place: the reminder that the legal conception of "religious freedom," as it currently stands, is not going to get us where we need to go. It is not going to get tribal nations there, it is not going to get Indigenous peoples in diaspora there, and it will not get settler states or most other types of governmental organizations on board either. At least, it has not had overwhelming success in doing this so far.

The problem is a philosophical one, not a legal one. McNally and many other scholars have emphasized the centrality of *relationships* to Indigenous worldviews—relationships between people but also communities and nations, as well as between two-legged beings and four-legged ones, between those who swim and those who fly. That web of relationships is sustained by the earth. The problem is that indigenous understandings of relationships do not necessarily have much to do with Western concepts of "rights" or of "jurisdiction." These are foreign concepts even when they have been put to meaningful use by Native peoples and their attorneys.

Appeals to rights and jurisdiction are immensely important in many contexts, especially local ones, but they fall short of the vision Indigenous elders have articulated about the role we must begin to develop with ourselves, each other, and the spirits that sustain our presence—be they of the water, sky, or soil.

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<sup>1</sup> Vincent Shilling, "Digital Smoke Signals Founder Myron Dewey Dies in Tragic Accident," *Indian Country Today*, September 27, 2021, <https://indiancountrytoday.com/news/digital-smoke-signals-founder-journalist-filmmaker-myron-dewey-dies-in-tragic-accident>.



Despite that shortcoming, attorneys must keep fighting and drawing upon the tools at their disposal to defend sacred sites and the people we see on the cover of McNally's book. *Defend the Sacred* succeeds brilliantly at offering new frameworks and ideas for doing this. The paradox is that even in the midst of those efforts, we must remain aware of how doing so can end up reinscribing Lockean notions of property and power in a continent that has already been carved up and degraded to the point of uninhabitability in far too many cases.

The change of thinking necessary to support this shift is already underway. A friend recently joked to me that we are probably less than one hundred years from white people practicing Indigenous religious traditions for themselves. Indeed, Standing Rock was, for many non-Indian people, a moment of conversion whereby they began to see the world in a different way.

It is possible that such changes were articulated in the language of prophecy by an earlier generation of Native thinkers, many of whom were participants in a movement we know today as the Ghost Dance. Ghost Dancers were not one group of people but many, and their approach varied as much as the places that they hailed from. However, they tended to agree that in coming together and finding one another, in renewing their spiritual obligations to themselves and to others, that white people would eventually disappear. Contrary to popular belief both 140 years ago and today, that disappearance was rarely described as taking the form of violent upheaval or revolution. Rather, these prophecies of white destruction tended to emphasize the role of "natural disasters" like floods or avalanches in inundating the settlers' presence.

Race has always been a politically charged topic in America, but in the overheated rhetoric of the current moment, we actually do need to think about how Indigenous peoples a century or more ago diagnosed the problem of the disrespect they saw happening to their homelands. It was unlikely that white people were ever going to somehow magically die off. I have begun thinking of these prophecies as diagnostic tools for describing a process whereby the group of people who we today think of as "white" do what they have always needed to do and simply become a part of this place that they inhabit. And this place, in North America and elsewhere, already involves the political presence of Indigenous peoples.

Of course, there are a lot of movies and before that, novels, that described some version of white people "going Native." These stories always draw a big audience. But Native scholars have shown those kinds of narratives to be part of a settler fantasy, not an Indigenous one.<sup>2</sup> What would becoming part of a place actually look like? To me, that is the question we must ask; it is the metaphorical spot on the map that we must "go." Doing so successfully requires, above all else, that we respect the differences between Native and non-Native peoples while also acknowledging that we are relatives in the larger sense.

Again, the problem is philosophical, not legal. This work of reimagining in the broader sense cannot only occur in the courts. We must think bigger, and to me, after reading McNally's book, doing so is what I think "defending the sacred" actually means. Perhaps the goal, really, is to create a new kind of society that we have not seen before; one that is not predicated on the abuse and misuse of power and information. Short-term measures are important but we should not mistake them for the larger sense of purpose. What we need to do, and Vine Deloria Jr. said as much, is to move from a "rights" society to a "responsibility" society.<sup>3</sup>

I believe that the clichéd adage "think globally act locally" holds up here. Although hippies may have been the ones to put those words on bumper stickers, there are plenty of other groups who have used this way of thinking to accomplish their goals, including

<sup>2</sup> Phillip Deloria, *Playing Indian* (New Haven: Yale University Press, 1998), 185. For a discussion of this subject in an international context, see Jane Stafford, "Going Native: How the New Zealand Settler Became Indigenous," in "Maning to Mansfield: Writing New Zealand 1829–1920," special issue, *Journal of New Zealand Literature*, no. 23, part 1 (2005): 162–73.

<sup>3</sup> Vine Deloria Jr. briefly articulated the distinction between "rights societies" and "responsibility societies" in an interview in the documentary film *In the Light of Reverence*, directed by Christopher McLeod (Oley: Bullfrog Films, 2001), 1:11:28–1:12:01, <https://sacredland.org/in-the-light-of-reverence/>.

the Red Power movement. Figures like Clyde Warrior and Myron Dewey both had a strong understanding of this approach and brought it to their work on the ground with communities and allies every day.

This takes us to the place where McNally's book leaves us, which is the realm of international law and politics. I think this move is important, because Native American history has always been international in scope, especially prior to the War of 1812 in North America. The court cases that form the bedrock of current thinking in Native law are founded upon a slightly later era, however. The fact remains that the historical experiences of Native peoples in the nineteenth century cannot be reduced to the Marshall Trilogy<sup>4</sup> and the Indian Wars. The lived realities that earlier generations experienced were vastly more complicated. Acknowledging this serves as a reminder that Native historians have more work to do in documenting and telling those stories in their true and brutal fullness.

We—all of us, lawyers, scholars, tribal members, descendants, settlers—have to do something that the filmmaker and artist Arthur Jafa described as training ourselves to look at the difficult and the unpleasant, rather than being repelled. We have to do this if we care about justice or making a new way forward. If we do not, we risk reducing the intellectual and spiritual legacies we inherit to the paltriness of legalese. We have to think about what gets lost in every expedient translation.

These are some of the critical reflections I had after reading this book. Normally I offer my praise first and critical comments later, but in this case, I am doing the opposite, having had the benefit of reading this book over a year ago and reflecting on its many strengths. What McNally's book does beautifully is examine the usefulness and limitations of the concept of "religion." It takes some of what he calls "conceptual gymnastics" (19) to do so, but beauty is a word that has profound religious meaning for Indigenous peoples, and I do not use it lightly in this context. Scholars like Charles Long, Tisa Wenger, David Chidester, and others have done this as well.<sup>5</sup> This is important because it reminds us that *religion* is a limited frame for understanding that vast and mystifying spectrum of human behavior that falls under its umbrella.

The crises of the current moment in terms of climate change, deep political and racial antagonism, and ongoing colonial violence require that we step outside that umbrella and into the elements. Our old ways of thinking are no longer viable. We need to challenge these categories, including the term *religion*, as McNally teaches us to do, and explore these philosophical tensions if we are to have a chance at creating a way forward. Doing so requires, above all else, a spirit of creativity and curiosity. What I admire most about this book is that it does that. It is relentlessly searching.

"Defending the sacred" in the way that McNally has helped me to imagine requires moving beyond defensive postures. No one ever won a game by just playing defense. We have to move to a more proactive, offensive strategy, legally and beyond the court systems. Doing this involves rethinking the game itself. We must do this without fear. If we are able to tap into the kind of curiosity that McNally has invited us to take part in with this book, then the world will truly be a different, and hopefully better, safer, and healthier place for everyone to live in a hundred years. We might not see it with our own eyes, but that is not the point. Thank you to Michael McNally for this book and for his ideas, so necessary in times like these. Thank you, Michael, for your courage in listening to Indigenous peoples. Fear can shut that ability to listen down, and that is where we two-leggeds can get into trouble.

<sup>4</sup> Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823); Cherokee Nation v. Georgia, 30 U.S. 1 (1831); Worcester v. Georgia, 31 U.S. 515 (1832).

<sup>5</sup> Charles Long, *Significations: Signs, Symbols, and Images in the Interpretation of Religion* (Aurora: Davies Group, 1999); Tisa Wenger, *We Have a Religion: The 1920s Pueblo Indian Dance Controversy and American Religious Freedom* (Chapel Hill: University of North Carolina Press, 2009); David Chidester, *Religion: Material Dynamics* (Berkeley: University of California Press, 2018).